

PP 3.2150 J

TELECOMMUNICATIONS LEASE AGREEMENT

FILED NO. 28457
CITY OF BELLEVUE
DATE 3 23 00
M. J. DENNO
CITY CLERK'S OFFICE
286412



This TELECOMMUNICATION LEASE AGREEMENT ("Lease Agreement") is entered into by and between the City of Bellevue, a municipal corporation of the state of Washington ("City"), VoiceStream PCS III Corporation ("Lessee").

WHEREAS, the City's Water Utility is the owner of certain property located at 2200 NE 96th Street, in Clyde Hill, Washington commonly referred to as West Bellevue Reservoir; and

WHEREAS, the City supports increased availability and improved telecommunications services for its citizens and businesses; and

WHEREAS, the primary responsibility of the City is to provide municipal services to its citizens and businesses and the leasing of City facilities to private telecommunication companies should not interfere with the delivery of those services; and

WHEREAS, the City is a partner with the Eastside Public Safety Communication Agency ("EPSCA"), an 800 MHZ system that provides public safety communications access for governmental and public agencies in northern and eastern King County; and

WHEREAS, opportunities to lease City property should be marketed to accomplish the greatest exposure and to achieve the best value for the City; and

WHEREAS, City-owned property must be leased at no less than fair market value; and

WHEREAS, Lessee desires to lease and the City is willing to lease a certain area within the Site ("Equipment Facility Area"), all as more particularly described in Exhibit "A", attached hereto and incorporated herein by reference, for the purpose of installing, maintaining, repairing, replacing and removing Lessee's Site Equipment ("Site Equipment") as hereafter defined and described in Exhibit "B";

NOW THEREFORE, for valuable consideration the sufficiency of which is hereby acknowledged, City and Lessee agree as follows:

1. Areas Leased:
 - A. City hereby leases to Lessee the "Equipment Facility Area" for the installation, operation, and maintenance, at Lessee's sole responsibility and expense, of Lessee's Site Equipment. The definition of what is included as Lessee's Site Equipment in Exhibit "B" may be modified by written agreement Lessee and the Director of the Utilities Department.
 - B. City represents (i) it owns the Site and the Equipment Facility Area and all appurtenances thereto not owned by other lessees, (ii) it is fully authorized to enter into this Lease Agreement, and (iii) the individual executing this Lease is authorized to bind the City to the provisions hereof.

C. Lessee shall, at its sole expense, procure all licenses, permits and/or approvals necessary to construct, install, maintain and operate the Site Equipment. City shall cooperate reasonably in all respects with Lessee's application(s) to appropriate governmental authorities thereof.

D. Lessee shall provide a performance bond or other security device satisfactory to the Utilities Department prior to the issuance of any permits for the construction of its facilities on the leased property.

E. Subject to City review and approval, Lessee may install cables and wires outside the Equipment Facility Area as may be reasonably necessary for service to the Equipment Facility Area. Upon forty-eight (48) hours prior notice to the City, Lessee may repair and maintain such cables and wires and shall be granted access to effect such repairs and maintenance. Lessee shall use its best efforts to perform such repairs and maintenance during normal business hours in a manner that will not interfere with City operations. In the event of an emergency, the forty eight (48) hour notice requirement may be dispensed with and Lessee may access the area and make such repairs as are necessary; provided that Lessee shall make every effort to contact the City as soon thereafter as the emergency is known to Lessee.

2. Term:

The term of this Lease Agreement shall commence on the date this Agreement is executed by both parties and shall expire five (5) years from the date of such execution; provided that this Lease Agreement may be extended for an additional five (5) year term by mutual agreement of the parties. Such extension shall be automatic unless either party provides written notice to the other party at least six (6) months prior to the expiration of the initial five year term that it does not agree to an automatic extension of the Lease Agreement.

If at any time during the term of this Lease Agreement, either party believes that technology has changed such that modifications to or replacement of the Site Equipment would result in better communications facilities for the Lessee, less interference with other communications facilities on the Site, or less physically or aesthetically obtrusive equipment, the parties shall make every reasonable effort to effectuate such modifications or replacement.

Notwithstanding the above, if Lessee has not approved the results of the radio frequency test(s) referenced in Section 4 to determine the suitability of the Equipment Facility Area for its intended uses, and/or has not obtained all necessary governmental approvals for the placement and operation of the Site Equipment within six (6) months after the effective date of this Lease Agreement, including but not limited to approvals from the FCC and/or the FAA, as well as applicable land use approvals for such facilities, the Lease Agreement shall automatically terminate thirty (30) days after the expiration of such six (6) month period and Lessee shall remove the Site Equipment and, unless otherwise agreed by the City, shall, within such thirty (30) day period, return the Equipment Facility Area to its respective condition immediately prior to the commencement of the term of the Lease Agreement. Such six (6) month period may be extended by the City for good cause shown.

3. Payment:

Lessee shall pay City a monthly lease fee in the amount of eleven Hundred Dollars (\$1100) ("Monthly Rent") for the duration of the term of the Lease Agreement. At the beginning of each subsequent year of the Lease thereafter, the monthly rent shall automatically be increased in proportion to the annual increase in the "All Items" category of the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics of the U.S. Department of Labor for the Seattle-Everett Metropolitan Area (1982-84 = 100) (the "Index"). Payment of such Monthly Rent shall be made to the City no later than the first day of each calendar month, at the address set forth in Paragraph 19. Lessee shall additionally be responsible for the payment of any applicable leasehold excise tax. The first of such Monthly Rent payments shall be due and payable to the City upon the date of execution of the Lease Agreement by the City, and shall be prorated as necessary if that date is not the first day of the month. In lieu of payment of the Monthly Rent, Lessee may, by agreement with the City, provide in-kind services, equipment or facilities of not less value than the Monthly Rent.

4. Interference Study:

A. When the Lessee is performing the radio frequency test(s) to determine the suitability of the Equipment Facility Area for its intended use, Lessee shall conduct an interference study. The results of this study shall be reviewed by any other lessee(s) with communication facilities located on the Site. If as a result of the interference study it is determined that operation of Lessee's Site Equipment would significantly interfere with the operation and use of any other authorized communications facilities on the Site, whether operated by the City, EPSCA or another lessee, the Lessee or the City may terminate the Lease Agreement upon thirty (30) days notice to the other party and neither party shall have any further obligations or responsibilities under the Lease Agreement. The cost of the study shall be the sole responsibility of the Lessee.

B. If after the Lessee initiates operation of its Site Equipment, the City has reason to believe that Lessee's operation of its Site Equipment has caused or is causing any electrical, electromagnetic, radio frequency, or other interference with the operation and use of any other authorized communications facilities on the Site, whether operated by the City, EPSCA or another lessee, Lessee shall promptly commence curative measures until the interference has been corrected to the reasonable satisfaction of the owner of the facilities being interfered with. If such interference has not been corrected within sixty (60) days of initial notice from the City, the Lessee or the City may terminate the Lease Agreement upon thirty (30) days notice to the other party and neither party shall have any further obligations or responsibilities under the Lease Agreement.

C. Lessee shall not affix or mount any antennae, devices, equipment or related material, in any manner or in any location which would cause a degradation in the operation or use of communications systems at the Site which serve the City or other public users. This would include but not be limited to impacting the received or transmitted signal strength or patterns of any systems at the site serving the needs of the City.

5. Utilities and Services:

A. Lessee and its employees shall have unrestricted access to the Equipment Facility Area at all times provided that such access does not unreasonably interfere with any repair or operational activities being conducted by the City.

B. Prior to the execution of the Lease Agreement and with forty-eight (48) hours written notice to the City, Lessee or its surveyor or contractor may, at Lessee's sole expense, enter upon and survey the Equipment Facility Area and City's abutting and surrounding property to take measurements, make calculations, and note all other information relevant to Lessee's assessment of the suitability of the site for its purposes.

C. If City does not furnish Lessee electrical service for the Site Equipment, Lessee may install, at its sole cost and expense, an electrical meter and run such utility lines as may be reasonably necessary to provide electrical service to the Site Equipment. The provision of such electrical lines and service shall not materially interfere with City's normal use of the Site. The City will not encumber its property for the benefit of the Lessee to provide these services.

D. City shall not be liable for any damages to any person or property, nor shall Lessee be relieved from any of its obligations under this Lease Agreement, as a direct or indirect result of temporary interruption in the electrical power provided to the Site Equipment where such interruption is caused by acts of nature or other acts beyond City control. Under no circumstances shall City be liable for indirect or consequential damages resulting from such an interruption.

E. Lessee may, at its sole expense, install a backup generator in a location acceptable to the City, in order to provide electrical service to the Lessee's Site Equipment during emergency situations where electrical power is not otherwise available. Any backup generator must be so designed and operated as to not exceed local noise level standards.

6. Compliance with Laws:

Lessee shall at all times ensure that the installation, maintenance and operation of its Site Equipment complies with all applicable City ordinances, regulations and policies, as well as all state and federal laws and regulations. Lessee shall not use the Equipment Facility Area for any illegal purposes or violate any applicable law, nor create or allow to exist any nuisance or hazardous materials, nor trespass or do any act on the Site which would increase the rate of insurance thereon, nor deface, damage or overload the structural components of any structures on the Site.

7. Maintenance:

Lessee shall keep the Site, Equipment Facility Area and the immediate surrounding areas neat and clean. City shall have no obligation to maintain or safeguard the Site Equipment, except that City shall not intentionally permit access to the Site Equipment to any party without the prior approval of Lessee, except as otherwise provided herein.

8. Repairs by City Inspection; Increased Maintenance Costs:

City shall have no duty to Lessee to make any repairs or improvements to the Equipment Facility Area except those repairs necessary for the safety of the Lessee. The City or its representatives shall be provided access to the Equipment Facility Area upon no more than 24 hours notice to Lessee.

In the event that the presence of Lessee's Site Equipment on the Site or the Equipment Facility Area results in increased maintenance or repair costs to the City, Lessee shall, within thirty (30) days of notification by the City, pay City for the incremental maintenance or repair costs incurred by the City.

9. Assignment and Subleasing:

Lessee may not assign this Lease Agreement or sublet the Equipment Facility Area or its Site Equipment without the prior written consent of City, which consent shall not unreasonably be withheld, provided that the assignee or transferee assumes by written agreement all of the Lessee's obligations under this Lease Agreement, which shall remain in full force and effect for the duration of the lease term. The provision of such consent shall be contingent on sublessee or assignee registering with the City's Tax Office.

Lessee shall provide in writing to the City, the conditions of the assignment and the conditions of the sublease agreement. If the amount of compensation the Lessee is receiving under the assignment or the sublease agreement exceeds the Monthly Rent amount the Lessee is paying the City, the parties agree to review the amount of the Lessee's Monthly Rent payment and to increase such amount if necessary to more accurately reflect fair market value. City may transfer and assign its rights and obligations hereunder and no further liability or obligation shall thereafter accrue against City hereunder, provided that the assignee or transferee assumes all of City's obligations under this Lease Agreement, which shall remain in full force and effect.

10. City's Review of Plans and Approval of Contractors:

Prior to installing any equipment in the Equipment Facility Area, Lessee shall submit plans and specifications of the planned installation for City review and approval. City shall have thirty (30) business days to review and approve such plans, after which time City's failure to notify Lessee of any objections to the plans shall be deemed acceptance thereof. City's approval of such plans shall not be deemed a representation that they comply with applicable laws or regulations of the governing entity.

11. Destruction of or Damage to the Site, Equipment Facility Area or any Site Structures:

If the Site, Equipment Facility Area or any structure on the Site is destroyed or damaged by fire or casualty so as to render the Site or Equipment Facility Area wholly unfit for use by the Lessee or if in the reasonable judgement of the City the damage cannot be repaired within ninety (90) days following the date of such damage, either party may terminate this Lease Agreement upon written notice to the other party, whereupon this Lease Agreement shall terminate on the date of such notice and Lessee shall surrender the Equipment Facility Area

to the City within ninety (90) days. Within fifteen (15) days after such damage, City shall notify Lessee as to whether the City expects to complete such repair within ninety (90) days. If the Equipment Facility Area is damaged by fire or casualty, but not rendered wholly unfit for use, City may elect promptly to repair such damage. City shall not be liable to Lessee for any indirect or consequential damages including but not limited to inconvenience, annoyance, or loss of profits, nor for any expenses, or any other damage resulting from the repair of such damage, or from any repair, modification, arranging, or rearranging of any portion of the Site or Equipment Facility Area or for termination of this Lease Agreement as provided herein, unless the damage was caused by the gross negligence of the City or its agents or employees.

12. Condemnation:

If all or any portion of the Site or the Equipment Facility Area shall be taken or condemned for any public purpose such that the Lessee cannot use its Site Equipment on the Equipment Facility Area, either party may terminate this Lease Agreement. All proceeds from any taking or condemnation of the Site or Equipment Facility Area shall belong and be paid to the City. Lessee shall have all rights to its Site Equipment and personal property, which shall not be included in any taking or condemnation.

13. Fixtures:

City agrees that, notwithstanding any provision of statutory or common law, the Site Equipment and any other Lessee improvements to the Site or Equipment Facility Area shall not become affixed to or a part of the Site or any structure on the site, but shall remain the personal property of the Lessee. Lessee agrees to save City harmless on account of any claims or liens imposed upon the Site or Equipment Facility Area in connection with alterations or improvements thereto.

14. Insurance:

Lessee shall maintain throughout the term of this Lease Agreement a policy of liability insurance covering the Lessee, which shall name the City as an additional insured, in amounts no less than the following, and with such deductibles as are ordinary and reasonable in keeping with industry standards:

- A. Comprehensive General Liability: combined single limit of not less than one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) in the annual aggregate.
- B. Comprehensive Automobile Liability: combined single limit of not less than one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) in the annual aggregate.
- C. All bonds and insurance policies called for herein shall be issued by companies authorized to sell insurance in the State of Washington with current rating of B+ or better by the A.M. Best Company or a mutually agreed substitute rating company.

- D. Notwithstanding the other provisions of this section, the City may, at its sole discretion, accept proof of self insurance by the Lessee in lieu of the insurance requirements provided herein.

15. Liability and Indemnity:

City and Lessee shall each indemnify and save the other harmless from all claims (including costs and expenses of defending against such claims) arising from that party's breach of any of its obligations hereunder or from the negligence or willful misconduct of City or Lessee, as the case may be, or any of its agents, employees, or contractors occurring during the term of this Lease Agreement.

16. Termination:

- A. City shall have the right to terminate this Lease Agreement upon thirty (30) days written notice to Lessee upon the occurrence of any of the following events.
- (1) City determines that Lessee's exercise of its rights under this Lease Agreement unreasonably interfere with the City's use of the Site and/or the structures on the Site for the lawful municipal purposes for which City owns and administers such structures/site.
 - (2) City determines that Lessee's exercise of its rights under this Lease Agreement unreasonably interferes with the use of the Site or structures thereon by a governmental agency with which the City has an agreement to provide services to the City, e.g. the Eastside Public Safety Communications Agency.
 - (3) Lessee breaches any material term or covenant of this Lease Agreement pursuant to Paragraph 17.
- B. Lessee may terminate this Lease Agreement upon thirty (30) day's written notice to City if:
- (1.) The approval or consent of any governmental authority necessary for the construction and/or operation of the Site Equipment is withheld, revoked or terminated, or Lessee determines, in its sole discretion, that the cost of obtaining or retaining such approval is cost prohibitive; or
 - (2.) Lessee at any time determines in its sole discretion that it desires to discontinue use of the Equipment Facility Area for any reason whatsoever; or
 - (3.) City breaches any material term or provision of this Lease Agreement.

Upon termination under this section, neither party will owe any further obligation to the other party provided that Lessee is not in arrears in making its Monthly Rent payments; provided however that Lessee shall remove its Site Equipment within ninety (90) days of notice of termination and shall restore the

Site and the Equipment Facility Area to its original condition, normal wear and tear and conditions beyond Lessee's control excepted, and provided that, if Lessee terminates this Lease Agreement pursuant to Paragraph 16(B)(2) above, Lessee shall pay City a sum equal to six (6) months' rent as City's sole remedy for such termination; and provided if City terminates this Lease Agreement pursuant to Paragraph 16(A)(2) above, City shall, at Lessee's option, attempt to find alternative sites on other City property in order to allow Lessee to continue to provide service within the City.

17. Defaults and Remedies:

Neither party shall be in default under this Lease Agreement until thirty (30) days after receipt of written notice of default from the other; provided, however, where such default cannot reasonably be cured within thirty (30) days, the defaulting party shall not be in default if it commences to cure such default within said thirty (30) day period and diligently pursues cure to completion. Should Lessee breach any material term or covenant in this Lease Agreement, and such breach shall continue uncured thirty (30) days following notice thereof, City may terminate this Lease Agreement upon written notice to Lessee. Lessee shall pay as City's sole remedy an amount equal to the then existing annual rent.

18. Removal of Site Equipment upon Termination of Lease Agreement:

Upon the expiration of the term of this Lease Agreement or upon the termination of this Lease Agreement pursuant to Paragraph 16, Lessee shall remove all the Site Equipment from the Site and the Equipment Facility Area unless otherwise agreed by the parties; provided, that, at the City's sole option, such Site Equipment shall become the property of the City.

19. Notice:

All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested, or overnight delivery, addressed as follows (or any other addresses as designated by like notice):

City of Bellevue:

Director
Utilities Department
City of Bellevue
P.O. Box 90012
Bellevue, WA 98009-9012

Lessee:

VoiceStream PCS III Corporation
3650 131st Avenue SE, Suite 200
Bellevue, WA 98006
Attn: PCS Leasing Administrator

cc. VoiceStream PCS III Corporation
Legal Department
3650 131st Avenue SE, Suite 200
Bellevue, WA 98006

20. Complete Agreement:

This Lease Agreement and any attached exhibits constitute the entire agreement between City and Lessee; no prior written or prior, contemporaneous or subsequent oral promises or representations shall be binding except that any subsequently adopted City policies and procedures for telecommunications lease agreements shall be binding on the parties.

21. Amendments:

Except as may otherwise be provided herein, this Lease Agreement shall not be amended or changed except by written instrument signed by both parties.

22. Executed in Counterparts:

This Lease Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute but one instrument.

23. Governed by Laws of State of Washington; Invalidity of Provisions:

This Lease Agreement shall be governed by the laws of the State of Washington. If any term or provision of this Lease Agreement, or application thereof shall to any extent be invalid or unenforceable, the remainder of this Lease Agreement shall not be affected thereby, but shall be valid and enforced to the fullest extent permitted by law.

24. Binding on Successors:

This Lease Agreement shall be binding upon and inure to the benefits of the heirs, executors, administrators, successors and assigns of the parties, subject to the conditions set forth in Paragraph 9 herein.

25. Failure to Insist upon Strict Performance:

The failure of either party to insist upon strict performance of any of the terms or conditions of this Agreement shall not constitute a waiver thereof.

26. Memorandum of Lease Agreement:

City and Lessee shall enter into a short form memorandum of this Lease Agreement, in a form suitable for recording under the laws of the State of Washington, referencing this Lease Agreement, and all options herein, which Lessee may, at its expense, file in King County, Washington.

IN WITNESS WHEREOF, the parties hereto have executed this Lease Agreement on the respective dates below indicated.

CITY OF BELLEVUE

VoiceStream PCS III Corporation

By: Linda Barton

By: [Signature]

Name:

Name: Toby Bull

Title:

Title: Executive Director

Date:

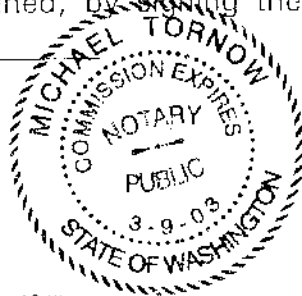
Date: 5/11/02

Approved as to form:

[Signature]
Richard L. Kirkby
Assistant City Attorney

STATE OF _____)
COUNTY OF _____)

On this 3 day of April, 192000, personally appeared before me Linda Barton, a Notary Public in and for the State and County aforesaid, personally appeared _____, with whom I am personally acquainted, (or proved to me on the basis of satisfactory evidence), and who, upon oath acknowledged herself to be the Interim City Manager of City of Bellevue and that she as such _____, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by herself as



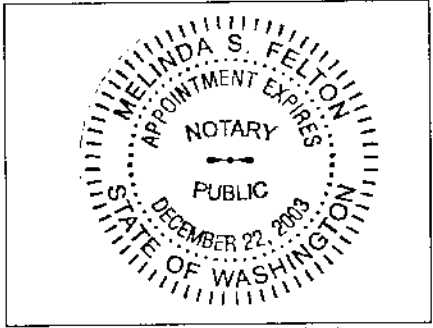
Michael Tornow
NOTARY PUBLIC, residing
in Bothell, Washington
My Commission Expires:
3-9-03

STATE OF WASHINGTON)
) ss.
COUNTY OF King)

I certify that I know or have satisfactory evidence that Tung Bui is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Executive Director of VoiceStream PCS III Corporation to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 5/11/00

Melinda S. Felton



(Use this space for notary stamp/seal)

Notary Public _____
Print Name Melinda S. Felton
My commission expires 12-22-03

EXHIBIT "A"

That portion of the SE 1/4 of the NW 1/4 of the NE 1/4 of Section 30, Township 25 N, Range 5 East of King County, Washington, described as follows:

Beginning at the NE corner of said SE 1/4; thence N 0°56'27" E 30 feet; thence N 89°17'34" W 132.96 feet to the true point of beginning; Thence N 0°56'27" E 100 feet; thence N 89°17'34" W 100 feet; thence S 0°56'27" W 100 feet; thence S 89°17'34" E 100 feet to the true point of beginning.

Y:\D1-93-CC50

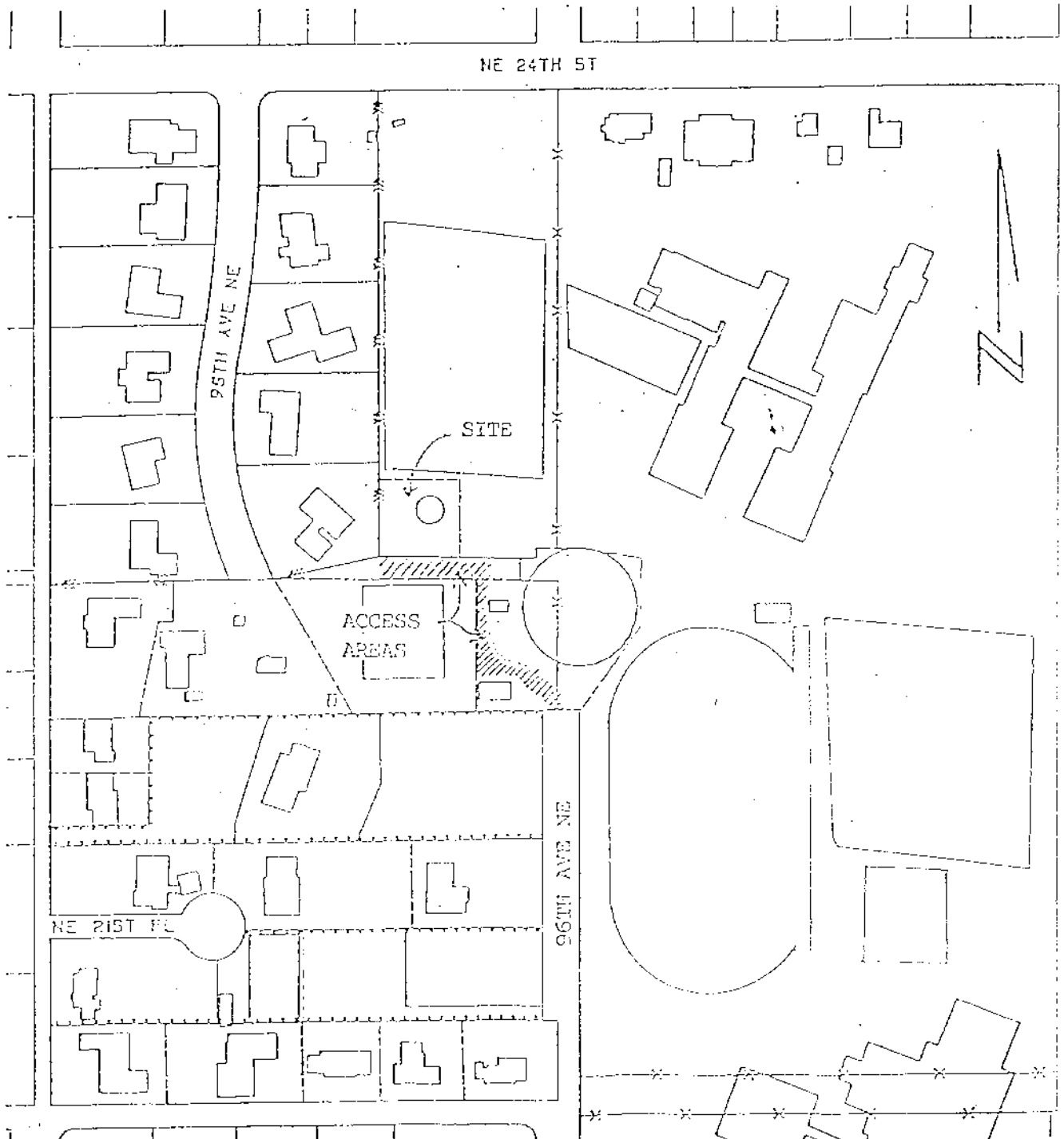


EXHIBIT B

Equipment

Six (6) panel antennas measuring 72" x 8" x 2.75" mounted on the existing mounting brackets located on the side of the Clyde Hill Water Tank.

Coaxial cables mounted on the water tank connecting the antennas to the equipment cabinets located in the equipment building owned by the City of Clyde Hill.