

LAKEHAVEN UTILITY DISTRICT
King County, Washington

Resolution No. 2001-943

A RESOLUTION of the Board of Commissioners of the Lakehaven Utility District, King County, Washington, approving the execution of a lease of a portion of District property described herein and canceling Resolution number 2001-926.

Whereas, the District owns a parcel of real property at South 310th Street and 8th Avenue South upon which is located a water storage tank, and

Whereas, a party having previously received approval to lease another tank site at 312th and 21st Avenue South, which site is no longer suitable for its purposes, has expressed an interest in locating certain telecommunications facilities on 310th/8th Ave South tank site, and

Whereas, the Board, after holding a public hearing to consider such lease, believes the same to be in the best interests of the District;

NOW, THEREFORE, **BE IT RESOLVED** as follows:

1. The Board hereby finds that, pursuant to its existing water system comprehensive plan, the District has a continuing need for ownership of the following tank site properties:
 - South 310th Street
 - 8th Avenue South
2. The Board additionally finds that the lease of a portion of the following parcel to the designated lessee under terms and conditions of a "Lease Agreement" and for initial rent or other compensation set forth below would be in the best interests of the District:
 - South 310th & 8th Avenue South – Federal Way Amateur Radio club – Agreement to provide Emergency response assistance
3. The General Manager is hereby authorized, upon the receipt of adequate security therefore as required by law, to execute a "Lease Agreement", substantially in the form as attached hereto.
4. Resolution Number 2000-926 is hereby cancelled.

ADOPTED by the Board of Commissioners of Lakehaven Utility District, King County, Washington, at an open public meeting this 22 day of March, 2001.

ATTEST:

Donald A. Miller
President and Commissioner ✓
Yea
Nay Abstain

Thomas M. Johnson
Vice President and Commissioner ✓
Yea
Nay Abstain

NOT PRESENT

Secretary and Commissioner
Yea
Nay Abstain

Beverly J. Tweddle
Commissioner ✓
Yea
Nay Abstain

NOT PRESENT

Commissioner
Yea
Nay Abstain

Approved as to form:
General Counsel

LAKEHAVEN UTILITY DISTRICT

SITE LEASE FOR TELECOMMUNICATIONS FACILITIES

THIS INDENTURE of lease, made this 17th day of April, 2001, by and between LAKEHAVEN UTILITY DISTRICT of King County, Washington, a municipal corporation, hereinafter referred to as "Lessor" and FEDERAL WAY AMATEUR RADIO CLUB, hereinafter referred to as "Lessee".

1. Lease-

Subject to the following terms and conditions, Lessor hereby leases to Lessee, certain space on the property described on Exhibit "A", attached hereto (the "Property"), for the placement, maintenance and operation of telecommunications facilities and appurtenances.

2. Term-

The duration of this Lease shall be Twenty-Five (25) years. The initial term of this lease shall be Ten (10) years, commencing on 17th day of April, 2001 (the "Commencement Date") and terminating at Midnight on April 17, 2011, the last day of the initial term.

3. Rent/Fees-

Lessee hereby agrees, in lieu of monetary rent, to provide Lessor with emergency response assistance and other related services as more particularly described in Exhibit "B", attached hereto.

4. Renewal-

Lessee shall have the right to extend this Lease for Three (3) additional terms of five (5) years each ("Renewal Term"). Each Renewal Term shall be on the same terms and conditions as set forth herein. This Lease shall automatically renew for each successive Renewal Term unless Lessee shall notify Lessor, in writing, of Lessee's intention not to renew this Lease, at least ninety (90) days prior to the expiration of the term or any Renewal Term.

5. Interference-

Lessee shall not use the Premises in any way that interferes with the use of the Property by Lessor, or other lessees, employees or agents of Lessor. Similarly, Lessor shall not use, nor permits its lessees, employees or agents to unreasonably interfere with Lessee's use of the premises. It is agreed that if such interference does not cease following the provision of written notice demanding the same, it shall constitute a material breach of this lease and the non-defaulting party may bring suit to enjoin such interference or terminate this Lease.

6. Security-

The parties acknowledge the requirement that Lessor obtain from parties leasing property owned by Lessee, pursuant to RCW 57.08.120, security for Lessee's performance of the lease

terms. It is agreed that in recognition of Lessee's status as a non-profit organization performing functions of benefit to the public and that it is providing non-monetary consideration for the lease, Lessee shall not be required to post a performance bond or other security to guarantee performance of its obligation under this Lease. If it is determined by the Office of the State Auditor or a court of competent jurisdiction that this waiver of the security requirement is invalid, then Lessee shall be obligated to provide a bond guaranteeing performance of its obligations under this Lease from a surety licensed in the State of Washington as a further condition of this Lease.

7. Improvements/Access-

Lessee shall have a nonexclusive right, at its expense, to erect and maintain on the Premises, improvements, personal property and facilities necessary to operate its telecommunication facilities as set forth in Exhibit 'C'. Lessee shall not be entitled, without the written consent of the Lessor, to make or install any improvements to its facilities not described herein or otherwise alter its use of the Premise. A pre-construction meeting shall be held at least ten working days prior to installation of facilities. Lessor shall have final approval over construction and/or installation of improvements, which approval shall not be unreasonably withheld or delayed. Lessee shall keep and maintain such facilities in commercially reasonable condition and repair during the term of this lease, normal wear and tear excepted. At the end of the lease, the Premises shall be returned to Lessor in good, usable condition, normal wear and tear excepted. As partial consideration for Rent paid under this Lease, Lessor hereby grants Lessee a non-exclusive easement, for the term of the lease, for ingress and egress to the Premises adequate to install and maintain the improvements and necessary appurtenances.

8. Operating Conditions-

Lessee agrees to abide by each and every operating condition set forth in Exhibit "D", attached hereto. Failure to abide by any such operating condition shall constitute a material breach of the Lease and, upon written notice to Lessee and failure to cure within five (five) days, entitle Lessor to declare the Lease immediately terminated and enforce such termination in a court of competent jurisdiction.

9. Termination-

Either party may terminate this lease at the end of any lease year on the provision of written notice of not less than six (6) months prior to the end of such lease year.

10. Utilities-

In addition to the aforesaid Rent, Lessee shall install necessary facilities and pay, as accrued, all utilities used or consumed upon the lease premises by Lessee and its facilities, and any and all other charges or expenses incurred for services performed on or for the lease premises for Lessee.

11. Hold Harmless/Insurance-

Lessee shall hold harmless the Lessor and Lessor's agents from all damage of every kind and nature whatsoever that may be claimed or accrue by reason for any accident in or about the Premises and areas adjacent thereto caused by the acts or neglect of the Lessee or any agent of Lessee. For purposes of this section, Lessee shall procure a policy of comprehensive commercial

general liability insurance which names the Lessor as an additional insured with limits not less than \$1,000,000 per occurrence/\$2,000,000 aggregate.

12. Applicable Laws-

The Lessee, in the use and occupation of the demised premises and in the operation of any activity thereon, shall comply with all requirements of all applicable laws, orders, ordinances, rules and regulations of the federal, state, county and municipal authorities.

13. Time of the Essence/Waiver-

Time is of the essence in all matters relating to the performance of each and every term of this lease herein. Any failure by either party to enforce any right arising hereunder shall not be deemed a waiver of such right.

14. Assignment-

The parties agree that this Lease shall not be assignable in whole or in part by Lessee without the written consent of Lessor. Should Lessor be acquired in part by any municipal entity pursuant to statutory assumption proceedings and should Lessor continue to exist as a municipal corporation, Lessee's obligation to pay Rent to Lessor shall continue regardless of whether or not Lessor continues to own the Premises.

IN WITNESS WHEREOF, Lessor and Lessee have set their hands and seals the day and year above set forth.

Lessee:

By: 

Its: _____

Date: 4/12/2001

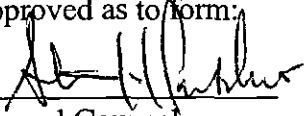
Lessor: LAKEHAVEN UTILITY DISTRICT

By: 

Its: General Manager

Date: 4/17/01

Approved as to form:


General Counsel

LAKEHAVEN UTILITY DISTRICT
LEASE AGREEMENT FOR TELECOMMUNICATIONS FACILITIES

Exhibit A

Real Property Description

BEING KNOWN AS:

Tanks 1&4 Site: South 310th Street and 8th Avenue South, Federal Way,
Washington.

LAKEHAVEN UTILITY DISTRICT
LEASE AGREEMENT FOR TELECOMMUNICATIONS FACILITIES

Exhibit B

Rent/Fees

Emergency Response Assistance and other related services shall be provided as follows:

- Communications Aid as requested during designated emergencies.
- Assistance during staff training exercises.

LAKEHAVEN UTILITY DISTRICT

LEASE AGREEMENT FOR TELECOMMUNICATIONS FACILITIES

Exhibit C

IMPROVEMENTS

- 1) The Federal Way Amateur Radio Club (FWARC) will undertake the removal from the Tank 2 Site, transport between tank sites, and install and set-up at the Tanks 1&4 Site, all of its equipment and structures at its sole expense. If so required by the City of Federal Way, the Federal Way Amateur Radio Club shall perform this work under a City building permit and the Federal Way Amateur Radio Club will be responsible for any requirements that the City may impose, such as landscaping.
- 2) The Federal Way Amateur Radio Club will use the same building structure on the Tanks 1&4 Site that is currently being used by the Seattle Amateur Radio Club (SARC) and the Federal Way Fire Department, in coordination with the Federal Way Fire Department, and may share the same electrical power and phone service as is used by the SARC and/or the Federal Way Fire Department.
- 3) The Federal Way Amateur Radio Club, at its sole expense, will install conduit and wire, or use existing conduit and wire, for power and telephone service for its equipment and appurtenances from the points these two utility services would be available in or near the tank site.
- 4) The Federal Way Amateur Radio Club will be assigned its own fence gate key for the Tanks 1&4 Site, so that authorized members can gain access to the site under the conditions set forth in Exhibit D "Operating Conditions" (currently the same key they used for the Tank 2 Site).

LAKEHAVEN UTILITY DISTRICT

LEASE AGREEMENT FOR TELECOMMUNICATIONS FACILITIES

Exhibit D

Operating Conditions

1. Lessee shall notify the District at least 24-hours prior to entering the site. In emergency situations, the Lessee shall notify the District within 24 hours of entering the site. The appropriate contact is: Water Quality Engineer (currently Stan French) @ (253) 946-5410.
2. Lessee shall maintain, at its own expense, all facilities and improvements installed on District property to the satisfaction of the District. Failure to maintain said facilities will result in termination of this contract unless arrangements are made to pay the District's cost of maintaining the facility.
3. Lessee is responsible for ensuring site is secure upon departure. Fencing of said facilities/improvements within the fenced portions of District property is prohibited, unless authorized in writing by the District's representative.
4. Lessee shall inform the District of any hazardous substance(s) that will be used and/or stored on site along with the appropriate MSDS and spill response plan.