

RESOLUTION R- 3942

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING A LEASE FOR A PORTION OF 10733 132ND AVENUE, KIRKLAND, WASHINGTON, COMMONLY KNOWN AS THE ROSE HILL WATER TANK.

Whereas, ample space is available at the property located at 10733 132nd Avenue for the location of a cellular communications facility, without interfering with the operation of the water reservoir located on the site;

Now, therefore, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Manager is hereby authorized to execute a lease agreement with OneComm Corporation for a portion of the property located at 10733 132nd Avenue, Kirkland, Washington, for rent of \$800.00 per month, said rent to be deposited into the Joint Facilities Account. Such lease shall be substantially similar to that attached hereto as Attachment A.

Passed by majority vote of the Kirkland City Council in regular, open meeting this 20th day of June, 1995.

Signed in authentication thereof this 20th day of June, 1995.



MAYOR

Attest:



City Clerk

5city95\onecomrs

SITE NAME: ROSE HILL/ROSE HILL

SITE No: WA0344012Z-4

COMMUNICATIONS SITE LEASE

(Washington Tower/Shelter Space Lease)

Dated May 10, 1995, between ONECOMM CORPORATION N.A., a Delaware Corporation ("ONECOMM"), having its principal place of business at 4643 South Ulster, Suite 500, Denver, Colorado 80237, Attn: General Counsel, and THE CITY OF KIRKLAND, a municipal corporation ("Lessor"), having its principal place of business at 123 Fifth Avenue, Kirkland, Washington 98033-6189.

1. **The Property.** Lessor is the owner of that certain parcel of real property located in the State of Washington, County of King, City of Kirkland, commonly known as the Rose Hill Water Tank at 10733 132nd Avenue, Kirkland, WA 98033, also known as Assessor's Parcel No. 332605-9136-0 (the "Property"). A legal description of the Property is contained in Exhibit A to this Lease.

2. **Lease of the Premises.**

(a) **Premises.** Lessor hereby leases to ONECOMM and ONECOMM leases from Lessor that portion of the Property generally described as follows: approximately six hundred twenty five square feet (625') of ground space for the Equipment Shelter for placement of ONECOMM's communications equipment and space at the top of the water tower for the placement of antennas including but not limited to an equipment shelter, three communications antennas on the water tower itself, necessary cables and connections between the equipment shelter and the antennas and any associated utilities necessary to operate the communications facilities (collectively the "Premises"). A description of the Premises which may be used for legal purposes is contained in Exhibit B to this Lease.

(b) **ONECOMM Improvements.** Following the Commencement Date, ONECOMM shall have the right to construct and install the Communications Site (defined herein) in accordance with the plans attached as Exhibit B which are hereby approved for construction by Lessor. Lessor acknowledges that certain non-structural modifications to the Premises not shown on Exhibit B may be required to accommodate construction of the Communications Site (such as the addition or modification of ceilings and floor coverings), which modifications ONECOMM may complete without further approval by Lessor. ONECOMM shall obtain the consent of Lessor, which consent shall not be unreasonably withheld, for any structural modifications required to accommodate the Communications Site not shown in Exhibit B. Antennas shall be limited to six (6) Omni directional antennas, two (2) GPS antennas, one (1) Test Mobil antenna and antenna height shall be limited to eighteen (18') feet. ONECOMM shall obtain all necessary governmental approvals and permits prior to commencing construction and shall provide Lessor with five (5) days notice prior to the start of construction to permit Lessor to post notices of non-responsibility. All ONECOMM contractors and subcontractors shall be duly licensed in the state where the Property is located.

3. **Rent.**

(a) **Base Rent.** ONECOMM shall pay to Lessor as rent the sum of Eight Hundred Dollars (\$800.00) per month, due and payable on the first day of each month, in advance, commencing on the Commencement Date and continuing during the term.

(b) **Utility Charge.** ONECOMM shall install separate utility meters at the Premises and, when permitted by the serving utilities, ONECOMM shall be responsible directly to the serving utilities for all utilities required for ONECOMM's use of the Premises.

4. **Term of Lease.** This Lease shall be for an initial term of five (5) years. ONECOMM shall have the right to extend its tenancy beyond the initial term for two (2) additional successive optional extension terms of five (5) years each.

5. **Commencement Date; Governmental Permits.** The initial term of this Lease shall commence on the earlier to occur of the first day of the first month following ONECOMM's notice to Lessor in writing that ONECOMM has obtained all permits and approvals necessary for ONECOMM to be legally entitled to construct the Communications Site for providing radio communications services at the Premises, or August 1, 1995 (the "Commencement Date"). ONECOMM shall be permitted enter the Property and Facilities, occupy the Premises and commence construction of the Communications Site upon receipt of all such permits and approvals and notice to Lessor as required in Section 2. Any such pre-Commencement Date occupancy by ONECOMM shall be under all the terms and conditions of this Lease and ONECOMM shall pay any portion of one month's rent due for such occupancy with the first month's rent due hereunder.

6. Use of the Premises. ONECOMM shall use the Premises as one of ONECOMM's radio communications sites (a "Communications Site") comprising ONECOMM's system (the "System") for providing radio and wireless telecommunications services to the public, including Enhanced Specialized Mobile Radio, Specialized Mobile Radio, short messaging, wireless data and any other radio service which ONECOMM is legally authorized to provide to the public during the term of this Lease. A Communications Site, for purposes of this Lease, is a site at which radio, telephone and communications equipment is installed and used to send and receive radio signals to and from wireless telephones and other radio devices and to connect those signals to radio, telephone or other communications facilities either directly, by means of cables, or indirectly, by means of transmitting and receiving facilities (including microwave antennas) located at the Communications Site. ONECOMM shall not use the Premises for any other purposes without the written consent of Lessor.

7. Easement. Lessor hereby grants to ONECOMM for the duration of this Lease, or any extensions thereof, an unimpaired, non-exclusive easement and right of way in and over: the access roads shown in Exhibit B (if any) ("Access Road"); the overhead or underground cable and utility runs shown in Exhibit B (if any) including the cable runs from the Equipment Shelter to ONECOMM's equipment on the Tower ("Service Easement"); the common areas at the Property; and all areas necessary in ONECOMM's use of the Premises to provide physical access by personnel, cable or equipment from the nearest public right of way, and utilities from the nearest service, to or from the Premises and between the Equipment Shelter and Tower (collectively the "Access Areas"). No change or removal of trees or shrubs shall be allowed without prior City approval. ONECOMM maintenance activity shall not interfere with City Operations maintenance of the Water Tank. The rights granted to ONECOMM herein are for the purpose of installing, constructing, maintaining, restoring, replacing, and operating ONECOMM's equipment located within or on the Premises or such Access Areas, including, in the case of an emergency, the right to temporarily install a fuel powered electrical generator. Such rights shall include the right of ingress and egress, twenty-four (24) hours per day, seven (7) days per week over such Access Areas for access to or from any of ONECOMM's equipment.

8. Protections Against Interference. Lessor will not grant a lease to any party for use of the Property or Facilities, if such use would interfere with ONECOMM's operation of the System. Any future lease of the Property or Facilities which permits the installation of communication equipment shall be conditioned upon not interfering with ONECOMM's operation of the Communications Site. Without limiting any other remedy in law or equity, ONECOMM shall have the right to terminate this Lease upon thirty (30) days' written notice in the event its reception or transmission is interfered with by other antenna equipment, or obstacles constructed or operated in ONECOMM's reception or transmission paths.

ONECOMM agrees that it will not license and/or operate any radio channel or frequency at this site in such a manner as to cause interference with or require design modifications to the King County Emergency Radio System, except as may be provided in a document which the parties agree is analogous to that attached hereto as Exhibit C, which is entitled, "[Draft] Agreement Between Subregional 800 MHz Trunked System Operators in King County and ONECOMM, Inc. Regarding Licensing and Use of 800 MHz Frequencies In and Around King County, Washington."

9. Damage and Destruction. If the Premises are, in whole or in part, damaged or destroyed then: (1) if wholly damaged or destroyed so that all of the Premises are rendered unusable as a Communications Site for greater than ninety (90) days, this Lease shall then terminate and ONECOMM shall be liable for the rent only up to the time of such destruction and any rent prepaid by ONECOMM shall be returned to ONECOMM; but (2) if only partially destroyed and still usable as a Communications Site, Lessor shall, within a reasonable time, repair the Premises with a reasonable reduction of rent from the time of such partial destruction until the Premises are again as fully usable by ONECOMM as they were before such partial damage or destruction; provided, however, that unless such partial damage or destruction is caused by Lessor, Lessor's agents or employees, Lessor shall be obligated to repair or replace the Premises only, excluding tenant improvements constructed, installed, or placed onto the Premises by ONECOMM; further provided that if such partial damage or destruction shall occur within three (3) months prior to the termination of this Lease, then this Lease, if either Lessor or ONECOMM so elects, shall then terminate and ONECOMM shall be liable for rent only up to the time of such damage or destruction and any rent prepaid by ONECOMM shall be returned to ONECOMM. A decision as to whether partially destroyed or partially condemned (for purposes of Section 10) Premises are still usable as a Communications Site, shall be made jointly by Lessor and ONECOMM, and, if they cannot agree, by an arbitrator reasonably acceptable to both parties.

10. Condemnation. If all or part of the Premises is taken by condemnation such that the Premises are no longer usable as a Communications Site, this Lease shall terminate unless ONECOMM's equipment and improvements can be relocated to another position at the Property acceptable to ONECOMM and Lessor. ONECOMM shall be entitled only to that portion of the proceeds of condemnation which is directly attributable to the value of ONECOMM's equipment and improvements and cost of relocation.

11. Need to Prevent Unsupervised Access. ONECOMM's communications equipment is highly sensitive and any entry onto the Premises which could damage or interfere with it must be controlled. Accordingly,

although Lessor may have a key to the Premises, Lessor shall not enter the Shelter (other than in an emergency) unless it has given ONECOMM twenty-four (24) hours' actual notice. In case of emergency, Lessor shall make reasonable efforts to notify ONECOMM prior to entering the Premises. ONECOMM shall (except in the case of an emergency) give Lessor reasonable notice of intent to enter the reservoir site. ONECOMM will insure the reservoir site has been secured upon leaving the site. If ONECOMM fails to secure reservoir site, Lessor will be entitled to reasonable costs incurred to have Lessor personnel respond to secure site.

12. Termination by ONECOMM. ONECOMM may terminate this Lease for cause upon the giving of thirty (30) days' written notice to Lessor if any of the following events occur: (a) ONECOMM fails to obtain or loses any necessary permits, approvals or orders and is thereby unable to use the Premises as a Communications Site; (b) if ONECOMM determines at any time that the Property is not appropriate for locating ONECOMM's communication equipment for technological reasons, including, but not limited to, signal interference; or (c) Lessor fails to comply with any term, condition or covenant of this Lease and does not cure such failure within thirty (30) days after ONECOMM's written notice thereof or in the event of a cure which requires in excess of thirty (30) days to complete, if Lessor has not commenced such cure within thirty (30) days of such notice and is not diligently prosecuting said cure to completion. ONECOMM shall have the right to cure any default by Lessor following such notice and cure period and to deduct the cost of such cure from rent due hereunder upon presentation of an accounting of such costs to Lessor.

13. Termination by Lessor. Lessor may terminate this Lease upon the occurrence of any of the following: (a) failure by ONECOMM to pay any rent required hereunder when due if such failure shall continue for more than ten (10) calendar days after delivery to ONECOMM of notice of such failure to make timely payment; (b) failure by ONECOMM to comply with any material term, condition or covenant of this Lease, other than the payment of rent, if such failure is not cured within thirty (30) days after written notice thereof to ONECOMM, or in the event of a cure which requires in excess of thirty (30) days to complete, if ONECOMM has not commenced such cure within thirty (30) days of such notice and is not diligently prosecuting said cure to completion; or (c) if ONECOMM becomes insolvent, or makes a transfer in fraud of creditors, or makes an assignment for the benefit of creditors, or files a petition under any section or chapter of the Federal Bankruptcy Code, as amended, or under any similar law or statute of the United States or any state thereof, or is adjudged bankrupt or insolvent in proceedings filed against ONECOMM thereunder, or if a receiver or trustee is appointed for all or substantially all of the assets of ONECOMM due to ONECOMM's insolvency; or (d) if termination is reasonably necessary to continued Lessor provision of public services, then upon eighteen (18) months prior written notice by Lessor to ONECOMM.

14. Exercise of Options to Extend. ONECOMM shall be deemed to have timely exercised each option without notice to Lessor unless ONECOMM shall provide written notice to Lessor not less than ten (10) days prior to the expiration of the then current term of ONECOMM's intent to terminate the Lease at the end of that term. The base rent provided for in paragraph 3(a) shall be subject to adjustment in the commencement date of each option extension term exercised by ONECOMM ("the Adjustment Dates"). The base for computing the adjustment is the Consumer Price Index, All Urban Consumers (CPI-U), U.S. Seattle Average, All Items, published by the United States Department of Labor, Bureau of Labor Statistics (1982-84 = 100) ("Index"), which is in effect on the Commencement Date ("Beginning Index"). The Index published most immediately preceding the Adjustment Date in Question ("Extension Index") is to be used in determining the amount of the adjustment. If the Extension Index has increased over the Beginning Index, the minimum monthly rent for the following extension term (until the next Adjustment Date) shall be set by multiplying the base rent set forth in paragraph 3(a) by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index. In no case shall the base rent be less than the base rent set forth in paragraph 3(a) and in no case shall the base rent increase more than twenty five percent (25%) on any Adjustment Date. If the Index is changed so that the base year differs from that in effect when the term commences, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor Statistics. If the Index is discontinued or revised during the term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained in the Index had not been discontinued or revised.

15. Warranties and Covenants of Lessor. Lessor warrants and covenants that (a) Lessor has legal right to possession of the Premises and the power and the right to enter into this Lease and that ONECOMM, upon the faithful performance of all of the terms, conditions and obligations of ONECOMM contained in this Lease, shall peaceably and quietly hold and enjoy the Premises upon the terms, covenants and conditions set forth in this Lease throughout the term of this Lease and any extensions thereof; (b) Lessor shall deliver the Premises to ONECOMM clean and free of debris on the Commencement Date and shall maintain the Property and Facilities in a manner which will not interfere with ONECOMM's use of the Premises as contemplated hereby; (c) Lessor shall make available to ONECOMM at the Premises, all presently existing utility services required by ONECOMM for purposes of the operation of ONECOMM's equipment at the Premises, provided that ONECOMM may at its own expense (or Lessor may, if ONECOMM so requests, at ONECOMM's expense), install any and all additional utilities service facilities which are so required; (d) Lessor shall, during the term hereof, make payment of all real property taxes and general and special assessments levied against the Property and the Premises which it has the duty to pay within the time allowed by the taxing authorities in order to avoid penalty and ONECOMM shall compensate Lessor

for any real property taxes directly attributable to the value of improvements placed upon the Premises by ONECOMM; (e) Lessor shall maintain in full force and effect throughout the term of this Lease fire and extended coverage, vandalism and malicious mischief insurance in an amount equal to the full replacement cost of all improvements now or hereafter located on Lessor's Property, excepting ONECOMM's equipment, personal property, trade fixtures and tenant improvements (f) Lessor shall maintain and operate the Property and Facilities in a good and safe condition, consistent with standard industry practices, and in full compliance with all applicable federal, state and local laws, ordinances, orders, rules and regulations (including, but not limited to all FAA and FCC requirements regarding the lighting and striping of the Tower); and (g) ONECOMM shall have access to the Premises from the nearest public way at all times and all loading doors and freight elevators (if any) shall be operational.

16. Warranties and Covenants of ONECOMM. ONECOMM warrants and covenants that throughout the term of this Lease, ONECOMM shall maintain comprehensive liability insurance, naming Lessor as an additional insured, protecting and indemnifying Lessor and ONECOMM against claims and liabilities for injury, damage to persons or property, or for the loss of life or of property occurring upon the Premises resulting from any negligent act or omission of ONECOMM, its employees, agents, contractors, and subcontractors. Such insurance shall afford minimum protection of not less than \$1,000,000 for injury to or death of any one person, \$3,000,000 for injury or death of two or more persons, and \$1,000,000 for property damage. ONECOMM shall also maintain personal property insurance in an amount sufficient to fully protect all personal property, fixtures and tenant improvements owned or controlled by ONECOMM from theft, fire or other loss or damage while upon the Property. ONECOMM shall furnish Lessor with a certificate indicating the applicable coverage annually or for any change in limits, carriers or agents. ONECOMM shall maintain its improvements in the Premises in a good and safe condition, consistent with standard industry practices. Generator will comply with Noise Regulations as specified in Section 115.95 of the City of Kirkland Zoning Code.

17. Liability and Indemnification. Each party hereunder shall indemnify, hold harmless and defend the other party from any and all loss, damage, cost or expense (including attorneys' fees) arising out of the breach of any covenant or warranty made under this Lease. The foregoing notwithstanding, nothing herein shall limit the liability of either party for its own gross negligence or willful misconduct. Except for the acts of Lessor and Lessor's agents or employees Lessor shall not be liable to ONECOMM for any loss or damages arising out of personal injuries or property damage on the Premises. A party's obligation under this paragraph to indemnify and hold the other party harmless shall be limited to the sum that exceeds the amount of insurance proceeds, if any, received by the indemnified party.

18. Title To and Removal Of ONECOMM's Equipment. Title to ONECOMM's equipment, and all improvements installed at and affixed to the Premises or Property by ONECOMM shall be and shall remain the property of ONECOMM. Lessor hereby waives any lien rights it may have or acquire with respect to such property and shall promptly execute any document, required by any supplier, lessor, or lender of such property which waives any rights Lessor may have or acquire with respect thereto. ONECOMM may, at any time, including any time it vacates the Premises, remove ONECOMM's improvements, equipment, fixtures, and all of ONECOMM's personal property from the Premises, but ONECOMM shall not be required to remove any structural improvements to the Tower or Equipment Shelter required for the support of ONECOMM's equipment, nor any underground cable or conduit.

19. Holding Over. If ONECOMM holds over after this Lease has been terminated, the tenancy shall be month-to-month, subject to the provisions of this Lease.

20. Surrender. Upon termination of this Lease, ONECOMM shall remove the equipment and improvements installed at the Premises by ONECOMM except as set forth in Section 18, and shall surrender the Premises in as good order and condition as when first occupied by ONECOMM, ordinary wear and tear and damage by fire or other casualty excepted.

21. Assignment and Subletting. ONECOMM shall not assign, or otherwise transfer or encumber all or any part of ONECOMM's interest in this Lease without Lessor's prior written consent, which Lessor shall not unreasonably withhold. Notwithstanding the foregoing, ONECOMM may assign its interest in this Lease or may assign the Premises, or any portion thereof, without Lessor's consent, to any entity which controls, is controlled by, or is under the common control with ONECOMM, or to any entity resulting from any merger or consolidation with ONECOMM, or to any partner of ONECOMM or to any partnership in which ONECOMM is a general partner, or to any person or entity which acquires all of the assets of ONECOMM as a going concern, or to any entity which obtains a security interest in a substantial portion of ONECOMM's assets. Lessor hereby consents to: the assignment by ONECOMM of its rights under this Lease as collateral security to any entity which provides financing for the purchase of the equipment to be installed at the Premises; and the license of portions of the Premises to communications users similar to ONECOMM. Any such assignment, or transfer shall not relieve ONECOMM of its obligations under this Lease. Should Lessor sell, lease, transfer or otherwise convey all or any part of the Property to any transferee other than ONECOMM, then such transfer shall be subject to this Lease and

all of ONECOMM's rights hereunder and the easement rights of ONECOMM to the Access Areas. ONECOMM shall not have the right to sublet.

22. Notices and Other Communications. Every notice required by this Lease shall be delivered either by (i) personal delivery, or (ii) postage prepaid return receipt requested certified mail addressed to the party for whom intended at the addresses appearing in the first paragraph of this Lease or at such other address as the intended recipient shall have designated by written notice. A copy of each notice sent to ONECOMM shall be sent to:

Mackenzie & Albritton	and	OneComm Corporation, N.A
Attn: Paul B. Albritton		Attn: Property Management
One Post Street, Suite 500		5808 Lake Washington Blvd., Suite 400
San Francisco, CA 94104		Kirkland, WA 98033

23. Mutual Release; Waivers Of Subrogation. Each party hereby releases the other and the other's partners, affiliates, agents and employees from liability or responsibility for any loss or damage to the extent resulting from any cause or hazard with respect to which insurance is carried pursuant to Sections 15 or 16 of this Lease, including any loss or damage resulting from any loss of the use of any property. These releases shall apply between the parties, and they shall also apply to any claims under or through either party as a result of any asserted right of subrogation. All policies of insurance obtained by either party pursuant to Sections 15 or 16 of this Lease shall include a clause or endorsement waiving the insurer's right of subrogation against the other party.

24. Hazardous Substances. ONECOMM agrees that it will not use, generate, store or dispose of any Hazardous Material (defined herein) on, under, about or within the Property in violation of any law or regulation. Lessor represents warrants and agrees (1) that neither Lessor nor, to Lessor's knowledge, any third party has used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any Hazardous Material on, under, about or within the Property in violation of any law or regulation, and (2) that Lessor will not, and will not permit any third party to, use generate, store or dispose of any Hazardous Material on, under, about or within the Property in violation of any law or regulation. Lessor and ONECOMM each agree to defend, indemnify and hold harmless the other and the other's partners, affiliates, agents and employees against any and all losses, liabilities, claims and/or costs (including reasonable attorney's fees and costs) arising from any breach of any representation, warranty or agreement contained in this Section. As used in this Section, "Hazardous Material" shall mean petroleum or any petroleum product, asbestos, any substance known by the state in which the Property is located to cause cancer and/or reproductive toxicity, and/or any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation.

25. Waivers. Any waiver of any right under this Lease must be in writing and signed by the waiving party.

26. Written Agreement to Govern. This Lease is the entire understanding between the parties relating to the subjects it covers. Lessor acknowledges that this Communications Site Lease, once executed by Lessor, constitutes an offer to ONECOMM which shall not be binding upon the parties until accepted by ONECOMM's authorized signature below.

27. Attorneys' Fees. The prevailing party in any action or proceeding brought to enforce this Lease shall be entitled to recover its reasonable attorneys' fees, costs, and expenses in connection with such action or proceeding from the other party.

28. Further Assurances. In addition to the actions specifically mentioned in this Lease, the parties shall each do whatever may be reasonably necessary to accomplish the transactions contemplated in this Agreement including, without limitation: execution of all applications, permits and approvals required of Lessor for construction of the Communications Site by ONECOMM; cooperation in obtaining Non-Disturbance Agreements from holders of senior encumbrances on the Property; and execution of a Memorandum of Lease and a Memorandum of Commencement hereof in form appropriate for recording in the county in which the Premises are situated.

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

ONECOMM CORPORATION N.A.,
a Delaware corporation

By: _____

Title: Vice President, Network Development

THE CITY OF KIRKLAND

By: Terry Ellis
Its: City Manager
Federal Tax Number: 91-6001255

Approved as to Form

SCHEDULE OF EXHIBITS:

- (a) Exhibit A (the "Property")
- (b) Exhibit B (the "Premises")
- (c) Exhibit C (King Co. conditions relative to 800 MHz emergency radio system)
- (d) Memorandum of Lease

By: _____
Gail Gorud
City Attorney

ACKNOWLEDGMENT

State of Colorado)
County of Denver)

The foregoing instrument was acknowledged before me this 9th day of July, 1995, by Danny F. Snow as Vice President of ONECOMM CORPORATION a Delaware corporation.

WITNESS my hand and official seal.

My commission expires: May 18, 1998

Linda K. Quastie
Notary Public

State of Washington)
County of _____) ss.

I certify that I know or have satisfactory evidence that Terry Ellis 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 City Manager of The City of Kirkland to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____, 199__

Notary Public for Washington
Residing at _____
My appointment expires: _____

EXHIBIT A

THE LAND REFERRED TO IN THIS COMMITMENT IS SITUATED IN THE STATE OF WASHINGTON, COUNTY OF KING AND IS DESCRIBED AS FOLLOWS:

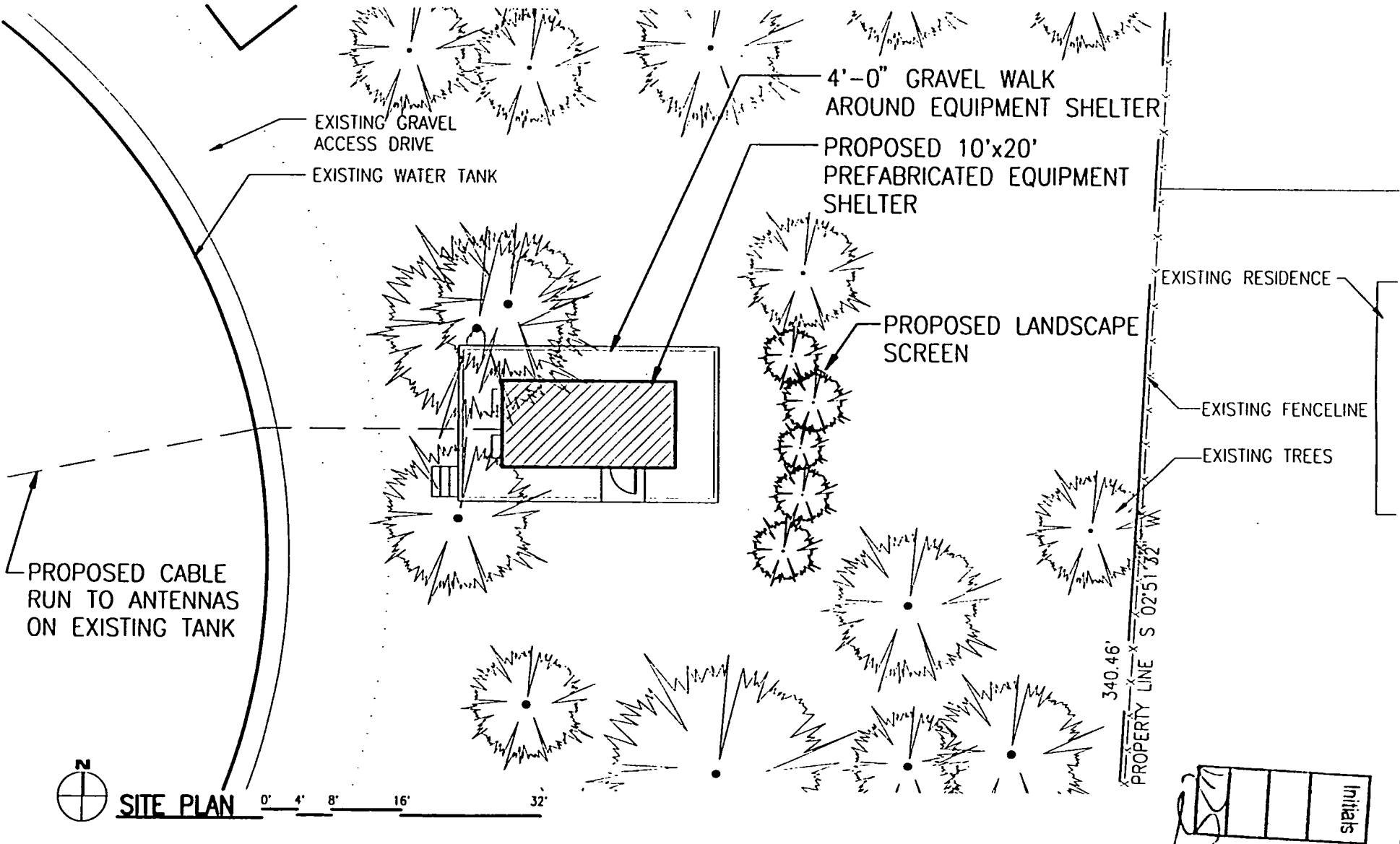
THE NORTH HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 26 NORTH, RANGE 5 EAST W.M.; EXCEPT THE WEST 180 FEET THEREOF; AND EXCEPT THE EAST 192 FEET THEREOF; AND EXCEPT THAT PORTION CONVEYED TO THE CITY OF KIRKLAND BY RECORDING NO. 9112050453.

SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON.

Initials DS

EXHIBIT "B"

R-3942



SITE PLAN

0' 4' 8' 16' 32'

340.46'
PROPERTY LINE x S 02'51"32" W

Initials

NOTE:
PLAN SHOWN IS A GRAPHIC REPRESENTATION
OF LEASE AREA

SITE PLAN - 2 OF 2
ONECOMM COMMUNICATIONS
REDMOND/ROSE HILL
10733 132ND AVE. N.E.

SITE NUMBER: WAO34
DATE: JULY 11, 1994
REV:

AGREEMENT BETWEEN SUBREGIONAL 800 MHz TRUNKED
SYSTEM OPERATORS IN KING COUNTY
AND
ONE COMM, INC.
REGARDING LICENSING AND USE OF 800 MHz FREQUENCIES
IN AND AROUND KING COUNTY, WASHINGTON

DRAFT

Initials
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This Agreement between the Subregional operators of 800 MHz trunked radio systems in King County (the Subregions) and OneComm, Inc. (OneComm), entered into this ____ day of April 1995, has been reached in an effort to provide protections and assurances to King County, and the local governments in King County, that OneComm will not use 800 MHz frequencies in or around King County in such a manner as to interfere with these governments' ability to operate their King County Regional 800 MHz Trunked Radio System on a county-wide basis.

BACKGROUND

In 1992 the voters of King County funded, via a 3-year special levy, the establishment of a county-wide 800 MHz trunked radio system to serve all functions of government, including police services, fire services, emergency medical services (EMS), and local government services. This system is scheduled for completion in late 1995 and by 1996 will be serving virtually all public safety agencies in the county. Additional local government functions will migrate to the system over the next several years as they life-out their present systems.

The Ordinance which established the project and its funding also established four (4) Subregions in the county who have the responsibility for assuring that the obligations of the Ordinance are met and that the system operates to the benefit of public safety and local government agencies in King County. The Subregions have approved an overall system design for the King County Regional 800 MHz Trunked Radio System that includes plans for present and future utilization of a number of 800 MHz frequencies licensed by the various Subregions. While this design is based on the best information available regarding potential traffic load distribution on this county-wide radio network, it is clear that as more users join the system and better data is collected, there may be a need to move some frequencies among our sites, or add sites, to handle the traffic needs of the system users.

The King County/Seattle metropolitan area faces many intense challenges in designing public safety radio systems. One of the most challenging is that virtually all of the densely populated area of the county lies north of a treaty-defined line that is 140km from the United States-Canadian border. Areas in the US north of this line have fewer frequencies allocated for exclusive use since the treaty with Canada allocates half of the available spectrum for their exclusive use. Further complicating the situation is that the terrain in the area is quite diverse and often relatively high transmitter sites are needed to reach into some areas of the county.

DRAFT

The frequencies used in the King County Regional 800 MHz Trunked Radio System are regulated by several different sections of the FCC Part 90 rules;

Channels from § 90.619, Table 9, which are channels designated for use by Public Safety agencies in Region 5, the area north of the 140km line,

Channels from § 90.617, Table 1, which are channels designated for use by Public Safety agencies beyond the 140km line, and

Channels from the National Public Safety (NPSPAC) Plan which regulates 800 MHz channels for Public Safety use.

Channels from the first two of these (§§ 90.619 and 90.617) that are either already licensed or under license application are listed in Attachment #1. The rules for these channels have provisions for inter-category sharing which appear to allow uses by OneComm in or near King County that could cause these channels to be unusable in the King County Regional 800 MHz Trunked Radio System. Therefore, it is of extreme public importance that the governments in King County have assurances that they will have the flexibility to use these frequencies to their best advantage to serve the citizens of King County, without harmful interference from uses of these channels by OneComm in and around King County.

AGREEMENTS

The Subregions and OneComm, Inc. have conducted a technical review of the various interference potentials. This work has resulted in the production of a map showing the predicted System Coverage Area, which is attached in Attachment #2.

OneComm agrees that it will not interfere with the use of any of the frequencies listed in Attachment #1 within the System Coverage Area or the boundaries of King County, whichever is larger. Interference will be defined as either: measured signal from a OneComm transmitter location being less than 19dB below signal levels from the King County system (which defines a 19dB carrier-to-interference ratio); or, signal from OneComm's use of an adjacent channel that is sufficiently strong so as to cause destructive interference to mobile units operating in the King County system.

OneComm also agrees that if subsequent to this agreement being executed they transfer their licenses or prospective licenses for any of these channels to another commercial (non-government) enterprise that any transfer agreement carry with it these same protections for King County agencies.

The Subregions agree to allow this Agreement to be referenced in any site lease agreement OneComm may enter into with government agencies in or near King County as an indication that OneComm's use of the site will not interfere with the successful implementation and use of the King County Regional 800 MHz Trunked Radio System.

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Mackenzie & Albritton
One Post Street
Fifth Floor
San Francisco, CA 94104
Attn: Paul B. Albritton Esq.

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is made and entered into as of this ____ day of _____ 199__, by and between **THE CITY OF KIRKLAND**, a municipal corporation ("Lessor") and **ONECOMM CORPORATION, N.A.**, a Delaware corporation ("ONECOMM") doing business as OneComm Corp.

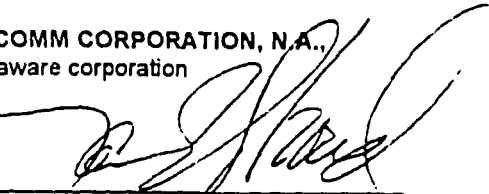
WITNESSETH:

That Lessor hereby leases to ONECOMM and ONECOMM hereby leases from Lessor a portion of that certain real property in the State of Washington, City of Kirkland County of King, a legal description of which is shown in Exhibit A attached hereto and incorporated herein by reference, under the terms and conditions of the unrecorded Lease Agreement by and between Lessor and ONECOMM dated May 10, 1995, and incorporated herein by reference (the "Lease Agreement"), for an initial term of Five (5) years, and Two (2) subsequent optional extension terms of Five (5) years each, with a term commencement date of no later than June 30, 1995, pursuant to the terms of the Lease Agreement. The portion of the real property leased by Lessor to ONECOMM is that portion depicted on Exhibit B attached hereto and incorporated herein by reference. The Lease Agreement provides for an easement during the term of the Lease over Access Areas defined therein and also states, "Any future lease of the Property which permits the installation of communication equipment shall be conditioned upon not interfering with ONECOMM's operation of the Communications Site." All of the Lessor's covenants under the Lease are intended to and shall inure to the benefit of ONECOMM and its successors. This memorandum is prepared for the purpose of recordation to give notice of the Lease Agreement and shall not constitute an amendment or modification of the Lease.

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

ONECOMM CORPORATION, N.A.,
a Delaware corporation

By: _____



Title: **Vice President, Network Development**

THE CITY OF KIRKLAND

By: Terry Ellis Its: City Manager

Federal Tax Number: 91-6001255

Approved as to Form

By: _____

Gail Gorud
City Attorney

ACKNOWLEDGMENT

State of Colorado)
County of _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 199___, by _____ as _____ of ONECOMM CORPORATION a Delaware corporation.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

State of Washington)
County of _____) ss.

I certify that I know or have satisfactory evidence that Terry Ellis 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 City Manager of The City of Kirkland to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____, 199__

Notary Public for Washington
Residing at _____
My appointment expires: _____