

METROPOLITAN EXPOSITION RECREATION COMMISSION

Resolution No. 09-02

For the Purpose of Approving Communication Site Lease Agreement Between the Metropolitan Exposition Recreation Commission and Clearwire US LLC, and Authorizing Staff to Forward such Lease to the Metro Council for Approval.

WHEREAS, the Metropolitan Exposition Recreation Commission operates and manages the property commonly known as the Expo Center; and

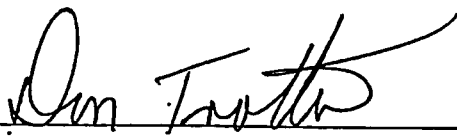
WHEREAS, the Metropolitan Exposition Recreation Commission desires to lease to Clearwire US LLC fifty (50) square feet of rooftop space on Expo Center Exhibit Hall D (the "Premises") for the purpose operating certain radio communications facilities; and

WHEREAS, the initial term of the Communication Site Lease Agreement (the "Lease") would be five years and Clearwire US LLC would have the right to extend the initial term for five additional successive five-year periods; and

WHEREAS, the Commission recommends that the Metro Council, as fee owner of the Expo Center, (1) determine that the Premises are not needed for public use during the term of the Lease and (2) authorize the Metropolitan Exposition Recreation Commission to enter into the Lease with Clearwire US LLC;

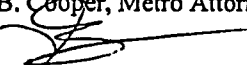
BE IT THEREFORE RESOLVED AS FOLLOWS:

1. That the Metropolitan Exposition Recreation Commission hereby recommends that the Metro Council determine that the Premises are not needed for public use; and
2. That the Metropolitan Exposition Recreation Commission hereby recommends that the Metro Council approve the Lease with Clearwire US LLC and authorizes staff to forward such Lease to the Metro Council for its review and approval; and
3. Subject to the Metro Council's prior approval, that the Metropolitan Exposition Recreation Commission hereby directs the Chief Executive Officer to execute the Lease substantially in the form attached hereto as Exhibit A.



Chair

Approved as to Form:
Daniel B. Cooper, Metro Attorney

By: 

Nathan A. Schwartz Sykes
Senior Attorney



Secretary-Treasurer

MERC Staff Report

Agenda Item/Issue: For the purpose of approving the Communication Site Lease Agreement between the Metropolitan Exposition Recreation Commission and Clearwire US LLC, and authorizing Staff to forward such Lease to the Metro Council for approval.

Resolution No.: 09-02

Presented By: Chris Bailey

Date: March 25, 2009

Background and Analysis: In the Spring of 2008, a Clearwire representative contacted Expo Center staff expressing an interest in testing the viability of utilizing a portion of the facilities as a site for the transmission of its WiMax communication services.

WiMax is a wireless technology that provides mobil broadband internet access within a network coverage area. Shortly thereafter, Clearwire confirmed that the Expo Center is an ideal site location.

During the interim, Clearwire and the Office of Metro Attorney developed a Communication Site Lease Agreement; basic elements of the agreement are:

Premises: Westerly portion of Exhibit Hall D roof at the exhaust fan enclosures (antenna location)
Westerly lower roof of Exhibit Hall D (equipment cabinet)

Terms:

Effective Date:	date of agreement execution
Due Diligence Period:	Effective Date to Commencement Date (up to six months)
Commencement Date:	date of construction commencement
Term:	Five years from Commencement Date
Renewals:	Five successive Five year periods

Fiscal Impact: Beginning on the Commencement Date, Clearwire will pay for rental of the Premises at \$1,500 per month. Monthly rental will increase each year thereafter at the rate of 3% per year.

Recommendation: Staff recommends that the Metropolitan Exposition-Recreation Commission adopt Resolution 09-02 approving the Communication Site Lease Agreement between the Metropolitan Exposition Recreation Commission and Clearwire US LLC, and authorize Staff to forward such Lease to the Metro Council for approval.

EXHIBIT A TO RESOLUTION 09-02

COMMUNICATION SITE LEASE AGREEMENT (BUILDING)

THIS COMMUNICATION SITE LEASE AGREEMENT ("Agreement"), dated for reference purposes as of _____, 2009, is between CLEARWIRE US LLC, a Nevada limited liability company ("Clearwire" or "Tenant"), and METRO, a municipal corporation organized under the laws of the State of Oregon and the Metro Charter, by and through the Metropolitan Exposition Recreation Commission ("MERC"), governing body for the Portland Metropolitan Exposition Center (METRO and MERC are jointly referred to herein as "Owner" or "Landlord").

For good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Premises.** Landlord owns a parcel of land ("Land") and a building ("Building") located in the City of Portland, County of Multnomah, State of Oregon, commonly known as 2060 N. Marine Drive (APN: 2N1E33 00200). The Building and the Land are collectively referred to herein as the "Property." The Land is more particularly described in Exhibit A annexed hereto. Subject to the terms and conditions set forth in this Agreement, Owner hereby leases to Clearwire and Clearwire leases from Owner 50 square feet of rooftop space, plus additional space adjacent to and/or on the roof of the Building and cable tray, cable runs, antennae, MW dishes, conduit and riser space (collectively, "Premises"). The Premises is more particularly described and depicted on Exhibit B annexed hereto.

2. **Effective Date/Due Diligence Period.**

2.1 This Agreement shall be effective on the date of full execution hereof ("Effective Date"). Beginning on the Effective Date and continuing until the Term Commencement Date as defined in Paragraph 4 below ("Due Diligence Period"), Clearwire shall only be permitted to enter the Property for the limited purpose of making appropriate engineering and boundary surveys, inspections, signal, topographical, geotechnical, structural and environmental tests, and other investigations Clearwire may reasonably deem necessary to determine the physical condition, feasibility and suitability of the Premises for Clearwire's intended use (collectively, "Investigations and Tests"). Clearwire will provide Landlord with no less than 72 hours notice of its intent to access the Property and shall coordinate with Landlord to schedule a time that is convenient for both parties.

2.2 Tenant will notify Landlord and receive Landlord's written consent before conducting any invasive Investigations and Tests such as soils testings, wells, and borings. With respect to the Investigations and Tests, Tenant shall (i) have all work performed in a good and workmanlike manner and in accordance with all Laws (as defined below); (ii) pay for all work performed and keep the Property free and clear of all mechanic's liens, construction liens, and any other encumbrances; (iii) have all work performed in such a manner so as not to cause any damage to the Property, injury to any person, or injury to the environment; and (iv) promptly repair any damage caused by such entry and restore the Property to the condition that existed prior to the entry. For purposes of this Paragraph, the term "Laws" shall mean each and every applicable federal, state, county, and local statute, ordinance, rule, regulation, order, or requirement, including, without limitation, all amending, modifying, or superseding statutes, ordinances, rules, regulations, orders, or requirements. Tenant shall indemnify, defend, and hold Landlord harmless from and against any and all claims, liabilities, losses, damages, costs, penalties, and expenses, including (without limitation) reasonable counsel, engineering, and other professional or expert fees: (a) arising from or in any way related to the acts or omissions of Tenant or its agents or consultants occurring during or relating to any entry during the Due Diligence Period or (b) arising from or in any way related to any breach by Tenant or its agents or consultants of any term, condition, or covenant set forth in this Paragraph 2. Landlord and Clearwire expressly acknowledge and agree that Clearwire's access to the Property during this Due Diligence Period shall be solely for the limited purpose of performing the Investigations and Tests, and that Clearwire shall not be considered an owner or operator of any portion of the Property, and shall have no ownership or control of any portion of the Property (except as expressly provided in this Paragraph 2), prior to the Term Commencement Date.

2.3 If, prior to the expiration of the Due Diligence Period, Clearwire determines that the Premises are not appropriate for Clearwire's intended use, or if for any other reason, or no reason, Clearwire decides not to commence its tenancy of the Premises, then Clearwire may terminate this Agreement without penalty upon written notice to Owner at any time prior to the Term Commencement Date. If Clearwire has not notified Landlord of its inability to accept the Property before the Term Commencement Date, Clearwire shall be deemed to have accepted the Premises "AS IS", and with all faults, and waives all claims against Landlord in respect of defects in the Premises or the Property and its structures and appurtenances excepting any latent defects, and their suitability for Clearwire's intended use.

3. Use. The Premises may be used by Tenant to erect and maintain the Tenant Facilities (as defined below in Paragraph 6) for the transmission of its communications services. Landlord agrees to cooperate with Tenant, at no expense to Landlord, in making application for and obtaining all licenses, permits and any and all other necessary approvals that may be required for Tenant's intended use of the Premises.

4. Term; Renewal; Deposit.

4.1 Term. The term of this Agreement shall commence upon the date Tenant begins construction of the Tenant Facilities (as defined in Paragraph 6 below) or six (6) months following the Effective Date, whichever first occurs ("Term Commencement Date") and shall terminate on the fifth anniversary of the Term Commencement Date ("Term") unless otherwise terminated as provided herein. Tenant shall have the right to extend the Term for five (5) successive five (5) year periods ("Renewal Terms") on the same terms and conditions as set forth herein. This Agreement shall automatically be extended for each successive Renewal Term unless Tenant notifies Landlord of its intention not to renew at least ninety (90) days prior to commencement of the succeeding Renewal Term.

4.2 Upon the Term Commencement Date, Tenant shall pay to Landlord the sum of Three Thousand and 00/100 Dollars (\$3,000.00), as security for the full and faithful performance by Tenant of all the covenants and terms of this Agreement (the "Deposit"). The Deposit shall be returned to Tenant after the expiration of this Agreement, provided Tenant has fully and faithfully carried out all of Tenant's obligations hereunder, including (without limitation) the payment of all amounts due to Landlord hereunder and the surrender of the Premises to Landlord in the condition required in this Agreement. If Landlord applies any part of the Deposit to cure any default of Tenant, Tenant shall on demand deposit with Landlord the amount so applied so that Landlord shall have the full Deposit on hand at all times during the Term of this Agreement.

5. Rent. Within fifteen (15) business days following the Term Commencement Date and on the first day of each month thereafter, Tenant shall pay to Landlord as rent One Thousand Five Hundred and 00/100 Dollars (\$1,500.00) per month ("Rent"). Rent shall be increased annually at a rate of Three Percent (3%) per year. Rent for any fractional month at the beginning or at the end of the Term or Renewal Term shall be prorated. Rent shall be payable to Landlord at 2060 N. Marine Drive, Portland, OR 97217; Attention: Expo Center Director. All of Tenant's monetary obligations set forth in this Agreement are conditioned upon Tenant's receipt of an accurate and executed W-9 Form from Landlord.

6. Improvements.

6.1 Tenant has the right to construct, maintain, install, repair secure, replace, remove and operate on the Premises certain radio communications facilities described on the attached Exhibit B, including but not limited to utility lines, transmission lines, an air conditioned equipment shelter(s), electronic equipment, transmitting and receiving antennas, microwave dishes, antennas and equipment, a power generator and generator pad, and supporting equipment and structures therefore ("Tenant Facilities"). In connection therewith, Tenant has the right to do all work reasonably necessary to prepare and maintain the Premises for the Tenant Facilities and to install utility lines and transmission lines connecting antennas to transmitters and receivers.

6.2 Title to the Tenant Facilities and any equipment placed on the Premises by Tenant shall be held by Tenant or its lenders or assigns and are not fixtures. Installation and operation of the Tenant Facilities shall be subject to all applicable land use and zoning restrictions and conditions and Tenant is responsible for obtaining all necessary permits and approvals and paying all associated fees prior to commencing construction of the Tenant Facilities. All of Tenant's construction and installation work shall be performed at Tenant's sole cost

and expense and in a good and workmanlike manner. Tenant shall at all times during the duration of this Agreement maintain the Tenant Facilities and the Premises in a safe and secure condition.

6.3 Tenant shall pay as due all claims for work done on or for services rendered or material furnished to the Premises or, on its behalf, to the Building or Property, and shall keep the Premises and the Property free from any liens other than liens created by Landlord or other parties. If Tenant fails to pay such claim or to discharge any lien created or suffered by Tenant, Landlord may do so and collect such amount as additional rent. Such payment by Landlord shall not constitute a waiver of any right or remedy Landlord may have because of Tenant's default.

6.4 Tenant shall remove the Tenant Facilities at its sole expense on or before the expiration or earlier termination of this Agreement. Tenant shall be responsible for repairing any and all damage to the Premises caused by such removal, and shall surrender the Premises to Landlord in the same or better condition as existed at the Term Commencement Date of this Agreement, less ordinary wear and tear and other casualty beyond the control of Tenant.

7. Access and Utilities.

7.1 Subject to the conditions set forth below in this Paragraph, Tenant, and Tenant's agents, employees and contractors, shall have the right to cross the Property to access the Premises. Tenant may access the Premises for construction, routine maintenance, repair and other non-emergency visits during business hours (defined as Monday through Friday, 8:00 a.m. to 3:00 p.m.); provided, however, that Tenant shall provide Landlord with one week advance notice of its intent to access the Premises and shall schedule its visit to the Property at times that are convenient to Landlord so as to minimize interference with Landlord's ongoing business operations. Non-emergency visits to the Premises shall be coordinated with Christopher W. Bailey, Expo Center Director at (503) 736-5200. In the event of an emergency, Tenant may access the Premises upon two hours notice to Landlord provided that Tenant coordinates its access with Landlord's designated operations staff, whose contact information will be provided to Tenant upon the Term Commencement Date. Tenant shall pay Landlord an agreed upon flat fee of \$200 per visit to cover all costs incurred by Landlord to accommodate Tenant's emergency access to the Property during non-business hours.

7.2 Landlord shall maintain all access roadways from the nearest public roadway to the Premises in a manner sufficient to allow pedestrian and vehicular access at all times under normal weather conditions. Landlord shall be responsible for maintaining and repairing such roadways, at its sole expense, except for any damage caused by Tenant's use of such roadways.

7.3 Tenant shall install separate meters for utilities used on the Property and shall pay all charges due to Tenant's use at the rate charged by the servicing utility company. Tenant shall, at Tenant's sole expense, have the right to install utilities and to improve the present utilities on the Property (including, but not limited to, the installation of emergency power generators) reasonably necessary to provide service to the Tenant Facilities. Landlord agrees to sign such documents or easements as may be necessary to provide such utility service to the Premises; provided, however, that any easement necessary for such utilities will be at a location acceptable to Landlord.

8. Interference. Tenant shall operate the Tenant Facilities in compliance with all Federal Communications Commission ("FCC") requirements including those prohibiting interference to communications facilities of Landlord or other lessees or licensees of the Property, provided that the installation and operation of any such facilities predate the installation of the Tenant Facilities. Subsequent to the installation of the Tenant Facilities, Landlord will not permit its lessees or licensees to install new equipment if such installations are likely to cause interference with Tenant's operations.

9. Taxes. Tenant shall pay all real property and/or personal property taxes assessed against the Tenant Facilities and all other taxes, fees and assessments attributable to the Premises or this Agreement. Notwithstanding the forgoing, in the event Tenant fails to timely pay any such taxes assessed, Landlord retains the right to pay such amounts on Tenant's behalf and invoice Tenant for the amount paid, in which case Tenant shall reimburse Landlord for the amount invoiced within thirty (30) calendar days of receipt of written notice from Landlord.

10. Termination.

10.1 This Agreement may be terminated by Tenant without further liability for any reason or for no reason, provided Tenant delivers written notice of termination to Landlord prior to the Term Commencement Date.

10.2 After the Term Commencement Date, this Agreement may be terminated by Tenant without further liability on thirty (30) days prior written notice if Tenant is unable to obtain or maintain, through no fault of Tenant and after expending reasonable efforts, any certificate, license, permit, authority or approval from any governmental authority, thus, restricting Tenant from installing, replacing, maintaining or operating the Tenant Facilities. In the event of a termination under this paragraph, Tenant shall pay Landlord all monies due including Rent, and any other fees due to Landlord, as of the date of termination. In addition Tenant shall, at its sole expense, return the Premises to the same or better condition than existed on the Term Commencement Date (normal wear and tear, and casualty beyond Tenant's control, excepted) and remove the Tenant Facilities.

10.3 This Agreement may be terminated by Landlord upon thirty (30) days written notice by Landlord if Tenant fails to cure a default for payment of amounts due under this Agreement within that thirty (30) day period.

10.4 This Agreement may be terminated by either party upon sixty (60) days written notice by either party upon default of any non-monetary covenant or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default, except that this Agreement shall not be terminated if the default cannot reasonably be cured within such sixty (60) day period and the defaulting party has commenced to cure the default within such sixty (60) day period and diligently pursues the cure to completion.

10.5 In the event of a default by Tenant which has not been cured by Tenant within the applicable time periods set forth in Section 10.3 and 10.4, this Lease may be terminated at the option of Landlord by written notice to Tenant, in accordance with state law. In the event of termination or retaking of possession following an event of default by Tenant, Landlord shall be entitled to recover immediately, without waiting until the due date of any future rent or until the date fixed for expiration of the term of this Lease, the following amounts as damages:

(a) An amount equal to twelve (12) times the monthly Rent, at the then current rate. This amount shall be the full, agreed, and liquidated damages attributable to Landlord's loss of Rent and Landlord shall have no duty to mitigate its damages. Landlord and Tenant agree that it would be impractical and extremely difficult to estimate the damages that Landlord may suffer as a result of the loss of Rent. Therefore, Landlord and Tenant agree that a reasonable estimate of the total net detriment that Landlord would suffer is and shall be, in addition to other remedies provided in this Lease, the amount set forth in this Section 10.5(a). The payment of this amount as liquidated damages is not intended as a forfeiture or penalty, but is intended to constitute liquidated damages to Landlord.

(b) The reasonable costs of reentry and reletting including without limitation the cost of any cleanup, refurbishing, removal of Tenant's property and fixtures, or any other expense occasioned with Tenant's default including but not limited to, any remodeling or repair costs, attorney fees, and court costs.

10.6 This Agreement may be terminated by Tenant without further liability on thirty (30) days prior written notice to Landlord for any reason if Tenant otherwise determines, within its sole discretion, that it will be unable to use the Premises for Tenants intended purpose. In the event Tenant terminates this Agreement pursuant to this paragraph, Tenant shall pay to Landlord a termination fee equal to six (6) months the current Rent.

10.7 This Agreement may be terminated by Landlord, for reasons involving public health, safety, or welfare. If the public's health, safety, or welfare is endangered by the operations of the Tenant Facilities and Tenant fails to cure the conditions causing the endangerment within thirty (30) days after receipt of such notice, Landlord may terminate this Agreement.

10.8 This Agreement may be terminated by Landlord or Tenant upon prior written notice, if either the Metropolitan Exposition Recreation Commission or the Metro Council decides to redevelop the Property or the Building in a manner inconsistent with continued use of the Premises by Tenant pursuant to the terms of paragraph 15 below.

11. Destruction or Condemnation. If the Premises or Tenant Facilities are damaged, destroyed, condemned or transferred in lieu of condemnation, Tenant may elect to terminate this Agreement as of the date of the damage, destruction, condemnation or transfer in lieu of condemnation by giving notice to Landlord no more than forty-five (45) days following the date of such damage, destruction, condemnation or transfer in lieu of condemnation. If Tenant chooses not to terminate this Agreement, and provided any of the damage and/or destruction suffered was not caused by Tenant, Rent shall be reduced or abated in proportion to the actual reduction or abatement of use of the Premises.

12. Insurance; Subrogation; and Indemnity.

12.1 Tenant shall provide Commercial General Liability Insurance in an aggregate amount of One Million and No/100 Dollars (\$1,000,000.00). Tenant may satisfy this requirement by obtaining the appropriate endorsement to any master policy of liability insurance Tenant may maintain. Tenant's policy shall be specifically endorsed to provide that the coverage obtained by Tenant by virtue of this Agreement will be primary, and that any insurance carried by Landlord shall be excess and non-contributory. Such insurance shall name Metro, MERC, and Portland Metropolitan Exposition Center, (and each entity's elected officials, employees, and agents) as additional insureds. Tenant shall provide Landlord with a certificate of insurance complying with this article within fifteen (15) days of execution of this Agreement. Notice of any material change or policy cancellation shall be provided to Landlord thirty days (30) prior to the change.

12.2 Landlord and Tenant hereby mutually release each other (and their successors or assigns) from liability and waive all right of recovery against the other for any loss or damage covered by their respective first-party property insurance policies for all perils insured thereunder. In the event of such insured loss, neither party's insurance company shall have a subrogated claim against the other.

12.3 Tenant shall indemnify, defend and hold harmless Landlord (and Landlord's elected officials, employees, and agents) from any and all claims, demands, actions, damages, losses, and expenses, including attorney's fees, whether before the commencement of litigation at trial or on appeal ("Losses"), arising out of or in any way connected with Tenant's performance of this Agreement, Tenant's breach of any term or condition of this Agreement, or any way related to the Tenant Facilities, the Premises, or Tenant's use of the Property pursuant to this Agreement. Notwithstanding the forgoing, Tenant shall not have to indemnify Landlord for Losses caused by Landlord's negligent or willful misconduct. The duties described in this Paragraph 12.3, shall apply as of the Effective Date of this Agreement and survive the termination of this Agreement.

13. Assignment. Tenant shall not assign any interest in this Agreement without the prior written consent of Landlord which consent shall not be unreasonably withheld, conditioned or delayed provided however that Tenant may, without Landlord's consent, assign this Lease to a corporation which is a partner, parent, subsidiary or affiliate of Tenant. For the purposes of this Section, a "parent" shall mean a corporation which owns not less than fifty-one percent (51%) of the outstanding stock of Tenant, a "subsidiary" shall mean any corporation not less than fifty-one percent (51%) of whose outstanding stock shall be owned by Tenant, and an "affiliate" shall mean any partner or corporation not less than fifty-one percent (51%) of whose outstanding stock shall be owned by the Tenant's parent. Upon such assignment to a partner, parent, subsidiary or affiliate of Tenant, such assignee shall succeed to all rights and options of the Tenant hereunder. It is hereby expressly understood and agreed that the assignment of this Lease and the term and estate hereby granted, to (a) any corporation into which Tenant is merged or to which Tenant has sold all or substantially all of its assets, or (b) any entity which is an Affiliate or (c) any entity which is a transferee or assignee of Tenant's FCC wireless license as part of the sale or exchange of all or a majority of Tenant's sites in the market in which the Premises is located (any such corporation, entity or transferee in (a), (b) and (c) being hereinafter called "Assignee"), shall not require Owner's consent; provided (x) that Assignee and Tenant shall promptly execute, acknowledge and deliver to Owner an assignment agreement in form satisfactory to Owner, and (z) that the Assignee is an FCC licensed telecommunications company and otherwise properly licensed to operate the wireless communications system. Tenant, may also, upon notice to Landlord, mortgage or grant a security interest in Tenant's equipment, and may assign this Lease and the equipment to any mortgagees or holders of security interest, including their successors or assigns collectively ("Mortgagees"), provided such Mortgagees agree to be bound by the terms and provisions of this Lease. If reasonably required by the Mortgagees, Landlord shall execute such consent to Leasehold or equipment financing. The foregoing notwithstanding, under no circumstances shall any assignee or Mortgagee of Tenant have any property in the Building beyond that of a leasehold interest for the term of the Lease.

14. Title and Quiet Enjoyment.

14.1 Landlord represents and warrants that (i) it has full right, power, and authority to execute this Agreement, (ii) Tenant may peacefully and quietly enjoy the Premises and such access thereto, provided that Tenant is not in default hereunder after notice and expiration of all cure periods, (iii) it has obtained all necessary approvals and consents, and has taken all necessary action to enable Landlord to enter into this Agreement and allow Tenant to install and operate the Facility on the Premises, including without limitation, approvals and consents as may be necessary from other tenants, licensees and occupants of Landlord's Property, and (iv) the Property and access rights are free and clear of all liens, encumbrances and restrictions except those of record as of the Effective Date.

14.2 Tenant has the right, during the Due Diligence Period, to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice. If such title report shows any defects of title or any liens or encumbrances which may adversely affect Tenant's use of the Premises, Tenant shall have the right, prior to the Term Commencement Date, to terminate this Agreement immediately upon written notice to Landlord.

15. Relocation. In the event Landlord desires to redevelop, modify, remodel or in any way alter the Property, the Building, and/or any improvements located thereon ("**Redevelopment**"), Landlord shall use reasonable efforts to fully accommodate Tenant's use of the Premises. Should any proposed Redevelopment necessitate the relocation of the Tenant Facilities, Landlord shall use reasonable efforts to find a mutually acceptable alternate location for the Tenant Facilities. Landlord shall give Tenant at least six (6) months prior written notice of its Redevelopment plans. In the event that Tenant and Landlord cannot agree on an alternative location for the Tenant Facilities within three (3) months after Tenant's receipt of Landlord's notice of Redevelopment, either party may immediately terminate this Agreement on ten (10) days written notice and such termination shall be either party's sole remedy. In no event shall Tenant be entitled to any damages resulting from Landlord's Redevelopment under this section. If the parties are able to agree on an acceptable alternate location for the Tenant Facilities, Landlord and Tenant agree to use their best efforts to amend this Agreement to document the new, alternate Tenant Facilities location, and from and after the date Tenant begins installation of its Tenant Facilities at such new location, such new location shall be deemed the Premises (or part thereof, as applicable) herein.

16. Environmental. As of the Effective Date of this Agreement: (1) Tenant hereby represents and warrants that it shall not use, generate, handle, store or dispose of any Hazardous Material in, on, under, upon or affecting the Property in violation of any applicable law or regulation, and (2) Landlord hereby represents and warrants that (i) it has no knowledge of the presence of any Hazardous Material located in, on, under, upon or affecting the Property in violation of any applicable law or regulation; (ii) no notice has been received by or on behalf of Landlord from any governmental entity or any person or entity claiming any violation of any applicable environmental law or regulation in, on, under, upon or affecting the Property; and (iii) it will not permit itself or any third party to use, generate, handle, store or dispose of any Hazardous Material in, on, under, upon, or affecting the Property in violation of any applicable law or regulation. To the extent permitted by Article XI, Section 7 of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 to 30.300, and without limiting the terms set forth in Paragraph 12.3 above, Landlord and Tenant shall each indemnify, defend and hold the other harmless from and against all Losses (specifically including, without limitation, attorneys', engineers', consultants' and experts' fees, costs and expenses) arising from (i) any breach of any representation or warranty made in this Paragraph 16 by such party; and/or (ii) environmental conditions or noncompliance with any applicable law or regulation that result, in the case of Tenant, from operations in or about the Property by Tenant or Tenant's agents, employees or contractors, and in the case of Landlord, from the ownership or control of, or operations in or about, the Property by Landlord or Landlord's predecessors in interest, and their respective agents, employees, contractors, tenants, guests or other parties. The provisions of this Paragraph 16 shall apply as of the Effective Date of this Agreement and survive termination of this Agreement. "**Hazardous Material**" means any solid, gaseous or liquid wastes (including hazardous wastes), regulated substances, pollutants or contaminants or terms of similar import, as such terms are defined in any applicable environmental law or regulation, and shall include, without limitation, any petroleum or petroleum products or by-products, flammable explosives, radioactive materials, asbestos in any form, polychlorinated biphenyls and any other substance or material which constitutes a threat to health, safety, property or the environment or which has been or is in the future determined by any governmental entity to be prohibited, limited or regulated by any applicable environmental law or regulation.

17. Restoration. In the event that Tenant causes damage of any kind during the course of installing, operating or maintaining Tenant Facilities, including damage to the Property caused by cutting, boring, jack hammering, excavation or other work, and including latent damage not immediately apparent at the time of the work, Tenant shall repair the damage and restore the Property at its sole cost and expense, without delay or interruption and within the reasonable time period prescribed by Landlord. Restoration of the Property shall be to a condition that is equivalent to or better than the condition of the Property prior to commencing the installation, operation or maintenance of the Tenant Facilities and to a condition satisfactory to Landlord.

18. Waiver of Landlord's Lien. Landlord hereby waives any and all lien rights it may have, statutory or otherwise concerning the Tenant Facilities or any portion thereof which shall be deemed personal property for the purposes of this Agreement, whether or not the same is deemed real or personal property under applicable laws, and Landlord gives Tenant and Mortgagees the right to remove all or any portion of the same from time to time, whether before or after a default under this Agreement, in Tenant's and/or Mortgagee's sole discretion and without Landlord's consent.

19. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by for next-business-day delivery by a nationally recognized overnight carrier to the following addresses:

If to Tenant, to:	If to Landlord, to:
Clearwire US LLC Attn: Site Leasing 4400 Carillon Point Kirkland, WA 98033 Telephone: 425-216-7600 Fax: 425-216-7900 Email: Siteleasing@clearwire.com	Portland Metropolitan Exposition Center 2060 N. Marine Dr. Portland, OR 97217 Attn: Christopher Bailey, Expo Center Director Telephone: 503-736-5200
With a copy to: Clearwire US LLC Attention: Legal Department 4400 Carillon Point Kirkland, WA 98033 Telephone: 425-216-7600 Fax: 425-216-790	With a copy to: Metro Office of the Metro Attorney 600 NE Grand Avenue Portland, OR 97232 Telephone: 503-813-7522 Fax: 503-797-1792

Landlord or Tenant may from time to time designate any other address for this purpose by written notice to the other party. All notices hereunder shall be deemed received upon actual receipt or refusal to accept delivery.

20. Miscellaneous.

20.1 If Tenant is to pay Rent to a payee other than the Landlord, Landlord shall notify Tenant in advance in writing of the payee's name and address.

20.2 The substantially prevailing party in any legal claim arising hereunder shall be entitled to its reasonable attorney's fees and court costs, including appeals, if any.

20.3 If any provision of the Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

20.4 Terms and conditions of this Agreement which by their sense and context survive the termination, cancellation or expiration of this Agreement will so survive.

20.5 This Agreement shall be governed under law of the State of Oregon, and be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.

20.6 A Memorandum of Agreement in the form attached hereto as Exhibit C may be recorded by Tenant confirming the (i) effectiveness of this agreement, (ii) expiration date of the Term, (iii) the duration of any Renewal Terms, and/or other reasonable terms consistent with this Agreement.

20.7 All Exhibits referred herein are incorporated herein for all purposes.

20.8 This Agreement will be subject and subordinate to all mortgages that may now or hereafter affect the Building or the Property, to each and every advance under such mortgages, and to all renewals, modifications, replacements, and extensions of such mortgages. This Section is self-operative, and no further instrument of subordination will be required. In confirmation of the subordination, Tenant will promptly execute, acknowledge, and deliver any instrument that Landlord (or Landlord's lender) may reasonably request to evidence the subordination, provided that in return Tenant receives a written non-disturbance agreement from the holder of such mortgage or deed of trust. Landlord shall make a diligent and good faith effort to obtain a Nondisturbance Agreement for the benefit of Tenant from each lender with a security interest recorded upon the title to the Property at the time of execution of this Agreement.

20.9 This Agreement constitutes the entire Agreement between the parties, and supersedes all understandings, offers, negotiations and other leases concerning the subject matter contained herein. There are no representations or understandings of any kind not set forth herein. Any amendments, modifications or waivers of any of the terms and conditions of this Agreement must be in writing and executed by both parties.

20.10 This Agreement must be specifically approved by formal action of the Metropolitan Exposition Recreation Commission prior to it having any binding effect whatsoever. All parties acknowledge that no liability or obligations of any kind shall attach to any party until such Commission approval has been given pursuant to this subsection.

IN WITNESS WHEREOF, the parties have entered into this Agreement effective as of as of the last date of signature specified below.

LANDLORD:

TENANT:

METROPOLITAN EXPOSITION RECREATION
COMMISSION

CLEARWIRE US LLC, a Nevada limited liability company

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

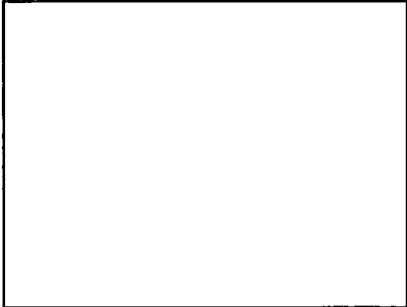
Date: _____

Date: _____

STATE OF OREGON)
) ss.
COUNTY OF MULTNOMAH)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of Metropolitan Exposition Recreation Commission, a _____, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



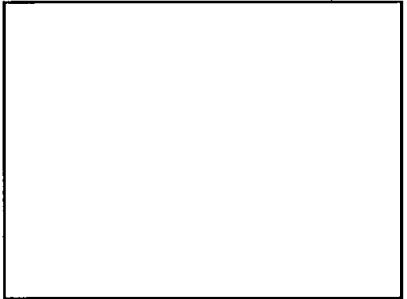
(Use this space for notary stamp/seal)

Notary Public
Print Name _____
My commission expires _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ 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 _____ of Clearwire US LLC, a Nevada limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



(Use this space for notary stamp/seal)

Notary Public
Print Name _____
My commission expires _____

EXHIBIT A

DESCRIPTION OF LAND

to the Agreement dated _____, 2009, by and between Portland Metropolitan Exposition Center a _____ as Landlord, and Clearwire US LLC, a Nevada limited liability company, as Tenant.

The Land is described and/or depicted as follows (metes and bounds description):

APN: 2N1E33 00200

[TO BE INSERTED]

EXHIBIT B

DESCRIPTION OF PREMISES

to the Agreement dated _____, 2009, by and between Portland Metropolitan Exposition Center, _____, as Landlord, and Clearwire US LLC, a Nevada limited liability company, as Tenant.

The Premises are described and/or depicted as follows:

[TO BE INSERTED]

Notes:

1. Tenant may replace this Exhibit with a survey of the Premises once Tenant receives it.
2. The Premises shall be setback from the Property's boundaries as required by the applicable governmental authorities.
3. The access road's width will be the width required by the applicable governmental authorities, including police and fire departments.
4. The type, number, mounting positions and locations of antennas and transmission lines are illustrative only. The actual types, numbers, mounting positions and locations may vary from what is shown above.
5. The locations of any utility easements are illustrative only. The actual locations will be determined by the servicing utility company in compliance with all local laws and regulations.

EXHIBIT C

**RECORDED AT REQUEST OF, AND
WHEN RECORDED RETURN TO:**

Clearwire US LLC
4400 Carillon Point
Kirkland, WA 98033
Attn: Site Leasing

**MEMORANDUM OF AGREEMENT
APN: 2N1E33 00200**

This MEMORANDUM OF AGREEMENT is entered into on _____, 2009, by METRO, a municipal corporation organized under the laws of the State of Oregon and the Metro Charter, by and through the Metropolitan Exposition Recreation Commission (“MERC”), governing body for the Portland Metropolitan Exposition Center (METRO and MERC are jointly referred to herein as “Owner” or “Landlord”) and Clearwire US LLC, a Nevada limited liability company, with an address at 4400 Carillon Point, Kirkland, WA 98033 (hereinafter referred to as “Clearwire” or “Tenant”).

1. Owner and Clearwire entered into a Communication Site Lease Agreement (“Agreement”) dated as of _____, 2009, effective upon full execution of the parties (“Effective Date”) for the purpose of Clearwire undertaking certain Investigations and Tests and, upon finding the Property appropriate, for the purpose of installing, operating and maintaining a communications facility and other improvements. All of the foregoing is set forth in the Agreement.

2. The term of Clearwire’s tenancy under the Agreement is for five (5) years commencing on the date Tenant begins construction of the Tenant Facilities or six (6) months following the Effective Date, whichever first occurs (“Term Commencement Date”), and terminating on the fifth anniversary of the Term Commencement Date with five (5) successive five (5) year options to renew.

3. The Land that is the subject of the Agreement is described in Exhibit A annexed hereto. The portion of the Land being leased to Tenant and all necessary access and utility easements (the “Premises”) are set forth in the Agreement.

In witness whereof, the parties have executed this Memorandum of Agreement as of the day and year first written above.

LANDLORD:

Metropolitan Exposition Recreation Commission

By: _____
Name: _____
Title: _____
Date: _____

TENANT:

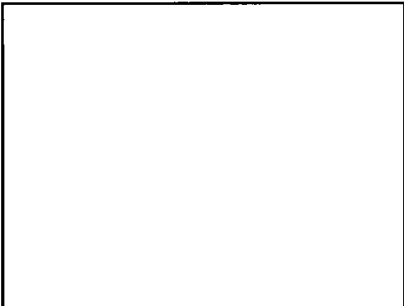
Clearwire US LLC,
a Nevada limited liability company

By: _____
Name: _____
Title: _____
Date: _____

[Notary block for a Corporation]

STATE OF OREGON)
) ss.
COUNTY OF MULTNOMAH)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of Metropolitan Exposition Recreation Commission, a _____, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.
Dated: _____



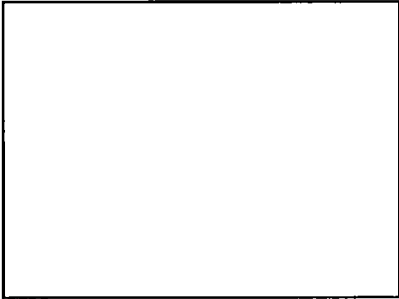
(Use this space for notary stamp/seal)

Notary Public
Print Name _____
My commission expires _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____s 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 _____ of Clearwire US LLC, a Nevada limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



(Use this space for notary stamp/seal)

Notary Public
Print Name _____
My commission expires _____