

EXHIBIT A

**TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON MT.
SCOTT COMMUNICATIONS SITE
SUBLEASE**

A sublease agreement between the Tri-County Metropolitan Transportation District of Oregon ("TriMet"), a mass transit district organized under ORS Chapter 267, and the City of Portland through the Bureau of Fleet and Facilities, ("Sublessee"). TriMet and Sublessee are referred to herein as the "parties".

RECITALS

- A. Pursuant to Lease No. 15667C-LA effective, June 30, 2014, and terminating June 30, 2019, TriMet has leased a parcel of land from the State of Oregon, Department of Transportation, for the purpose of operating a radio communication site ("Premises");
- B. TriMet and Sublessee have entered into a Sublease, effective June 30, 2014, and terminating June 30, 2019, covering certain property located in the Sublease and entitling Sublessee to locate and maintain equipment on the tower and in the building on the Premises, as set forth more specifically in the Sublease.
- C. TriMet and the State of Oregon, Department of Transportation ("ODOT"), have entered into a new lease, File No. PM303A-004, a copy of which is attached and incorporated as Exhibit A, leasing the same parcel of land, which is further described in the Lease.
- D. Sublessee desires to continue to sublease from TriMet, and TriMet desires to continue to lease to Sublessee, space on the tower located on the Premises, to place certain equipment.
- E. The parties to desire to enter into a Sublease subject to the terms of Lease No. PM303A-004.

Now therefore, the parties agree as follows:

AGREEMENT

1. Incorporation of Lease No. PM303A-004 and Term

The terms and conditions of this Sublease shall be those set forth in Lease No. PM303A-004 between TriMet and the State of Oregon, Department of Transportation, contained in Exhibit A, subject to the modifications set forth below. Except as otherwise provided, the term "State be "Sublessee." References to "State Transportation Facility" means the State of Oregon Transportation Facility. This Sublease is subject to future modifications

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between the State and TriMet of the terms of Exhibit A, and to future determinations by State or TriMet of the amount of rental fee owed by Sublessee for use of the Premises.

The term of this Sublease shall be from the date it is signed by TriMet until the earlier of: (1) June 30, 2029; (2) termination of Lease No. PM303A-004 between TriMet and the State; or (3) termination of this Sublease pursuant to its terms. If Lease PM303A-004 is extended or a new lease between TriMet and the State is entered into beyond June 30, 2029, the parties intend to extend the Sublease or enter into a new Sublease with Sublessee which shall be subject to the terms and conditions of the new lease between TriMet and the State, and as otherwise determined by TriMet.

2. Exhibit A, Paragraph 2, "Improvements"

Paragraph 2 "Improvement" is deleted in its entirety and replaced with the following:

TriMet shall not be required to make any repairs, alterations, additions, or improvements to or upon the Premises during the term of this Sublease, except only those specifically provided for in this Sublease. Sublessee shall make no alterations, additions, fixtures or improvements of any kind without the prior written consent of TriMet. Consent for removal shall not be unreasonably withheld so long as Sublessee is in good standing under this Sublease and removal will not irreparably damage the leased Premises as determined in TriMet's sole reasonable discretion. Except as otherwise specifically provided in this Sublease, all structure, partitions, plumbing, electrical wiring, light fixtures, floor coverings, restrooms, attached shelving and counters, and other fixtures, whether installed by Sublessee or TriMet, shall remain on the property of TriMet and may not be removed by the Sublessee.

3. Exhibit A, Paragraph 4, "Base Rent"

Paragraph 4, "Base Rent" is deleted in its entirety and replaced with the following:

Sublessee shall pay to TriMet rent at the rate of \$1,005.46 per month. The Lease Rate will be increased annually by three percent (3%), the same percentage by which TriMet's Lease Rate is increased under Lease No. PM303A-004 between TriMet and the State or Oregon. Rental payments shall be submitted by the first day of each month without demand to TriMet's Finance Division, 101 SW 1st Ave., 700, Portland, Oregon 97204. The rental payment must identify TriMet file no. 921, TriMet contract number GH120285LE and the Lease no. PM303A- 004.

4. Exhibit A, Paragraph 5, "Assignment, Sublease or Collocation"

Paragraph 5 "Assignment, Sublease, or Collocation" is deleted in its entirety and replaced with the following:

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Sublessee shall not assign this Sublease, or sublet any part of the Premises, or allow collocation without the prior written consent of TriMet. Any assignment or sublease or collocation entered into by Sublessee in violation of this paragraph shall be null and void and shall constitute grounds for immediate termination of this Sublease by TriMet.

5. Exhibit A, Paragraph 8, "Termination"

The second paragraph of Paragraph 8 "Termination" is deleted in its entirety and replaced with the following:

Sublessee may terminate this Sublease by providing TriMet ninety (90) days prior written notice of its intent to terminate.

6. Exhibit A, Paragraph 12, "Acceptable & Non-Acceptable Uses"

Paragraph 12, "Acceptable & Non-Acceptable Uses"; is revised to add the following provisions:

7. Sublessee's General Use

(A) Pursuant to a prior Sublease between TriMet and Sublessee; Sublessee was authorized to construct a twenty (20) foot extension of TriMet's radio tower subject to the conditions imposed by the conditional use permit issued by the City of Happy Valley on January 3, 1993. TriMet owns all preexisting tower improvements constructed by Sublessee.

(B) Sublessee shall be entitled to continue to locate and maintain the following Sublessee equipment on the tower and in the building which had been installed pursuant to prior approval by TriMet. Any change in the placement of said communication equipment or additional equipment shall first be approved by TriMet.

- (1) 20' waveguide ladder
- (2) 1 each- 4' dish-Mark HP D48, 18 GHz - Elevation at 75' level.
- (3) 1 each- 6' dish- RFS Celwave PAD 6-59A, 18 GHz - Elevation at 70-foot level
- (4) 2-1/2" feed lines for the antennas listed at (2) and (3) above
- (5) 2 each Antel BCD-80010, 800 MHz antennas at the highest point of the tower
- (6) 4 each- Antel BCD-80010, 800 MHz antennas at the 120 -foot level on 6-foot stand-offs
- (7) 1 each- Antel BCD-7905, 700MHz antenna the 120-foot level with a 6-foot stand off
- (8) 1 each- Kathrein 900 MHz antenna at the 120-foot level with a 6-foot stand-off
- (9) 7/8" transmission line for items (5) through (8)
- (10) Waveguide bridge between Sublessee's building and TriMet's tower

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(11)1 each- Pronet VHF Omni directional receive antenna; at 140 foot level

- (C) Sublessee shall pay for all utilities required for installation or use of Sublessee's equipment on TriMet's tower.
 - (D) As long as Sublessee's antenna requirements are met by the use of TriMet's tower, Sublessee agrees not to erect a tower on the property it leases adjacent to the Sublease leasehold site, that might interfere with use of TriMet's tower, and agrees to use reasonable efforts to continue its existing lease of the adjacent land, thereby keeping that land and its air space free of obstruction that might interfere with use of TriMet's tower. If Sublessee's antenna requirements are no longer met by use of TriMet's tower, Sublessee may terminate this Sublease as to its use of the tower upon ninety (90) days prior written notice to TriMet. The provisions of this subparagraph (D) shall not survive the termination of this Sublease. Subject to other provisions of this Sublease, Sublessee shall have access to the Premises and tower at all reasonable times for installation, maintenance, repair, replacement, or removal of its equipment.
 - (E) Sublessee shall ensure that only individuals necessary for installation, maintenance or operation of its equipment on TriMet's tower are admitted to the Premises by Sublessee. Sublessee shall ensure that those individuals practice all reasonable safety precautions, including but not necessarily limited to those commonly practiced in the relevant trade or industry. Sublessee shall ensure that individuals who go aloft the tower are not subjected to electric or electronic hazards of which Sublessee is, or reasonably should be aware. Each party shall notify the other immediately of any hazardous condition that arises on the Premises and becomes known to the party or its officers, employees or agents.
 - (F) Each party shall comply at its own expense with all laws, ordinances and regulations of any municipal, county, state, Federal and other public authority respecting the party's use of the Premises.
 - (G) Sublessee shall not install or use any power machinery on the property other than that which is necessary for diagnostic purposes or that which is necessary for normal maintenance of equipment, except with prior written consent of TriMet.
 - (H) Sublessee shall not permit any lien of any kind to be placed or imposed upon any part of the Premises.
8. Exhibit A, Paragraph 16, "Taxes & Assessments"
Paragraph 16, Taxes & Assessments", is revised to add the following language: The parties acknowledge that each party is a tax exempt entity. If applicable, Sublessee shall be responsible for any taxes and assessments that may be imposed as a result of Sublessee's use of or operations on the Premises.
9. Exhibit A, Paragraph 19, "Property Maintenance"

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The last sentence of Paragraph 19, "Property Maintenance", is revised to read:

Sublessee shall maintain the Premises in a neat, well-kept manner. The parties acknowledge that Sublessee is not the sole subtenant of TriMet at the Premises; Sublessee shall not be responsible for remedying conditions of the Premises caused by either TriMet or TriMet's other subtenants. TriMet shall require all other subtenants or authorized users to keep the Premises in a neat, well-kept manner during the entities' or persons' uses.

10. Exhibit A. Paragraph 22, "Liability: Indemnification"

The first sentence of Paragraph 22, "Liability; Indemnification", is revised to read:

Sublessee shall occupy and use the Premises at Lessee's own risk and expense, and shall in accordance with the provisions of the Oregon Tort Claims Act including the monetary limits of liability for public bodies (ORS 30.260 through 30.300), indemnify, defend and hold harmless TriMet, its directors, officers, employees and agents, from all claims, suits, actions, costs or liabilities, including attorney fees, for any damage to property or injury or death of any person arising out of or In connection with the occupancy or use of Premises by Sublessee.

Due to the difference between the tort claims liability cap for State agencies versus local government, the City and State have agreed to contribution in lieu of indemnification. The following contribution language will be used In lieu of any indemnification provision between the State or ODOT and the City of Portland that may be found in the Lease or Sublease:

If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which the State is jointly liable with the City (or would be if joined in the Third Party Claim), the State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the City in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the City on the other hand in

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connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the State on the one hand and of the City on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.

With respect to a Third Party Claim for which the City is jointly liable with the State (or would be if joined in the Third Party Claim), the City shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the State in such proportion as is appropriate to reflect the relative fault of the City on the one hand and of the State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the City on the one hand and of the State on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The City's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding

11. Exhibit A, Paragraph 24, "Successors & Assigns"

Paragraph 24 "Successors and Assigns; is deleted in its entirety and replaced with the following:

The provisions of this Sublease and all obligations and rights hereunder shall extend to and bind any successors or assigns of Sublessee for whom written consent has been provided by TriMet pursuant to Paragraph 17, "Assignment."

12. Additional Provisions

The following additional provisions shall apply to this Sublease:

(a) Security

TriMet makes no representation regarding security. Sublessee assumes all risk of loss due to theft, vandalism, or other acts of third

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parties. The parties acknowledged that TriMet has other subtenants at the Premises; TriMet shall require that any other subtenants or authorized users of the Premises take reasonable precautions to keep the Premises secure and to avoid damages or loss at the Premises and to any other users' telecommunications equipment that may be located at Premises.

(b) Light, View and Air Space

This Sublease does not grant any rights of access to light, view and air over the Premises.

(c) Non-Waiver

Any waiver by TriMet of any breach of any term or condition herein contained to be kept and performed by Sublessee shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent TriMet from declaring a forfeiture for any succeeding breach, either of the same term or condition or otherwise.

(d) Damage by Casualty on Fire. and Duty to Repair

In the event of destruction of the tower by fire or other casualty, TriMet may elect to repair the tower or not. TriMet shall give Sublessee written notice of TriMet's election within twenty (20) days after the occurrence of the damage. If TriMet does not give that notice, TriMet conclusively shall be deemed to have elected not to repair and may terminate this Sublease as of the date of the damage.

If TriMet elects not to repair the tower, then Sublessee may terminate this Sublease as of the date of the said damage. If the tower is partially destroyed and TriMet elects to repair, then TriMet shall repair the tower with all reasonable speed and shall have the right to take possession of, and occupy, to the exclusion of Sublessee, all or any part of the tower in order to make the necessary repairs, and Sublessee hereby agrees to vacate upon request all or any part of the tower that TriMet may require for making necessary repairs.

(e) Notices

Any notice required by the terms of this Sublease shall be in writing and effective if (a) delivered personally to the following addressee; (b) deposited upon mailing by in the United States mail, postage prepaid, certified mail, return receipt requested; (c) sent by overnight or commercial courier (such as Federal Express), addressed as specified below, or to such other address or addressee as either party may specify

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to the other in writing from time to time during the term of this Sublease. Notice sent by facsimile or electronic mail (email) transmission is deemed sufficient when received during regular business hours.

TriMet
Real Property
101 SW 1st Avenue,
Suite 700
Portland, Oregon 97201
Facsimile: 503-962-2299

City of Portland
Office of Management and Finance
ATTN: Facilities Property
Management 1120 SW 5th Avenue,
Room 1044
Portland, OR 97204
Telephone: (503) 823-5252

With a copy to:

City of Portland - City Attorney's
Office 1221 SW 4th Ave, Rm #430
Portland, OR 97204
Telephone: (503) 823-4047

Witness whereof, the parties have executed this Sublease by their duly authorized representatives as set forth below.

TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT OF OREGON

By: _____
Name: _____
Its: _____

City of Portland

By: _____
Name: Rick Dyer
Its: Real Estate Portfolio Manager

Approved as to Form

City Attorney