

Item Number: 5e Attach 1

Date of Meeting: September 24, 2013

Market: Seattle

Site State: WA

Site Address: 2600 S 165<sup>th</sup> Street, Seatac

## LICENSE AGREEMENT

**THIS LICENSE AGREEMENT** (the “Agreement”) is made as of this \_\_\_\_ day of \_\_\_\_\_, 2013, between Port of Seattle (“Owner”), a Washington municipal corporation, and Comcast Cable Communications Management, LLC, a Delaware limited liability company, on behalf of its affiliates (together, “Comcast”).

**WHEREAS**, Owner is the owner of that certain land (the “Land”) and the building(s) thereon (the “Building”) (together, the “Property”), having a street address of 2600 S 165<sup>th</sup> Street, Seatac, WA ; and

**WHEREAS**, Comcast desires to provide various communications services (the “Services”) to Comcast’s customers located on the Property (the “Customers”); and

**WHEREAS**, Owner is willing to permit Comcast to construct, replace, maintain, repair, operate, inspect, augment and remove its communications system through, over, and under the Property at specified locations as approved by the Port under the terms and conditions described below;

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Comcast and Owner hereby agree as follows:

**1. Grant.**

(a) Owner hereby grants to Comcast a non-exclusive license, at Comcast’s sole option and expense, to construct, replace, maintain, repair, operate, inspect, augment, and remove, on, within, under, across, and along the Property at specified locations as approved by the Port, as set forth on the Plans (hereinafter defined) , Comcast’s wires, cables, underground conduit, aerial supports, aerial cabling, building entrance facilities, above-ground enclosures, markers and concrete pads and other appurtenant fixtures and equipment (together, the “Facilities”) necessary or useful for distributing the Services to Customers. Access to Customer specific space may be granted by the respective Customer and falls outside this Agreement.

(b) Without limiting the foregoing, Owner shall give Comcast reasonable access to vertical and horizontal shafts, conduits, and the common areas on, within, under, across, and along the Property to enable Comcast, where necessary and at its expense, to install Facilities associated with providing Services.

(c) Nothing contained herein shall be construed as granting to Comcast any ownership rights in the Property or to create a partnership or joint venture between Owner and Comcast.

2. **Use.** Comcast may use the Facilities installed on the Property solely to provide the Services to Comcast's Customers on the Property.

3. **Installation.** Comcast represents that the drawings, plans, and/or specifications attached hereto as Exhibit A (the "Plans"), reasonably detail the location and size of the Facilities, and any space required on the Property necessary to house the Facilities (other than within the vertical and horizontal shaft(s) in the Building). The Owner/Port shall not be responsible for determining the sufficiency of Plans or have any liability arising out of or related to approval of plans. Any additional Facilities (other than additional/replacement cabling in existing Facilities and replacement/upgrade of existing fixtures and equipment) shall specifically require the Owner's advance written permission, such permission shall not be unreasonably withheld, conditioned or delayed. Comcast may begin to install its Facilities in accordance with the Plans, at Comcast's sole cost and expense, provided that Comcast shall:

(a) perform such construction in a safe manner consistent with generally accepted construction standards;

(b) perform such construction and work in such a way as to minimize interference with the operation of the Property; and

(c) obtain, prior to the commencement of any construction and work, necessary federal, state and municipal permits, licenses and approvals.

4. **Comcast's Obligations.**

Comcast shall:

a) keep the Facilities in good order, repair and condition, and promptly and adequately repair all damage to the Property caused by Comcast, other than ordinary wear and tear; and

b) comply with all applicable federal, state, and municipal laws, orders, rules and regulations included but not limited to Schedule of Rules and Regulations for Seattle-Tacoma International Airport ( "Airport Regulations"), provided that any such Airport Regulations shall not materially and adversely interfere with Comcast's use of the Facilities or the Services provided by Comcast to its Customers.

In the event that Owner reasonably requires the relocation of any portion of the Facilities in connection with any work undertaken or improvement made by Owner on or about the Property. Upon ninety (90) days' prior written notice from Owner, Comcast shall, at its sole cost and expense, relocate such portions of the Facilities as necessary to accommodate such work or improvement.

Nothing in this Agreement shall be construed to require Comcast to construct, install, or operate the Facilities in the Property, to deliver the Services to the Property, and/or to deliver the Services to a particular Customer or Customers.

5. **Facilities.** The Facilities shall belong to Comcast and shall be there at the sole risk of Comcast, and Owner shall not be liable for damage thereto or theft, misappropriation or loss thereof, except in the event of the gross negligence or willful misconduct of Owner, its employees, or contractors. At the expiration of this Agreement, Comcast shall, unless otherwise

agreed by Owner in writing, at Comcast's sole cost and expense, remove the Facilities (other than any underground conduit or vaults) and Comcast's other personal property from the Building, and repair all damage caused by such removal. Any property not so removed within sixty (60) days after the expiration of this Agreement shall be deemed the property of Owner and at the discretion of Owner, removed by Owner at Comcast's cost, without further liability to Comcast.

6. **Access.** Subject to non-discriminatory security requirements, Owner shall allow Comcast, and its employees, agents, and contractors access to the Property at all times (twenty four (24) hours per day, seven (7) days per week, and 365/366 days per year), for the purposes under the terms and conditions of this Agreement.

7. **Term.**

(a) Commencing on the date first written above, this Agreement shall have a term of ten (10) years.

(b) The license granted hereby may not be revoked during the Term, except as provided in Section 11.

8. **Liens.** Comcast shall keep the Property free and clear of any liens and encumbrances arising out of the use of the Property by Comcast. Comcast shall be responsible for the satisfaction or payment of any liens for any provider of work, labor, material or services claiming by, through or under Comcast. Said responsibility is subject to the indemnity provisions in Section 11 of this Agreement. . Such liens shall be discharged by Comcast within sixty (60) days after notice by Owner of filing thereof by bonding, payment or otherwise, provided that Comcast may contest, in good faith and by appropriate proceedings any such liens.

9. **Performance of Work.** Comcast may contract or subcontract any portion of work at the Property contemplated by this Agreement to any person or entity competent to perform such work. In no event shall such subcontract relieve Comcast of any of its obligations under this Agreement.

10. **Limitation of Liability.** Neither party shall be liable to the other party for any lost profits, special, incidental, punitive, exemplary or consequential damages, including but not limited to frustration of economic or business expectations, loss of profits, loss of capital, cost of substitute product(s), facilities or services, or down time cost, even if advised of the possibility of such damages.

11. **Termination; Default.**

- a. The Owner may terminate this Agreement for a material breach of this Agreement if the Owner provides written notice to Comcast of the breach and Comcast fails to commence a cure of the breach within 30 days of receiving the notice or fails to complete the cure within 90 days of receiving the notice. A material breach of this Agreement shall include but not be limited to any material interference with the operations of the Port Property, any unsafe condition created by the Facilities, any damage to Port property by Comcast actions, violation of laws or regulations or failure to defend and indemnify the Port in accordance with Comcast's indemnification obligation at Section 12.

- b. The Owner may terminate this Agreement with 120 days' notice if the Owner decides to undertake a major capital improvement project that the Owner, in its sole discretion, has determined requires displacement of the Facilities.

**12. Indemnification.** The Owner, its employees and agents will not be liable for any injury (including death) to any persons or for damage to any property regardless of how such injury or damage was caused, sustained, or alleged to have been sustained by Comcast or by others, including but not limited to all persons directly or indirectly employed by Comcast, or any agents, contractors, or subcontractors of Comcast, as a result of any condition (including existing or future defects in the Facility) or occurrence (including failure or interruption of utility service) whatsoever related in any way to the Facility, or related in any way to Comcast's use of the Facility, except to the extent caused by or resulting from the Owner's, its employees, or contractor's willful misconduct or sole negligence. In the event that this Agreement is relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of any building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate (specifically including moving or demolition in connection therewith) and therefore subject to Section 4.24.115 of the Revised Code of Washington, Comcast shall defend, indemnify and hold harmless the OWNER from all losses to the extent caused, or alleged to be caused, by any negligent act or omission of Comcast. COMCAST agrees to defend and to hold and save the Owner harmless from all claims, actions, damages, liabilities or reasonable expenses (including reasonable attorneys' fees, court costs, and all reasonable expenses of litigation) in connection with any such items of actual or alleged injury or damage occurring within the Facility during the period of Comcast's use thereof, except to the extent such injury or damage is caused by or resulting from the sole negligence of the Owner. Comcast agrees that the foregoing indemnity specifically covers actions brought by its own employees, and thus Comcast expressly waives its immunity under industrial insurance, Title 51, as necessary to effectuate this indemnity. The obligations under this Section shall survive the expiration or earlier termination of this Agreement.

Comcast shall indemnify, hold harmless and defend Owner, its employees, agents, contractors, invitees, officers, directors, affiliates and subsidiaries from and against any and all claims, actions, damages, liabilities and reasonable expenses, including reasonable attorneys' and other professional fees, and court costs, arising from or out of the installation, operation, maintenance or removal by Comcast of the Facilities and the Services provided by Comcast, except to the extent that any such claims, actions, damages, liabilities, expenses or damage are caused by Owner, its employees, agents, contractors, invitees, officers, directors, affiliates or subsidiaries

**13. Insurance.** Comcast and any authorized contractors/subcontractors shall obtain and keep in force, at its sole cost and expense the following types of insurance, in the amounts specified and in the form hereinafter provided for:

- a. *General Liability Insurance.* Comcast and any authorized contractors/subcontractors shall obtain and keep in force a commercial general liability policy of insurance, written on ISO Form CG 00 01 10 01 (or equivalent), that protects Comcast and the Owner, as an additional insured using ISO Form 20 26 (either 11 85 or 07 04 revision) or equivalent, against claims for bodily injury, personal injury and property damage based upon, involving or arising out of the

use or occupancy of the Facilities and all areas appurtenant thereto. The Port shall also be an additional insured for completed operations. The coverage form shall be on occurrence basis providing not less than two million dollars (\$2,000,000) per occurrence and an annual aggregate of not less than four million dollars (\$4,000,000). The policy shall not contain any intra-insured exclusions as between insured persons or organizations. The Owner shall be submitted upon Agreement inception a copy of the additional insured endorsement or applicable policy language that validates the Owner has been added as an additional insured for both ongoing and completed operations.

- b. *Automobile Liability Insurance.* Comcast and any authorized contractors/subcontractors shall obtain and keep in force a commercial automobile liability policy of insurance, written on ISO Form CA 00 01 07 97 (or equivalent), that protects Comcast and the Owner against claims for bodily injury and property damage based upon, involving or arising out of motor vehicle operations on or about the Facilities and all areas appurtenant thereto. Comcast shall provide a Waiver of Subrogation on this policy in favor of the Owner. Such insurance shall cover any "Auto" (i.e. owned, hired and non-owned) and shall be on an occurrence basis providing single limit coverage in an amount not less than one million dollars (\$1,000,000) per occurrence. The policy shall not contain any intra-insured exclusions as between insured persons or organizations.
- c. *Property Insurance.* Comcast and any authorized contractors/subcontractors shall obtain and keep in force property insurance using an ISO CP 10 20 Cause of Loss Broad Form (or an equivalent manuscript form) insuring Comcast's personal property and Alterations (specifically including "betterments and improvements") made by or for Comcast against physical damage, including loss of use of the Facilities. The policy shall include coverage for any additional costs resulting from debris removal and reasonable amounts of coverage for the enforcement of any ordinance or law regulating the reconstruction or replacement of damaged property including any undamaged sections of the Facilities required to be demolished or removed by reason of the enforcement of any Legal Requirement as the result of a covered cause of loss. The amount of such insurance shall be procured on a replacement cost basis (or the commercially reasonable and available insurable value thereof if, by reason of the unique nature or age of the improvements involved, such latter amount is less than full replacement cost). The Owner shall be included as a Loss Payee on Comcast's property insurance policy with respect to the Owner's interest in Alterations.
- d. *Insurance Companies.* Insurance required hereunder shall be in companies duly licensed to transact business in the State of Washington, and maintaining during the policy term a General Policyholders Rating of 'A-' or better and a financial rating of 'A-VII' or better, as set forth in the most current issue of "Best's Insurance Guide."
- e. *Policies Primary; Deductibles.* All insurance to be carried by Comcast shall be primary to and not contributory with any similar insurance carried by the Owner, whose insurance shall be considered excess insurance only.
- f. *Continuous Maintenance; Renewal.* All policies of insurance required under this Agreement shall be continuously maintained through the term of the Agreement.

Comcast shall deliver to Owner no less than ten days (10) following each insurance renewal, evidence of insurance required under this Agreement including all Certificates of Insurance, additional insured endorsements where indicated and if needed any waivers of subrogation.

- g. *Evidence of Insurance.* Comcast and any authorized contractors/subcontractors shall deliver, or cause to be delivered, to the Owner, certificates of insurance, additional insured, loss payee and waiver of subrogation on the certificate and any other reasonable documentation that provides evidence of the existence and amounts of such insurance, the inclusion of the Owner as an insured as required by this Agreement, and the amounts of all deductibles and/or self insured retentions.
- h. *No Limitation of Liability.* The limits of insurance required by this Agreement or as carried by COMCAST shall not limit the liability of Comcast nor relieve Comcast of any obligation hereunder.
- i. *Waiver of Subrogation.* Without affecting any other rights or remedies, Comcast (for itself and on behalf of anyone claiming through or under it by way of subrogation or otherwise) hereby waives any rights it may have against the Owner, its officers, agents and employees on account of any loss or damage occasioned to Comcast arising out of or incident to the perils required to be insured against under this Agreement. Accordingly, Comcast shall cause each insurance policy required by this Section to further contain a waiver of subrogation clause. The effect of such release and waiver of the right to recover damages shall not be limited by the amount of insurance carried or required, or by any deductibles applicable thereto.

Comcast and any authorized contractors/subcontractors shall maintain insurance coverage insuring against claims, demands or actions for personal injuries or death resulting from the use or operation of the Facilities with limits of not less than Five Million Dollars (\$5,000,000) any one occurrence, in an aggregate amount of Ten Million Dollars (\$10,000,000), and for damage to property in an amount of not less than One Million Dollars (\$1,000,000). Upon Owner's request, prior to installation of the Facilities, and thereafter upon renewal of required policies, Comcast and its authorized contractors/subcontractors shall provide a certificate of insurance to Owner, naming Owner as an additional insured.

**14. Assignment.** Comcast shall not assign or transfer this Agreement without the prior written consent of the Owner, which consent will not be unreasonably withheld or conditioned or unduly delayed; except that, Comcast may, without obtaining Owner's prior consent, make such assignment to:

- (a) any parent, affiliate, or subsidiary of Comcast; or
- (b) any entity which succeeds to all or substantially all of Comcast's assets or ownership interests, or the cable system operated by Comcast (or its affiliate or subsidiary) which serves the municipality in which the Property is located, whether by merger, sale or otherwise, provided that such successor also succeeds to the cable television franchise agreement held by Comcast (or its affiliate or subsidiary) for the municipality in which the Property is located; provided that for any succeeding entity that doesn't qualify as a parent, affiliate, or subsidiary of Comcast, Comcast must provide written notice of any assignment.

**15. Force Majeure.** Comcast shall not be liable for failure to perform its obligations hereunder due to acts of God, the failure of equipment or facilities not belonging to Comcast (including, but not limited to, utility facilities or service), denial of access to facilities or rights-of-way essential to serving the Property or Building, government order or regulation or any other circumstances beyond the reasonable control of the Comcast.

**16. Notice.** All notices, demands, requests or other communications given under this Agreement shall be in writing and be given certified mail, return receipt requested, or nationally recognized overnight courier service to the address set forth below or as may subsequently in writing be requested.

If to Owner:                   Port of Seattle  
  Attention: Aviation Properties  
  P.O. Box 68727  
  Seattle, WA 98168

With a copy to:               Port of Seattle  
  General Counsel  
  P.O. Box 1209  
  2711 Alaskan Way  
  Seattle, WA 98111

If to Comcast: Comcast Cable Communications Management, LLC  
  15815 25th Ave West  
  Lynnwood, WA 98087  
  Attn: Business Services

With a copy to:               Comcast Cable Communications, LLC  
  One Comcast Center  
  1701 JFK Blvd.  
  Philadelphia, PA 19103  
  Attn.: General Counsel

**17. Governing Law and Venue.** This Agreement shall be governed by and construed under the laws of Washington State. Venue shall be King County Superior Court for state law issues.

**18. Miscellaneous.** This Agreement shall bind and benefit the parties and their respective successors and assigns. No legal title or leasehold interest in the Property shall be deemed or construed to have been created or vested in Comcast or assignee (even if assignment is permitted by the Port). This Agreement is the entire understanding between the parties and supersedes any prior agreements or understandings whether oral or written. This Agreement may not be amended except by a written instrument executed by both parties. If any provision of this Agreement is found to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement will not be affected or impaired. Each party represents to the other that the person signing on its behalf has the legal right and authority to execute, enter into and bind such party to the commitments and obligations set forth herein.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date first written above.

**Owner:**  
PORT OF SEATTLE

**Comcast:**  
Comcast Cable Communications  
Management, LLC

By: \_\_\_\_\_

By: \_\_\_\_\_

Print: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

Title: VP Business Services

