

**CITY OF KEIZER FACILITY SPACE
INTERGOVERNMENTAL AGREEMENT**

This INTERGOVERNMENTAL AGREEMENT (“IGA”) is entered into between CITY OF KEIZER, an Oregon municipal corporation whose address is 930 Chemawa Rd NE Keizer, Oregon (“Lessor”), and CITY OF SALEM, an Oregon municipal corporation, whose address is 555 Liberty Street SE, Salem, Oregon, (“Lessee”), (collectively the "Parties").

Recitals:

1. By the authority granted in Oregon Revised Statute (ORS) [190.110](#), state agencies may enter into agreements with units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
2. Lessor owns, maintains, and operates a facility, located at 930 Chemawa Rd NE Keizer, Oregon 97303 ("Premises").
3. Lessee owns an existing emergency communications equipment structure containing primarily radio or data telecommunications equipment on land owned or controlled by Lessor, located at the following location on the Premises: Latitude 44° 56' 38"N, Longitude 123° 01' 55"W.
4. Lessee desires to occupy the Premises (location shown in Exhibit A) for the purposes of installing, operating, and maintaining primary and appurtenant equipment to provide emergency radio communications under the terms and conditions set forth herein.
5. Lessor agrees that such property may be used for such purposes upon the terms and conditions set forth herein.
6. Lessor agrees that, as a user of the system operated by Lessee, the proposed use of the Premises is beneficial to both parties.

Lease Agreement:

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein, Lessor and Lessee agree as follows:

Section 1: Leased Premises. Lessor leases to Lessee the ground area as described above, subject to the terms and conditions in this Lease Agreement.

Section 2: Effective Date. The effective date of this Lease Agreement is the date both Parties sign this Lease Agreement ("Effective Date"). If the parties sign on separate dates, the latter date shall be the Effective Date.

Section 3: Original Term. The term of this Lease Agreement shall commence on the Effective Date of this Lease Agreement and shall remain in effect for a period of one (1) year, and automatically renew at the end of the term and each renewal period for an additional period of one (1) years, unless sooner terminated as provided herein.

Section 4: Rent. For the purpose of this agreement, therete shall be no rent due from Lessee to Lessor.

- (a) At the end of the initial term and each renewal period thereafter, Lessor may review the terms of this Section and propose changes to be mutually agreed upon by written amendment to this agreement.
- (b) Power charges incurred by Lessee will be billed to Lessee by Lessor. The equipment structure and certain other facilities owned by Lessor are connected to power through a single utility service. In order to separate the cost of seasonal power use by the Lessor, the City has installed a meter for the splash fountain that staff reads at the beginning of each month. The City calculates the per Kilowatt hour charge for the City's use of power used by the splash fountain and then bills Lessee for the remaining usage by the communications shelter and equipment.
- (c) The equipment structure is also served with a diesel back-up generator for emergency power. Lessor agrees to give this generator to Lessee. Lessee agrees to assume responsibility for operations and maintenance of the generator and bear all associated costs. Lessee also agrees that the generator or an appropriate replacement generator shall be in place and operable to maintain radio communications.
- (d) Other costs pertaining to constructing, operating, and maintaining Lessee's facilities will be the sole responsibility of the Lessee and will be, when possible, billed directly to Lessee.
- (e) Lessee is not responsible for other direct or indirect costs not specifically stipulated in this IGA.

Section 5: Technical Standards

- (a) Lessee shall install and maintain equipment using good communication practices, and in accordance with all applicable codes.
- (b) Any damage to parking lot caused by construction must be repaired to original condition.

Section 6: Interference

- (a) Lessee acknowledges that it will not have exclusive use of the parking area, which may be used by the Lessor and/or leased by others for other purposes. At all times during the term of this Lease Agreement, Lessee agrees to use equipment of a type and tuned to a frequency that will not cause interference to Lessor or other lessees.
- (b) If Lessee's equipment causes interference in violation of this section, Lessor shall notify Lessee in writing. Lessee shall promptly take steps necessary to correct or eliminate such interference, or come to a mutually agreeable solution with Lessor or any other party involved.
- (c) If such interference cannot be corrected within twenty-four (24) hours, Lessor may request Lessee to cease operating its equipment immediately.
- (d) If such interference cannot be corrected within sixty (60) days of Lessee's being informed by Lessor of such interference, Lessor may, in its sole discretion, terminate this Lease Agreement or, alternatively, Lessor may require that Lessee cease operation of its equipment until such interference can be corrected or eliminated, at which time Lessee may resume operation of its equipment or Lessor may also remove a specific item of equipment causing such interference.
- (e) Lessee shall indemnify Lessor and hold it harmless from all expenses, costs, damages, loss, claims, or other liabilities arising out of any shutdown, unless the shutdown was the result of Lessor's gross negligence or willful misconduct.
- (f) Lessee agrees to cease operations, except for intermittent testing on a schedule approved by Lessor, until the interference has been corrected to the satisfaction of Lessor.
- (g) Lessor agrees not to enter into a future lease of Premises which would materially interfere with the broadcast activity or the signal of Lessee, and to include in each future lease of Premises a provision addressing any interference by such tenant with the broadcast activity or signal of Lessee, in substantially the same form as that set forth above in Section 6(a) through (f).

Section 7: Equipment

- (a) **Lessee's Equipment.**
 - (1) Lessee shall maintain an accurate inventory of the equipment itemized in

Exhibit B on location stating the Lessee's name, frequencies and twenty-four (24) hour emergency contact phone numbers. Lessee shall also post a copy of its FCC license on its transmitter upon installation.

- (2) No equipment other than that set forth in Exhibit B shall be installed without Lessor's written consent. If any equipment other than that described in Exhibit B is required at a later date, it will be agreed upon in an amendment to this IGA. Like for like exchanges excepted.
- (3) All transmitting and receiving equipment, shelters, and support facilities listed under Exhibit B, installed at the site by Lessee shall be and remain the property of Lessee and may be removed or replaced by Lessee at any time, provided that Lessee repairs any damage caused in conjunction with such removal and replacement.
- (4) Lessee shall, in the use of the Premises, comply with all federal, state, county, and local government laws, rules, and regulations, specifically including but not limited to appointing as specified in the use permit for the subject premises issued by the government in which the leased premises is located. Any permits required for the installation of Lessee's equipment shall be responsibility of the Lessee. Lessee will paint all feed-lines to match the Tower.

Section 8: Environmental

- (a) Lessor represents and warrants to Lessee that Lessor has never generated, stored, handled, or disposed of any hazardous waste or hazardous substance upon the Premises, and that Lessor has no actual knowledge of such uses historically have been made of the Premises or such substances historically having been introduced thereupon.
- (b) Lessor shall be solely responsible for and shall defend, indemnify, and hold Lessee, its officers, employees, and agents harmless from and against any and all claims, costs, and liabilities, including attorney's fees and costs, arising out of or in connection with the cleanup or restoration of the Premises associated with Lessor's use of asbestos, hazardous substance, waste, waste materials, or hazardous materials as defined by any federal state, or local environmental or safety law or regulation, including but not limited to Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

Section 9: Termination.

- (a) **Termination by Lessor.** This Lease Agreement may be terminated by Lessor by not less than ninety (90) days prior written notice to Lessee.
- (b) **Termination by Lessee.** This Lease Agreement may be terminated by Lessee by not less than ninety (90) days prior written notice to Lessor.
- (c) Lessor and Lessee agree that prior to either Party terminating this Lease Agreement, both Parties will meet to discuss options and consequences.
- (d) Any termination of this Lease Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
- (e) Upon termination of this Lease Agreement, Lessee shall immediately arrange with Lessor for the removal of Lessee's equipment from the Premises and the repair of any damage to the Premises caused by or as a result of Lessee's equipment, reasonable wear and tear excepted, all at Lessee's expense.

Section 10: Liens. Lessee shall not cause or allow any liens or encumbrances, including but not limited to construction or materialman's liens, to be imposed upon the Premises without the consent of the Lessor. If any lien or other encumbrance or assessment is imposed upon the premises as a result of Lessee's activities, Lessee shall proceed immediately to remove it.

Section 11: Use of Premises; Surrender at Expiration. Lessee shall use the Premises for the purpose of radio communications only. Upon vacation of the Premises, Lessee shall surrender the Premises in good condition, ordinary wear and tear excepted.

Section 12: Common Privileges and Uses. Common Privileges will be granted to identified Lessee's employees and contractors. Identified employees and contractors will need to pass security and LEADS checks prior to receiving unescorted access to secure areas. Access will be only to Tower and building housing Lessee equipment.

Section 13: Improvements and Notification of Dangers.

- (a) **Improvements.** Lessee shall make no improvements to the Premises without prior written approval of Lessor.
- (b) **Notification of Dangers.** Lessee shall notify Lessor of any dangers to person or property, or any dangerous conditions, that exist on the Premises, which are either known or discovered by Lessee. Lessee shall inform its employees and agents of any known or discovered dangers, or any dangerous conditions, that are present

on the Premises, until such time as the condition is remedied by Lessor.

Section 14: Compliance with Laws. Lessee agrees to comply with all local, state, and federal laws, codes, and regulations, including but not limited to environmental laws, now in effect or which may be enacted during the term of the Lease Agreement respecting Lessee's use of the Premises. Lessee shall not use, or allow the Premises to be used by its officers, agents, employees, and invitees for any unlawful or hazardous purpose and Lessee will neither commit nor allow others to commit any nuisance on the premises.

Section 15: Assignment and Sublease.

- (a) This Lease Agreement shall be binding upon Lessor and Lessee and their respective successors and assigns, except that Lessee shall not assign or sublease the whole or any of the rights granted hereunder, without the prior written consent of Lessor, which Lessor may in its sole discretion withhold. In the event of assignment or sublease of the Premises as provided in this section, Lessee shall remain obligated and liable under all the terms and conditions of this Lease Agreement, as if there had been no assignment or sublease. The assignee or sublease shall provide that nothing in such assignment or sublease shall be construed so as to modify, in any way, the provisions of this Lease Agreement. In the event of conflict between the language of this Lease Agreement and the language of the sublease or assignment, the language of this Lease Agreement shall govern.
- (b) Lessor reserves the right to assign, pledge, or transfer this Lease Agreement and will provide not less than thirty (30) days written notice to Lessee.

Section 16: Lessor's Right of Entry. Lessor reserves the right to enter and take possession of the Premises in case of emergency for the purpose of preventing sabotage or otherwise protecting the Premises. During such emergency Lessor shall relieve Lessee from any obligation to comply with any provision of this Lease Agreement.

Section 17: Relocation. In the event the Premises are required by the Lessor for any reason, Lessor shall attempt to provide reasonable relocation of an equivalent space at a mutually suitable location or within the Premises. Any relocation expenses shall be the responsibility of Lessee.

Section 18: Access to Premises. At all times throughout the Term of this Agreement, and at no additional charge to Lessee, and with the approval of Lessor, as evidenced by its signature below, Lessee and its employees, agents, and subcontractors, shall have pedestrian and vehicular access to and over the Premises, from a public road to the Premises, for the installation, maintenance and operation of the radio equipment and any utilities serving the Premises.

Section 19: Indemnity.

- (a) Lessee agrees to defend, indemnify, release, and hold Lessor, its officers, agents, and employees and affiliates harmless from and against any and all losses, damages to persons or property, injuries or deaths of persons, liability, claims, liens, demands and causes of action of every kind and character, including environmental liability, and including the amounts of judgments, penalties, interest, court costs and legal fees incurred by Lessor in defense of same ("Claims") arising in favor of any person, corporation or other entity, including the parties hereto and their employees, contractors and agents as the result of any breach by Lessee of any provisions of this Lease Agreement, or as the result of Lessee's use or occupancy of the Premises, or any careless, negligent, or improper acts or omissions of Lessee, except for claims arising from the gross negligence or willful conduct of Lessor, its officers, agents or employees.
- (b) Lessee warrants to Lessor that its indemnity obligation will be supported by liability insurance to be furnished by it or self-insurance program that complies with state law; provided that recovery under or in respect of this indemnity shall not be limited to the proceeds of any such insurance. Lessee's indemnity obligation under this Lease Agreement extends to the acts and omissions of any agent, officer, employee, invitee, permittee, or visitor of Lessee. The indemnity obligations under this section shall survive termination of this Lease Agreement for any reason.
- (c) Lessee shall have control of the defense and settlement of any claim that is subject to sections 20.a or 20.b; however, neither Lessee nor any attorney engaged by Lessee shall defend the claim in the name of the Lessor, nor purport to act as legal representative of the Lessor or any of its officers, employees, or agents, without first receiving from the Lessor, in a form and manner determined appropriate by Lessor, authority to act as legal counsel for Lessor, nor shall provider settle any claim on behalf of the Lessor without the approval of the Lessor. Lessor may, at its election and expense, assume its own defense and settlement in the event that Lessor determines that Lessee is prohibited from defending Lessor, or is not adequately defending the Lessor's interests, or that an important governmental principle is at issue and Lessor desires to assume its own defense.

Section 20: Insurance.

- (a) Lessee shall obtain and keep in effect at its own cost during the term of this Lease Agreement comprehensive or commercial general liability insurance covering bodily injury and property damage. This insurance shall include personal injury coverage and contractual liability coverage for the indemnity provided under this

Lease Agreement. The combined single limit per occurrence shall not be less than that under the Oregon Tort Claims Act, ORS 30.270, et seq., or \$2,000,000, whichever is greater. The certificate of insurance shall name the Lessor, its officials, officers, agents and employees, as additional insureds with respect to claims arising out of Lessee's activities under this Lease Agreement. Lessee shall provide a copy of the certificate to the Lessor. The insurance coverage shall not be amended, altered, modified or canceled insofar as the coverage contemplated herein is concerned without at least 30 days' prior written notice. Lessor reserves the right to require periodic adjustment of insurance coverage based upon then current industry standards or statutory limits.

- (b) Lessee, as a government body, may fulfill the insurance obligations listed above through a program of self insurance; provided that the self-insurance program complies with applicable laws and provides insurance coverage equivalent to both type and level of coverage to that listed in section 21(a).

Section 21: Renegotiation. Nothing in this Lease Agreement shall be construed or interpreted in any manner whatsoever as prohibiting or limiting the renegotiation or amendment of lease terms or execution of a new lease.

Section 22: Waiver. The failure of any Party hereto to insist upon strict performance of any of the covenants, terms or conditions of this Lease Agreement shall not be construed to be a waiver or relinquishment of such, or any other covenants, terms or condition, but the same shall be and remain in full force and effect.

Section 23: Notices. All notices required or permitted by this Lease Agreement shall be in writing and shall be deemed to have been properly given when delivered personally or sent by mail with all postage fully prepaid to the parties hereto at the respective addresses set forth below, or to such other address as may be furnished by either Party to the other in writing:

The Lessor and Lessee contacts (or assigned designee upon individual's absence) identified in this Lease are:

Lessee:	Lessor:
City of Salem	City of Keizer
Attn: Technical Services Manager	Attn: City Attorney
WVCC	PO Box 21000
595 Cottage St NE,	Keizer, Or 97307
Salem, OR 97301	

Section 25: Interpretation of Lease Agreement. Nothing in this Lease Agreement shall be

construed as requiring Lessor to incur costs or expenses for operating or maintaining the Premises, nor shall Lessor be liable for any loss sustained by Lessee, because of damage from any source whatsoever, irrespective of any prior or subsequent knowledge on the part of Lessor respecting the possibility of such damage.

Section 26: Entire Agreement. This Lease Agreement constitutes the entire agreement between the Parties with respect to these Premises. It supersedes all prior agreements, negotiations, and representations between the Parties, whether written or oral pertaining to the Premises. This Lease Agreement may be amended only by written instrument executed with the same formalities as this Lease Agreement.

Section 27: No Joint Venture. Lessee is an independent entity and not a contractor nor agent of the Lessor for any purpose. Nothing contained in this Lease Agreement shall be deemed or construed by the Parties hereto or by any third party to create the relationship of principal and agent or a partnership, joint venture or of any other association whatsoever between the Parties in the operation and use of the Premises other than the relationship of Lessor and Lessee.

Section 28: Severability. The invalidity or unenforceability of any provision of this Lease Agreement shall not affect or impair the validity of any other provision contained herein.

Section 29: Paragraph Headings. The paragraph headings herein are for convenience only, and do not define, limit or construe the contents of such paragraphs.

Section 30: No Warranties. Lessee acknowledges that no representations as to the condition or use of the Premises have been made by the Lessor or any agent or person acting for Lessor. Lessee acknowledges and affirms that the Premises and the Premises are not now, and may not hereafter, be secured facilities, and the Lessor makes no representation or warranty as to the current or future security of persons or property within the Premises or the Premises. Lessee hereby assumes the risk of loss or damage to persons or property which may result of the existence of any condition on the Premises that might now or hereafter affect Lessee's use.

Section 31: Rule of Construction. Any rule of construction interpreting this instrument against its drafter shall be inapplicable.

Section 32: Lessee Certification. Lessee understands and agrees to the terms and conditions of this Lease Agreement and certifies that the information provided to Lessor for the purpose of executing this Lease Agreement is true and accurate and that the undersigned is duly authorized by Lessee to enter into this Lease Agreement on its behalf.

IN WITNESS HEREOF the parties have caused this Lease Agreement to be signed in their respective names by their duly authorized representatives as of the dates set forth below.

LESSEE

CITY OF SALEM,
an Oregon municipal corporation
555 Liberty St.
Salem, Or 97301

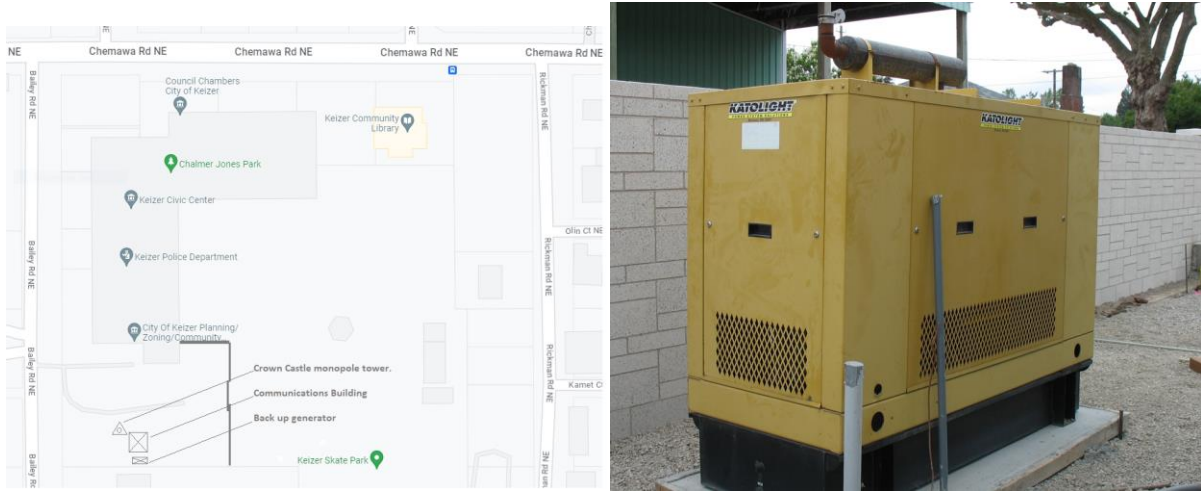
By: _____
Name: Keith Stahley
Title: City Manager
Date: _____

LESSOR

CITY OF KEIZER
an Oregon municipal corporation
930 Chemawa Road NE
Keizer, OR 97303

By: _____
Name: Adam J. Brown
Title: City Manager
Date: _____

EXHIBIT A



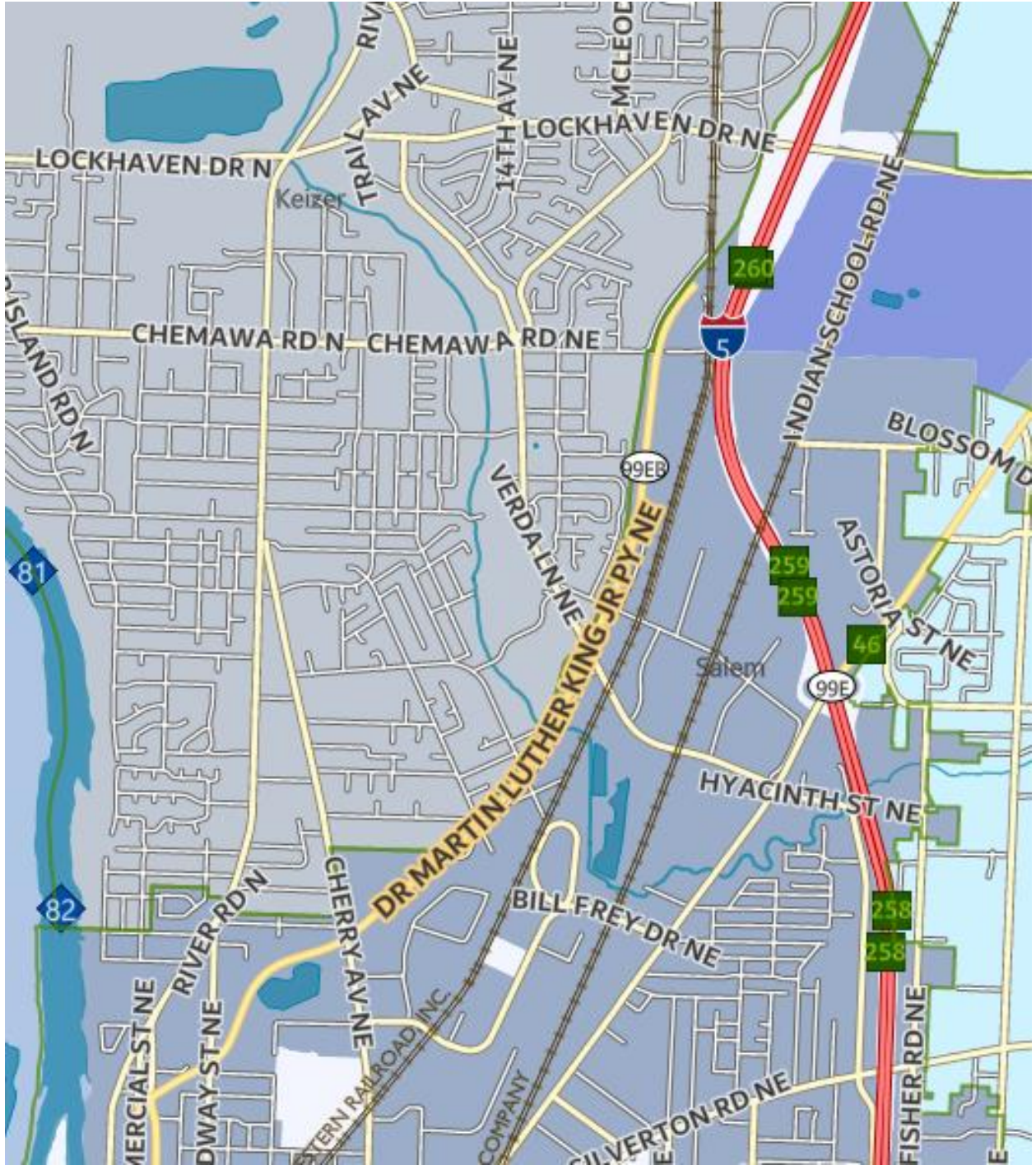


EXHIBIT B

1. Uninterruptable power system (UPS).
 - a. DC Power plant (1)
 - b. Back up batteries (8)
2. Microwave data link system.
 - a. RF power amplifier (2)
 - b. Data termination equipment (2)
 - c. DC Power distribution panel (1)
3. Motorola Simulcast radio transceiver equipment.
 - a. Tower top amp (1)
 - b. Receiver multi-coupler (1)
 - c. DC power distribution panel (2)
 - d. AC Power strip (3)
 - e. AC Inverter (1)
 - f. Data Switch (4)
 - g. Data Gateway (2)
 - h. RF Power monitor (1)
 - i. RF Combiner (2)
 - j. 6 bay transceiver cabinets (2)
 - k. Transceiver power supplies (12)
 - l. External punch blocks (4)
 - m. GPS based Frequency std (1)
4. Interconnecting equipment.
 - a. DC Power cables (non-conduit) (Various)
 - b. Data cables. (Various)
 - c. RF cables (Various)
 - i. Surge lighting protection devices. (6)
 - d. RF Waveguide
 - i. Coupler. (1)
 - ii. Dehumidifier and air pressure pump. (1)
 - iii. Pressure gauge manifold. (1)
5. 800 Mhz conventional transceiver. (1)
6. Site Fault monitoring equipment.
 - a. Logic module (1)
 - b. Wall mounted thermostat. (1)
 - c. AC Power surge protector. (1)
7. Baseboard heater. (1)
8. Ductless AC space cooling system. (1)
9. Generator power transfer switch. (1)
10. AC Power panel. (1)
11. Overhead lighting. (Various)
12. Equipment Racks. (7)