

RESOLUTION NO. 1276

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A LEASE AGREEMENT WITH WESTERN PCS I CORPORATION TO PLACE A TELECOMMUNICATION ANTENNA ON THE STARK STREET WATER TOWER, RESERVOIR #2.

WHEREAS, the City owns property at 24451 Stark Street, currently the site of Water Reservoir #2; and

WHEREAS, Western PCS I Corporation, a Delaware corporation, has a need for an antenna site for a personal communications service system; and

WHEREAS, Western PCS has identified Water Reservoir #2 as a desirable place to affix said antenna, and has offered to lease same from the City for a annual fee of \$9,000 for a term of five years, with one additional five-year extension at its option, and two additional five-year extensions with the consent of both parties; and

WHEREAS, staff have studied this proposal and believe the lease can be granted without adverse impact on the City's water system; and

WHEREAS, the proposed lease is virtually identical to one the City has entered into with another telecommunications firm; and

WHEREAS, granting this lease to place an antenna on an existing structure may be more desirable than requiring Western PCS to construct a separate antenna facility elsewhere in the City.


NOW THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE

That the Mayor is authorized to enter into a lease agreement substantially as shown in Attachment A with Western PCS I Corporation for placing an antenna and related facilities at Water Reservoir #2, 24451 Stark Street.

YEAS: 6
NAYS: 0
ABSTAINED: 0


Paul Thattner, Mayor

Dated: 8-28-96


Debbie Stickney, Deputy City Recorder

Adopted: 8-27-96



October 14, 1996

Public Works Dir.
City of Troutdale
104 S.E. Kibling Avenue
Troutdale, OR 97060

Dear Gentlemen:

Enclosed please find fully executed original of the Stark-242 (PO1461A) Water Tank Lease between the City of Troutdale, and Western PCS I Corporation.

Please note that the lease will commence within 30 days of the issuance of a building permit or the first day of the month following the commencement of physical preparation of the Site.

If you should have any questions, please do not hesitate to contact me at 503-284-9201.

Sincerely,

WESTERN PCS I CORPORATION

A handwritten signature in cursive script that reads "Geneva Schreiner".

Geneva Schreiner
Lease Administrator

encs.

Site: PO-1461-A/Stark-242
Market: Portland MTA

Water Tank Lease

THIS WATER TANK LEASE (this "Lease") is effective this 28th day of August, 1996, between the City of Troutdale ("Landlord"), and Western PCS I Corporation, a Delaware corporation, ("Tenant").

1. Premises and Use. Landlord leases to Tenant, the site described below:

- Real property consisting of approximately 400 square feet of land.
- Building interior space consisting of approximately _____ square.
- Building exterior space for attachment of antennas.
- Building exterior space for placement of base station equipment.
- Tower antenna space on water tank.
- Space required for cable runs to connect PCS equipment and antennas.

in the location(s) ("Site") shown on Exhibit A, together with a non-exclusive easement for reasonable access thereto and to the appropriate, in the discretion of Tenant, source of electric and telephone facilities. The Site will be used by Tenant for the purpose of installing, removing, replacing, maintaining and operating, at its expense, a personal communications service system facility ("PCS") including, without limitation, related antenna equipment and fixtures. Tenant will use the Site in a manner which will not unreasonably disturb the Landlord's use, operation, or maintenance of its water tower or related equipment or the occupancy of Landlord's other tenants.

2. Term. The term of this Lease (the "Initial Term") is five (5) years commencing on the date ("Commencement Date") Tenant signs this Lease. This Lease will automatically be renewed for one (1) additional term ("Renewal Term") of five (5) years unless Tenant provides Landlord with notice of intention not to renew not less than ninety (90) days prior to the expiration of the Initial Term. Following the first Renewal Term, this Lease may be renewed for two (2) additional Renewal Terms (each for five [5] years) upon the mutual agreement of both parties and upon such terms and conditions that the parties may agree.

3. Rent. Rent in the amount of Nine Thousand and 00/100 Dollars (\$9,000.00) will be paid annually beginning the earlier of (a) the date which is thirty (30) days after the issuance of a building permit for installation of the PCS; or (b) the first day of the month following commencement of physical preparation of the Site. Thereafter the annual rent will be paid on or before each anniversary of the Commencement Date, partial years to be prorated. The annual rent for each Renewal Term will be the annual rent in effect for the final year of the Initial Term or prior Renewal Term, as the case may be, increased by twenty percent (20%). In addition, Tenant will pay the sum of One Hundred and 00/100 Dollars (\$100.00) to Landlord on the Commencement Date.

4. Interference. Tenant will resolve technical interference problems with other equipment located at the Site on the Commencement Date or any equipment that becomes attached to the Site at any future date when Tenant desires to add additional equipment to the Site. Likewise, Landlord will not permit the installation of any future equipment which results in technical interference problems with Tenant's then existing equipment.

5. Improvements.

(a) Tenant may, at its expense, make such improvements on the Site and install its wireless communication equipment on the Site as shown on Exhibits B and C hereto and shall have the reasonable right to upgrade and replace its equipment on the Site so long as the same is consistent with the configuration of the equipment as shown in Exhibits B and C. If Tenant deems it necessary to make improvements on the Site that are not consistent with the configuration of the equipment as shown in Exhibits B and C, tenant must obtain Landlord's written consent, which consent will not be unreasonably withheld, delayed, or conditioned, prior to the commencement of installation. Landlord agrees to cooperate with Tenant with respect to obtaining any required zoning approvals for the Site and such improvements at Tenant's sole cost. Tenant will paint the antenna panels to blend in with the tank, and will enclose the electrical cabinet with a slated security fence. During the term of this Lease, Tenant will repair damage to the water tower in a timely manner if the damage is caused by the actions of Tenant. Upon termination or expiration of this Lease, Tenant shall remove its equipment and improvements and will restore the Site to the condition existing on the commencement date, except for ordinary wear and tear. If Tenant fails to remove its equipment and improvements from the Site within forty-five (45) days after the termination of this Lease, then Landlord may, without liability to Tenant, remove such equipment and improvements at Tenant's expense.

(b) Utilities. Tenant will arrange for separate electric service and metering at no cost to Landlord and purchase its electrical service directly from the appropriate utility company. Tenant will also be responsible for obtaining telephone service for the Site at no cost to Landlord. Landlord will reasonably cooperate with Tenant in Tenant's efforts to obtain utilities from any location provided by the servicing utility. Tenant shall obtain approval from Landlord of any plans for the location of new utility lines, which approval shall not be unreasonably withheld.

6. Termination.

(a) Tenant may terminate this Lease at any time by notice to Landlord without further liability if Tenant does not obtain all permits or other approvals (collectively, "Approval") required from any governmental authority or any easements required from any third party to operate the PCS system, or if any such approval is canceled, expires or is withdrawn or terminated, or if Landlord fails to have proper ownership of the Site or authority to enter into this Lease, or if Tenant is unable to use the Site for its intended purpose due to future changes in technology or

design of the communication system which was not contemplated as of the date of the Lease. Upon termination, all prepaid rent shall be retained by the Landlord, and Tenant shall execute a document which will extinguish the effect of any memorandum of the Lease recorded in the real property records, and if Tenant fails to do so within a timely manner, Tenant appoints Landlord as Tenant's attorney-in-fact for such purpose.

(b) Casualty. Should the water tank suffer substantial damage from any cause whatsoever and Landlord determines that it is in its best interests to not repair such damage or to remove the tank, then upon written notice of Landlord's determination, this Lease may be terminated by either party upon thirty (30) days' written notice to the other party. It is expressly understood by Tenant that in the event of such substantial damage to the tank, Landlord has no obligation to rebuild or repair the tank.

(c) Default. If either party is in default under this Lease for a period of (a) ten (10) days following receipt of notice from the non-defaulting party with respect to a default which may be cured solely by the payment of money; or (b) thirty (30) days following receipt of notice from the non-defaulting party with respect to a default which may not be cured solely by the payment of money, then, in either event, the non-defaulting party may pursue any remedies available to it against the defaulting party under applicable law, including, but not limited to, the right to terminate this Lease. If the non-monetary default may not reasonably be cured within a thirty (30)-day period, this Lease may not be terminated if the defaulting party commences action to cure the default within such thirty (30)-day period and proceeds with due diligence to fully cure the default. Tenant waives all consequential and incidental damages arising from any breach or alleged breach of this Lease by Landlord, specifically including any loss of revenues from Tenant's wireless communication system arising from the loss of Tenant's communication signal from the Site.

7. Taxes. Tenant will be responsible for payment of all real and personal property taxes assessed directly upon and arising solely from its use of the communication facility on the Site. Tenant will pay such taxes within sixty (60) days of receipt of sufficient documentation indicating calculation of Tenant's share and payment of the taxes by Landlord, or the taxing authority if separately billed to Tenant.

8. Insurance. Tenant will procure and maintain a public liability policy, with limits of One Million and 00/100 Dollars (\$1,000,000.00) for bodily injury, One Million and 00/100 Dollars (\$1,000,000.00) for property damage, Two Million and 00/100 Dollars (\$2,000,000.00) aggregate, with a certificate of insurance to be furnished to Landlord within thirty (30) days of written request. Such policy will provide that cancellation will not occur without at least fifteen (15) days prior written notice to Landlord. Landlord shall be listed as an additional insured party on such insurance policy.

9. Indemnity. Tenant takes the Site in "AS-IS" condition and assumes sole risk for damage to its equipment and improvements from any cause whatsoever, except from such damage resulting from the Landlord's gross negligence or intentional

tortious conduct. Tenant agrees to defend, indemnify and hold Landlord, including Landlord's employees, agents and officers, harmless from and against any and all claims, losses, damages, liabilities, costs (including reasonable attorney fees) arising from Tenant's use of the Site, specifically including its installation, use and maintenance of its equipment and improvements, except for such claims arising from the tortious, intentional acts of Landlord, including its employees, agents and officers, or the negligence of Landlord, when Landlord's contributory fault with respect to the same exceeds the contributory fault of Tenant.

10. Notices. All notices must be in writing and are effective when deposited in the U.S. mail, certified and postage prepaid, to the address set forth below or as otherwise provided by law:

If to Tenant, to:

Western PCS I Corporation
Attn: PCS Leasing Administrator
2001 N.W. Sammamish Road
Suite 100
Issaquah, WA 98027
Phone: (206) 313-5200
Fax: (206) 313-5520

with a copy to:

Western PCS I Corporation
Attn: Legal Department
2001 N.W. Sammamish Road
Suite 100
Issaquah, WA 98027
Phone: (206) 313-5200
Fax: (206) 313-5520

If to Landlord to:

Public Works Dir.
City of Troutdale
104 S.E. Kibling Avenue
Troutdale, OR 97060
Phone: (503) 665-5175
Fax: (503) 667-6403
Fed. Tax ID #: 93-6002268

11. Title and Quiet Possession. Landlord represents and agrees (a) that it is the owner of the Site; (b) that it has the right to enter into this Lease; (c) that the person signing this Lease has the authority to sign; (d) that Tenant is entitled to access to the Site at all times and to the quiet possession of the Site throughout the Initial Term and each Renewal Term so long as Tenant is not in default beyond the expiration of any cure period; and (e) that Landlord shall not have unsupervised access to the PCS equipment; however, this shall not limit the Landlord's right to access its water tower as needed in the course of its operation and maintenance of the water tower.

12. (a) Hazardous Substances. To the best of Landlord's actual knowledge without investigation, there is no substance, chemical or waste (collectively "Substance") on the Site that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Tenant shall not introduce or use any such Substance on the Site in violation of any applicable law.

(b) Compliance with Laws. To the best of Landlord's knowledge, Landlord represents that Landlord's property (including the Site), and all improvements located thereon, are in compliance with building, life/safety, disability and other laws, codes and regulations of applicable governmental authorities. Tenant will comply with all applicable laws relating to its possession and use of the Site.

13. Assignment and Subletting. Tenant will not assign or transfer this Lease or sublet all or any portion of the Site without the prior written consent of Landlord, which consent will not be unreasonably withheld, delayed or conditioned.

14. Subordination and Non-Disturbance. This Lease is subordinate to any mortgage or deed of trust now of record against the site. However, promptly after this Lease is fully executed, Landlord will request the holder of any such mortgage or deed of trust to execute a non-disturbance agreement and Landlord will cooperate with Tenant toward such end to the extent that such cooperation does not cause Landlord additional financial liability or administrative expense.

15. Miscellaneous.

(a) This Lease applies to and binds the heirs, successors, executors, administrators and assigns of the parties to this Lease;

(b) This Lease is governed by the laws of the state in which the Site is located;

(c) If requested by Tenant, Landlord agrees promptly to execute and deliver to Tenant a recordable Memorandum of this Lease in the form of Exhibit D;

(d) This Lease (including the Exhibits) constitutes the entire agreement between the parties and supersedes all prior written and verbal agreements, representations, promises or understandings between the parties. Any amendments to this Lease must be in writing and executed by both parties;

(e) This Lease is conditioned upon Tenant's obtaining all necessary governmental permits and approvals for use of the Site. The execution of this Lease by Landlord shall not be deemed to be a commitment by Landlord to issue any such permits or approvals;

(f) If any provision of this Lease is invalid or unenforceable with respect to any party, the remainder of this Lease or the application of such provision to persons other than those as to whom it is held invalid or unenforceable will not be affected and each provision of this Lease will be valid and enforceable to the fullest extent permitted by law; and

(g) The prevailing party in any action or proceeding in court or mutually agreed upon arbitration proceeding to enforce the terms of this Lease is

entitled to receive its reasonable attorneys' fees and other reasonable enforcement costs and expenses from the non-prevailing party.

The following Exhibits are attached to and made a part of this Lease. Exhibits A, B, C and D.

The Commencement Date of this Lease is the _____ day of _____, 1996.

LANDLORD:

By: Paul Thalhofer

Its: Mayor

TENANT:

Western PCS I Corporation

By: [Signature]

Its: WP

STATE OF _____)

SS:

COUNTY OF _____)

On this 25th day of August, 1996, before me personally appeared Paul Thalhofer, known to me to be the Mayor of Trousdale, the City that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said City for the uses and purposes therein mentioned, and on oath, stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Marion Berg
NOTARY PUBLIC in and for the
State of Oregon
My commission expires 5-19-98

STATE OF WASHINGTON)

SS:

COUNTY OF KING)

On this 9 day of Oct, 1996, before me personally appeared David A. Miller, known to me to be the V.P. of Western PCS I Corporation, the person that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath, stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Amy S. Repasky
NOTARY PUBLIC in and for the
State of Washington.
My commission expires 11/03/98

EXHIBIT A

Legal Description

To the Water Tank Lease dated this 28th day of August, 1996, between City of Troutdale, as Landlord, and Western PCS I Corporation, as Tenant.

The Property is legally described as follows:

LEGAL DESCRIPTION

PARCEL 1: A tract of land situated in the Southwest one-quarter of Section 35, Township 1 North, Range 3 East of the Willamette Meridian, in the City of Troutdale, County of Multnomah and State of Oregon, more particularly described as follows:

Commencing at a point on the Base Line 1022.30 feet East of the Southwest corner of said Section 35; thence North 1° 19' 40" East parallel with the West line of a 12 acre tract heretofore conveyed to Iva J. Korlund and Hazel Korlund, husband and wife and Lloyd Bjur and Idarise Bjur, husband and wife on May 6, 1947 and recorded in Book 1169, Page 281, Deed Records of Multnomah County, a distance of 357.38 feet to the point of beginning of the tract herein to be described; thence North 88° 35' 50" West parallel with the South line of said Section 35, a distance of 159.00 feet to a point in the West line of the above mentioned 12 acre tract; thence North 1° 19' 40" East along said West line, a distance of 79.62 feet; thence South 88° 35' 50" East parallel with the South line of said Section 35, a distance of 159.00 feet; thence South 1° 19' 40" West 79.62 feet to the point of beginning.

PARCEL 2: A tract of land situated in the Southwest one-quarter of Section 35, Township 1 North, Range 3 East of the Willamette Meridian, in the City of Troutdale, County of Multnomah and State of Oregon, more particularly described as follows:

Commencing at a point on the Baseline 1022.30 feet East of the Southwest corner of said Section 35; thence North 1° 19' 40" East parallel with the West line of a 12 acre tract heretofore conveyed to Iva J. Korlund and Hazel Korlund, husband and wife and Lloyd Bjur and Idarise Bjur, husband and wife on May 6, 1947 and recorded in Book 1169, Page 281, Deed Records of Multnomah County, a distance of 357.38 feet to the point of beginning of tract herein to be described; thence North 88° 35' 50" West parallel with the South line of said Section 35, a distance of 159.00 feet to a point in the West line of the above mentioned 12 acre tract; thence South 1° 19' 40" West 16.38 feet; thence South 88° 35' 50" East 159.00 feet; thence North 1° 19' 40" East 16.38 feet to the point of beginning.

EXHIBIT B

Premises Location Within the Property

To the Water Tank Lease dated this 28th day of August, 1996, between City of Troutdale as Landlord, and Western PCS I Corporation, as Tenant.

The location of the Premises within the Property is more particularly described and depicted as follows:

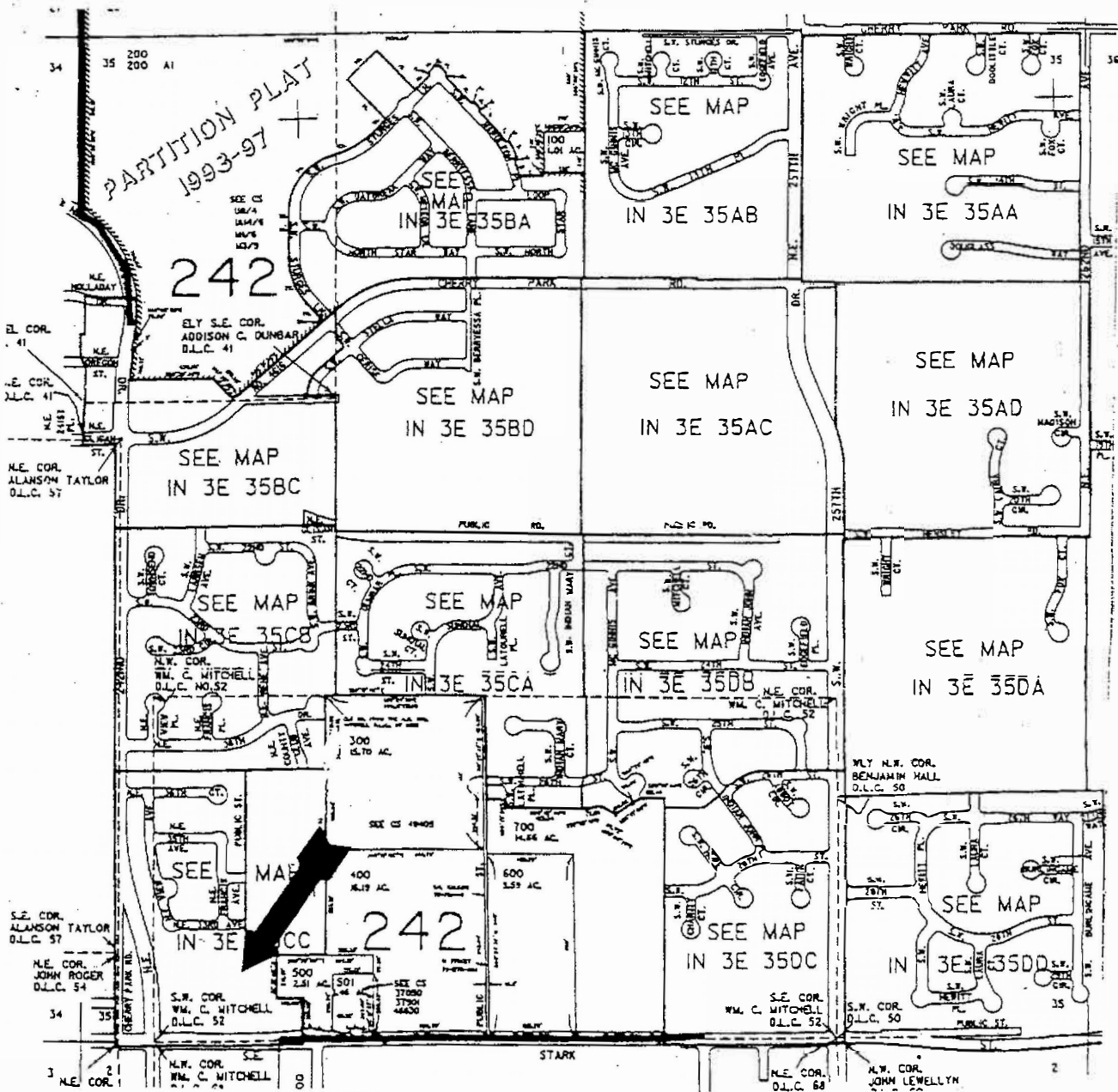


EXHIBIT D

Memorandum of PCS Site Lease

This memorandum evidences that a lease was made and entered into by written PCS Water Tank Lease dated August 28, 1996, between City of Troutdale ("Landlord") and Western PCS I Corporation, a Delaware corporation ("Tenant"), the terms and conditions of which are incorporated herein by reference.

Such Lease provides in part that Landlord leases to Tenant a certain site ("Site") located at 24451 Stark Street, City of Troutdale, County of Multnomah, State of Oregon, within the property of Landlord which is described in Exhibits A, B and C attached hereto, with grant of easement for unrestricted rights of access thereto and to electric and telephone facilities for a term of five (5) years commencing on _____, 19__, which term is subject to one (1) additional five (5) year extension period by Tenant and two (2) additional five (5) year extension periods with the consent of both parties.

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the day and year first above written.

LANDLORD: CITY OF TROUTDALE

By: *Paul J. Halchofer*
Its: *Mayor*

TENANT: Western PCS I Corporation

By: *[Signature]*
Its: *VP*