

## **E. NEW BUSINESS**

- 7. Ordinance 2022-10: An ordinance authorizing a three-party agreement and real property lease with Verizon Wireless & Alaska Pipeline Company.**

# Kenai Peninsula Borough

## Planning Department – Land Management Division

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### MEMORANDUM

TO: Brent Johnson, Assembly President  
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor *AK for CP*  
Melanie Aeschliman, Planning Director *MA*  
Marcus Mueller, Land Management Officer *mm*

FROM: Aaron Hughes, Land Management Agent *AH*

DATE: April 21, 2022

RE: Ordinance 2022-\_\_\_\_, Authorizing a Three-Party Agreement and Real Property Lease with Alaska Pipeline Company and Verizon Wireless (Mayor)

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Verizon Wireless (VZN) has proposed to install cellular communication equipment on an existing microwave tower owned and managed by Alaska Pipeline Company (APC). The existing tower is located on Kenai Peninsula Borough (KPB) fee-owned property and authorized under right-of-way grant 051647, conveyed from the Bureau of Land Management to APC on April 25, 1963. The right-of-way grant was issued prior to KPB receiving title and was identified in language on the State of Alaska Patent.

In order to properly document the required relationships between KPB and VZN, APC and VZN, and KPB and APC, a three-party agreement and real property lease is necessary.

The terms of the Three-Party Agreement and Real Property Lease will result in the fair market rental amount split between KPB and APC, as follows:

- The initial monthly lease revenue to KPB in the amount of \$1,499.00 per month with an annual escalator of 3%.
- The initial monthly lease revenue to APC in the amount of \$1,500.00 with an annual escalator of 3%.
- A 5-year initial lease term is provided, with five additional 5-year renewal options.

Your consideration of this ordinance is appreciated.

Introduced by:	Mayor
Date:	05/03/22
Hearing:	05/17/22
Action:	

**KENAI PENINSULA BOROUGH  
ORDINANCE 2022-**

**AN ORDINANCE AUTHORIZING A THREE-PARTY AGREEMENT AND REAL  
PROPERTY LEASE WITH VERIZON WIRELESS AND ALASKA PIPELINE  
COMPANY**

**WHEREAS,** Verizon Wireless (“VZN”) is proposing to install cellular communication equipment on an existing microwave tower owned by Alaska Pipeline Company (“APC”); and

**WHEREAS,** APC is grantee of BLM Right-of-Way Grant 051647 dated April 25, 1963 for the specific permitted use being “Plant site for microwave relay station necessary to the operation of approved Right-of-Way, Anchorage 051647”; and

**WHEREAS,** the Kenai Peninsula Borough (“KPB”) through Municipal Entitlement selection, received fee patent from the State of Alaska on July 16, 2003, of the property subject to “A right-of-way easement for microwave relay station, ADL 223553”; and

**WHEREAS,** APC has expressed specific interest in preserving its authority as granted under the right-of-way grant without modification; and

**WHEREAS,** KPB is identified as the fee simple owner subject to the right-of-way grant wherein APC is the owner of the established microwave tower and supporting infrastructure requiring a three-party agreement and real property lease necessary to establish the various relationships between KPB and VZN, ACP and VZN, and KPB and APC under the proposed agreement; and

**WHEREAS,** the proposed Three-Party Agreement and Real Property Lease have been negotiated on terms which would provide monthly lease revenue to both KPB and APC, while preserving the existing terms of the initial grant of right-of-way to APC; and

**WHEREAS,** the Kenai Peninsula Borough Planning Commission at its regularly scheduled meeting of May 9, 2022, recommended \_\_\_\_\_;

**NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:**

**SECTION 1.** That the assembly finds that entering into a three-party agreement and real property lease with APC, and VZN, pursuant to KPB 17.10.100(I), authorizing the negotiated lease of KPB lands, is in the best interest of KPB at the following location:

N½NE¼NE¼ of Section 1, Township 4 North, Range 12 West, Seward Meridian, Kenai Recording District, State of Alaska.

This finding is based on the following facts:

1. The KPB will receive a fair market rent, in the initial amount of \$1,499.00 per month with an annual escalator of 3%.
2. The lease terms provide for an initial 5-year term with an option to renew for five additional 5-year terms.
3. The land will be used to provide communication services that will improve connectivity for the residents of the KPB.
4. That the communication improvements are compatible with the site, existing improvements and uses.

**SECTION 2.** The terms of the agreement between KPB and VZN, KPB and APC are approved and consented with respect to the terms between APC and VZN.

**SECTION 3.** The terms of the agreement are exclusive to VZN, their successors and or assigns and does not expand or diminish APC's interest in the real property

**SECTION 4.** Pursuant to KPB 17.10.230, the assembly authorizes an exception to the requirements of KPB 17.10.080, KPB 17.10.090 and KPB 17.10.110 governing classification, disposition, and notice with respect to leasing of borough lands, based on the following facts:

1. That special circumstances or conditions exist.
  - a. The proposed Three-Party Agreement and Real Property Lease incorporates lease terms solely with APC and VZN, for the purpose of installing new cellular communication equipment on an existing microwave relay tower, wherein said tower is authorized by right-of-way grant conveyed prior to KPB ownership.
  - b. The proposed agreement does not expand the encumbered area outside that to which APC has received an existing right-of-way grant.
2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is the most practical manner of complying with the intent of this chapter.
  - a. The notice requirement is intended to make the public aware of an opportunity to purchase KPB property, which is unnecessary since the intent of the disposal is to enter into a three-party agreement and real property lease with APC and VZN.

- b. The communication uses are not primary factors in the land classification system.
- 3. That the granting of this exception will not be detrimental to the public welfare or injurious to other property in the area.
  - a. Terms of the Three-Party Agreement and Real Property Lease, are compatible with the existing land uses and surrounding land uses.
  - b. The addition of VZN installed communication equipment on the existing microwave tower will benefit the residents of the KPB.

**SECTION 5.** Based on the foregoing, the mayor is hereby authorized pursuant to KPB 17.10.100(I) to negotiate and enter into a three-party agreement and real property lease upon the property identified in Section 1. The authorization shall be for an agreement with APC and VZN for the installation of cellular communication equipment by VZN on an existing microwave tower owned by APC with terms and conditions substantially similar to the agreement accompanying this resolution.

**SECTION 6.** VZN and APC shall have 120 days from the date of enactment of this ordinance to execute the Three-Party Agreement and Real Property Lease.

**SECTION 7.** That rent revenue for the benefit of KPB shall be submitted to the KPB Finance Department and deposited as follows:

Land Trust Account: 250.00000.00000.36317.

**SECTION 8.** That this ordinance shall be effective immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS \_\_\_\_ DAY OF MAY 2022.**

\_\_\_\_\_  
Brent Johnson, Assembly President

ATTEST:

\_\_\_\_\_  
Johni Blankenship, MMC, Borough Clerk

## THREE PARTY AGREEMENT AND REAL PROPERTY LEASE

KPBL# XX-XXXX-XX

For good and valuable consideration, and pursuant to Ordinance 2022-\_\_\_\_, enacted May 17, 2022, this Three-Party Agreement and Real Property Lease (hereinafter called "Agreement"), is made and entered into by and between the Kenai Peninsula Borough, an Alaska municipal corporation, whose address is 144 N. Binkley Street, Soldotna, AK 99669, as Real Property Owner and Lessor ("KPB"), Cellco Partnership, dba Verizon Wireless whose address is 180 Washington Valley Road, Bedminster, NJ 07921, as Lessee ("VZN") and Alaska Pipeline Company, a subsidiary of SEMCO Energy, Inc., whose address is P.O. Box 190288, Anchorage, Alaska 99519-0288, as grantee of BLM Right-of-Way Grant dated April 25, 1963 and owner of improvements referred to as the Kalifornsky Tower ("APC").

This Agreement is intended to be the sole agreement to authorize VZN to place equipment on the Kalifornsky microwave tower and on ground space near the base of the tower as defined in the attached site plan.

**PART ONE:** Terms defining the relationship of this Agreement between KPB and VZN.

### DESCRIPTION OF REAL PROPERTY

This Agreement grants VZN non-exclusive use of a portion of the following- described parcel of real property, located in the Kenai Recording District, Third Judicial District, State of Alaska:

Section 01, Township 04 North, Range 12 West, Seward Meridian

Located within the N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ , consisting of approximately 20 acres of land, and as further identified on Exhibit F ("Property").

APC owns a microwave relay tower station ("Kalifornsky Tower"), located on the property as authorized under BLM Right-of-Way Grant dated April 25, 1963 ("Right-of-Way Grant"), attached as Exhibit D.

Ingress and egress to the Property is from Bypass Road along an existing traveled way to the Kalifornsky Tower.

## PURPOSE OF LEASE

1. Authority. Pursuant to Ordinance 2022-XX, the purpose of this lease is for the co-location and maintenance by VZN of three (3) cellular panel antennas, one (1) four-foot diameter parabolic dish, three (3) eight-foot panel antennas, along with all cables, mounts and necessary equipment on the Kalifornsky Tower.

Additionally, for the construction and maintenance by VZN of a 16' x 12' fenced-in equipment area adjacent to APC's existing microwave relay tower station, containing one (1) utility H-Frame with multi-gang meter base, one (1) primary cabinet, one (1) ILC, one (1) equipment platform, one (1) 30kW generator, and an 11' x 2.5' ice bridge area to the existing microwave relay tower ("Activities"). KPB makes no guarantee that the real property is suitable for VZN's purpose, and shall have no responsibility for the condition of the Property nor any damage suffered by VZN or any other person due to such condition. VZN is solely responsible for installing separate meters for utility use and payment, as applicable.

2. Site Plan. The Site Plan, entitled Verizon Wireless Final Construction Drawings Marathon and dated June 25, 2021, attached hereto as Exhibit A, illustrates the type and location of improvements, basic design and construction standards, landscaping features, location of utilities, and the nature of uses, authorized by this Agreement.
3. Purpose. The purpose of this Agreement is to lease to VZN a portion of the property for the colocation of certain communications equipment on the Kalifornsky Tower. The Property shall be utilized for the purposes of the development, management, and maintenance of improvements/facilities to support a communications site operation within the scope of the terms and conditions of the LEASE, and/or site plan. Utilization or development for other than the allowed uses shall constitute a violation of the Agreement and will become subject to cancellation.

Failure on the part of VZN to substantially complete the site plan or to be inconsistent with the proposed use and terms and conditions of the Agreement within two (2) years of the anniversary date of said lease shall constitute grounds for cancellation.

## TERMS AND CONDITIONS

**1.1. Lease Term.** This lease is for a term of five (5) years commencing \_\_\_\_\_, 2022, and includes an option to renew the lease for five (5) additional five-year terms upon the same terms and conditions unless VZN notifies KPBP in writing of VZN's intention not to renew this lease at least ninety (90) days prior to the expiration of the Agreement.

**1.2. Lease Rental.** The monthly lease rental for this Agreement from VZN to KPBP is \$1,499.00, plus any applicable sales taxes as may otherwise be required by law, which shall be due with each monthly lease payment. The first monthly lease rental payment shall be due within 30 days of the execution of this Agreement. Thereafter, the monthly lease payment is due and payable on or before 15<sup>th</sup> of each month. Rent shall be increased each year by 3 percent over the previous year's rent, as shown on Exhibit B, attached hereto. Rent will be prorated for any partial month.

**1.3 Memorandum.** A short-form Memorandum of Lease may be recorded at KPBP's or VZN's option in the form depicted in Exhibit C, attached hereto. KPBP will promptly execute any Memorandum of Lease or corrective amendments thereto, upon written request of VZN.

**1.4 Defense and Indemnification.** VZN shall indemnify, defend, save and hold KPBP, its elected and appointed officers, agents and employees, harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorney's fees resulting from VZN's performance or failure to perform in accord with the terms of this Agreement in any way whatsoever. VZN shall be responsible under this clause for any and all claims of any character resulting from VZN or VZN's officers, agents, employees, partners, attorneys, suppliers, and subcontractor's performance or failure to perform this Agreement in any way whatsoever. This defense and indemnification responsibility include claims alleging acts or omissions by KPBP or its agents which are said to have contributed to the losses, failure, violations, or damage. However, VZN shall not be responsible for any damages or claims arising from the sole negligence or willful misconduct of KPBP, its agents or employees.

1. Insurance. Insurance coverage required under this Agreement shall be primary and exclusive of any other insurance carried by KPBP. Minimum levels of insurance coverage required under this Agreement shall remain in effect for the life of this Agreement and shall be a part of the contract price. If VZN's policies contain higher limits, KPBP shall be entitled to coverage to the extent of such higher limits. There shall be no cancellation or material change of the insurance coverages, or intent not to renew the insurance coverages as specified in this Agreement, without thirty



(30) calendar days' prior written notice to KPB. Certificates of Insurance, reasonably acceptable in form and content, will be delivered to KPB at the time of submission of the signed Agreement and updated certificates shall be provided upon insurance coverage renewal, where applicable.

VZN shall provide and maintain Commercial General Liability Insurance (CGL). The CGL Policy shall be written on an occurrence basis and with a limit of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) each occurrence and aggregate. CGL insurance shall be written on standard ISO occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, broad form property damage, independent lessees, products-completed operations, personal injury and advertising injury, explosion, collapse, underground hazards, and liability assumed under a contract including the tort liability of another assumed in a business contract. If necessary to provide the required limits, the CGL policy's limits may be layered with a Commercial Umbrella or Excess Liability policy. This policy shall name KPB as Additional Insured. To the extent damages are covered by CGL, subrogation shall be waived.

VZN shall provide and maintain Auto Liability Insurance (AL). The AL Policy shall include a Combined Single Limit of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00); Underinsured and Uninsured Motorists limit of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00); Coverage shall include Non-Owned and Hired Car coverage. This policy shall name KPB as Additional Insured. To the extent damages are covered by AL, subrogation shall be waived.

If necessary to provide the required limits, required policy limits may be layered with a Commercial Umbrella or Excess Liability policy or policies. This policy shall name KPB as Additional Insured and waiver of subrogation language shall be included.

- 1.5 Assignments.** The property lease may be assigned with prior approval by KPB and APC of Notice of Assignment.
- 1.6 Subleasing.** VZN may not sublease the Property or any part thereof.
- 1.7 Waste.** VZN shall not commit waste upon or injury to the lands leased herein.

**1.8 Fire Protection.** VZN shall take all reasonable precautions to prevent, and take all reasonable actions to suppress destructive and uncontrolled grass, brush, and forest fires on the Property, and comply with all laws, regulations, and rules promulgated and enforced by the protection agency responsible for forest protection within the area wherein the Property is located.

**1.9 Safety.** VZN shall be solely responsible for maintaining the premises in a safe and fit condition, including without limitation snow and ice removal from all improvements and areas on the Property as needed for VZN's use of the Property. VZN is responsible for the safety of all persons conducting activities on the Property under this Agreement.

**1.10 Sanitation.** VZN shall comply with all laws, regulations or ordinances promulgated for the promotion of sanitation. The Property shall be kept in a clean and sanitary condition and every effort shall be made to prevent pollution of the waters and lands. Sanitary facilities shall be in accordance with the State of Alaska, Department of Environmental Conservation regulations.

**1.11 Hazardous Materials and Hazardous Waste.** Storage, handling, and disposal of hazardous waste shall not be allowed on Property. VZN shall comply with all applicable laws and regulations concerning hazardous chemicals and other hazardous materials, and shall properly store, transfer and use all hazardous chemicals and other hazardous materials and not create any environmental hazards on the Property. In no event may VZN utilize underground storage tanks for the storage or use of hazardous chemicals or other hazardous materials.

Should any hazardous chemicals or hazardous materials of any kind or nature whatsoever, or hazardous wastes be released upon the Property during the term of this Agreement, VZN shall IMMEDIATELY report such release to KPB and any other agency as may be required by law, and VZN shall, at its own cost, assess, contain, and clean up such spilled materials in the most expedient manner allowable by law.

As used herein, "hazardous chemical" means a chemical that is a physical hazard or a health hazard.

As used herein, "hazardous material" means a material or substance, as defined in 49 CFR 171.8, and any other substance determined by the federal government, the State of Alaska or KPB, to pose a significant health and/or safety hazard. The covenants and obligations described in this article shall survive the termination of this Agreement.

As used herein, "hazardous waste" means a hazardous waste as identified by the

Environmental Protection Agency under 40 C.F.R. 261, and any other hazardous waste as defined by the federal government, the state of Alaska or KPB.

**1.12 Compliance with Laws.** VZN shall abide by all applicable federal, state, city, and KPB statutes, ordinances, rules, and regulations. VZN is responsible for obtaining all federal, state, and local permits applicable to licensee's activities and shall keep such permits in good standing.

**1.13 Easements and Rights-of-Way.** This Agreement is subject to all easements, rights-of-way, covenants and restrictions of which VZN has actual or constructive notice.

**1.14 Inspections.** VZN shall allow KPB, through its duly authorized representative(s), to enter and inspect the Property at any reasonable time, with sufficient notice to VZN and APC, to ensure compliance with the terms and conditions of this lease.

**1.15 Property Taxes.** VZN shall timely pay all real property taxes, assessments and other debts or obligations owed to KPB. Pursuant to KPB Code, Section 17.10.120(F) this Agreement will terminate automatically should VZN become delinquent in the payment of any such obligations.

**1.16 Cancellation.** At any time that this Agreement is in good standing it may be canceled in whole or in part upon mutual agreement by VZN and KPB with notice to APC, so long as VZN pays KPB a cancellation fee equal to six (6) months' rent, at the then current rate.

**1.17 Termination.** Upon termination of this Agreement, VZN covenants and agrees to return the Property to KPB in the condition which existed immediately prior to entry on the Property by VZN, and to immediately remove all items of personal property subject to the conditions of Section 2.26 below. All terms and conditions set out herein are considered to be material and applicable to the use of the Property under this Lease. Subject to the following, in the event of VZN's default in the performance or observance of any of the Agreement terms, conditions, covenants and stipulations thereto, and such default continues for thirty (30) calendar days after written notice of the default, KPB may cancel this Agreement, or take any legal action for damages or recovery of the Property. No improvements may be removed during the time in which the Agreement is in default.

In the event VZN breaches any provisions prohibiting the release of hazardous chemicals, hazardous materials, or hazardous waste on the Property, and fails to immediately terminate the operation causing such release upon notice from KPB, then KPB may immediately terminate this Agreement without notice to VZN.

**1.18 Violation.** Violation of any of the terms of this Agreement may expose VZN to

appropriate legal action including forfeiture of lease interest, termination, or cancellation of its interest in accordance with state law.

**1.19 Notice of Default.** Notice of the default, where required, will be in writing and as provided in Section 1.23 of this Agreement.

**1.20 Entry or Re-entry.** In the event that this Agreement is terminated, canceled or forfeited, or in the event that the demised lands, or any part thereof, should be abandoned by VZN during the Agreement term, KPB or its agents, servants, or representatives, may immediately or any time thereafter, with sufficient notice to APC, enter or re-enter and resume possession of the Property or such part thereof, and remove all persons and property therefrom either without judicial action where appropriate, by summary proceedings, or by a suitable action or proceeding at law or equity without being liable for any damages therefor. Entry or re-entry by KPB shall not be deemed an acceptance of surrender of the contract.

**1.21 Removal or Reversion of Improvements Upon Termination of Lease.** Improvements on the Property owned by VZN shall, within sixty (60) calendar days after the termination of the Agreement, be removed by VZN; provided such removal will not cause injury or damage to the Property or Kalifornsky Tower; and further provided that KPB may extend the time for removing such improvements in cases where hardship is proven.

If VZN fails to remove improvements or chattels upon KPB's request, with sufficient notice to APC, KPB may do so at the expense of VZN.

**1.22 Rental for Improvements or Chattels Not Removed.** Any improvements and/or chattels belonging to VZN or placed on the Property during its tenure with or without its permission and remaining upon the Property after the termination of the Agreement shall entitle KPB to charge a reasonable rent therefor unless they have become the property of APC under Section 2.26 of this Agreement.

**1.23 Notice.** Any notice or demand, which under the terms of this Agreement must be given or made by the parties thereto, shall be in writing, and be given or made by registered or certified mail, addressed to the other party at the address shown on the contract. However, either party may designate in writing such other address to which such notice of demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed received when deposited in a U.S. general or branch post office by the addressor.

All notices shall be sent to both parties as follows:

LESSOR:

Attn: Land Management Officer  
Kenai Peninsula Borough  
144 N. Binkley Street  
Soldotna, AK 99669

LESSEE:

Cellco Partnership,  
d/b/aVerizon Wireless  
180 Washington Valley Road  
Bedminster, NJ 07921

**1.24 Responsibility of Location.** It shall be the responsibility of VZN to properly locate itself and its improvements on the Property.

**1.25 Liens and Mortgages.** VZN shall not cause or allow any liens of any kind or nature whatsoever to attach to the Property during the term of this Agreement. In the event that any prohibited lien is placed against the Property, VZN shall immediately cause the lien to be released. VZN shall immediately refund to KPB any monies that KPB may, at its sole discretion, pay in order to discharge any such lien, including all related costs and a reasonable sum for attorney's fees.

For the purpose of interim financing or refinancing of the improvements to be placed upon the Property, and for no other purpose, VZN may, upon written approval of KPB, encumber by mortgage, deed of trust, assignment or other appropriate instrument, VZN's interest in the Property and in and to the Agreement, provided said encumbrance pertains only to the leasehold interest. Any such encumbrance shall be entirely subordinate to KPB's rights and interest in the Property.

A leasehold mortgagee, beneficiary of a deed of trust or security assignee shall have and be subrogated to any and all rights of VZN with respect to the curing of any default hereunder by VZN.

**1.26 Non-Waiver Provision.** The receipt of payment by KPB, regardless of KPB's knowledge of any breach by VZN, or of any default on the part of VZN in observance or performance of any of the conditions or covenants of this Agreement, shall not be deemed to be a waiver of any provision of the Agreement. Failure of KPB to enforce any covenant or provision herein contained shall not discharge or invalidate such covenant or provision or affect the right of KPB to enforce the same in the event of any subsequent breach or default. The receipt by KPB of any payment of any other sum of money after notice of termination or after the termination of the Agreement for any reason, shall not reinstate, continue or extend the Agreement, nor shall it destroy nor in any manner impair the efficacy of any such notice of termination unless the sole reason for the notice was nonpayment of money due and the payment fully satisfies the breach.

**1.27 Jurisdiction.** Any lawsuits filed in connection with the terms and conditions of this Agreement, and of the rights and duties of the parties, shall be filed and prosecuted in

the State of Alaska, Third Judicial District at Kenai, and shall be governed by Alaska law, without regard to conflict of law principles.

**1.28 Savings Clause.** Should any provision of this Agreement fail or be declared null or void in any respect, or otherwise unenforceable, it shall not affect the validity of any other provision of this Agreement nor constitute any cause of action in favor of either party as against the other.

**1.29 Binding Effect.** It is agreed that all covenants, terms, and conditions of this Agreement shall be binding upon the parties hereto.

**1.30 Full and Final Agreement.** This Agreement constitutes the full and final agreement of the parties hereto and supersedes any prior or contemporaneous agreements. This Agreement may not be modified orally, or in any manner other than by an agreement in writing and signed by both parties in interest. VZN avers and warrants that no representations not contained within this Agreement have been made with the intention of inducing execution of this Agreement.

**1.31 Warranty of Authority.** VZN warrants that the person executing this Agreement is authorized to do so on behalf of VZN.

**PART TWO:** Terms defining the relationship of this Agreement between APC and VZN.

WHEREAS, APC operates several microwave radio towers and related ground facilities that are located on both the Kenai Peninsula and in Anchorage, Alaska;

WHEREAS, APC is Grantee of an existing Right-of-Way Grant initially conveyed under authority of the Bureau of Land Management and now administered by the Kenai Peninsula Borough;

WHEREAS, VZN owns and operates a cellular telephone system in south central Alaska and the lower 48 states;

WHEREAS, APC desires to lease a portion of APC's existing Kalifornsky microwave radio tower and related ground facilities for use in VZN's cellular telephone System;

IN CONSIDERATION OF THE ABOVE, APC and VZN agree as follows:



**2.1. Agreement.** APC does hereby consent to and authorize VZN the nonexclusive use of a portion of APC's existing Kalifornsky microwave radio tower for placement of three cellular antennas to be located at a height between 101 feet and 121 feet, one four-foot diameter parabolic dish to be located at a height of 100 feet, three 8-foot panel antennas at a height of 115 feet and all cables, mounts and equipment as shown in Exhibit "A" which is attached hereto and made a part hereof by this reference. APC shall additionally authorize VZN use of exterior ground space for access, utilities, and ground space near the base of the radio tower measuring 16 feet by 12 feet for the cellular carrier equipment described in Exhibit "A", which is attached hereto and made a part hereof by this reference. The Kalifornsky tower and related ground facilities are more fully described in Exhibit "A".

**2.2. Equipment.** VZN's antennas, parabolic dishes and cables shall be firmly anchored to the radio tower. All cellular carrier equipment must be distinctly marked with Lessee's name, call sign and frequency. During the term of this Agreement, VZN shall not alter, add to, replace or improve equipment without the prior written consent of APC, which consent shall not be unreasonably withheld. VZN covenants and agrees that the installation, operation and maintenance of equipment will:

Not damage, as determined in APC's sole discretion, APC's buildings, tower structures, or related facilities;

Not interfere with, as determined in APC's sole discretion, the operation and maintenance of APC's microwave radio communication system or other utility operations;

Comply with all applicable federal and state laws, rules, codes and regulations applicable to VZN's operations (as may currently exist or may hereinafter be adopted) including, but not limited to, those of the FCC, FAA, OSHA, MIOSHA and the Regulatory Commission of Alaska; and

Comply with the electrical codes and zoning ordinances of the Kenai Peninsula Borough (as now exist or may hereinafter be enacted or adopted).

**2.3. Access.** APC agrees that, during the term of this Agreement, VZN shall have 24/7 access to their ground equipment at the Kalifornsky facility for the purpose of maintenance, operation and repair of VZN equipment. VZN shall provide APC with a current list of employees authorized to work on VZN equipment. VZN shall maintain a log of entry and exit onto APC's facility and provide that data upon request. VZN shall contact ENSTAR Natural Gas Company Gas Communications ("ENSTAR") at (907) 334-

7750 prior to entering and upon exiting the Kalifornsky facility; provided, however, VZN shall not be required to give telephone notices to ENSTAR in the event of an emergency in VZN's sole discretion. Notwithstanding the foregoing, the parties agree that only qualified contractors approved by APC, under APC's direct supervision, will be permitted to install or remove antenna or coaxial cable or access the tower structure.

**2.4. Term.** The term of this Agreement shall be concurrent with the terms referenced in Part One, including the election and execution of renewals. VZN's notice of renewal shall include notice to APC. Each Extended Term shall be on the same terms and conditions as set forth herein except that the rent shall be adjusted as described in Paragraph 2.5.

**2.5. Rent.** VZN shall pay rent to APC in advance on the 1st day of each month during the first year of the Initial Term in the amount of \$1,500 per month. If VZN exercises its options to extend this Agreement, the rent shall be increased 15% at the beginning of each Extended Term. Rental payments that are past due by more than twenty days will incur interest at the rate of nine percent (9%) per annum. VZN shall pay all collection costs, including reasonable, actual attorney fees and court costs.

**2.6. Surveys and Testing.** During the first six months of the Initial Term, VZN shall have the right to perform surveys, structural, soils and environmental tests and other engineering tests and procedures on, under and over the facilities described in Paragraph 2.1. Any and all surface and subsurface testing by VZN will require the prior notice and approval of APC and KPB as provided in Part one of this Agreement. If during the first six months of the Initial Term defects are shown by such survey or tests which, in the opinion of VZN, may adversely affect VZN's use of Lessee Equipment, VZN shall have the right to terminate this portion of the Agreement between APC and VZN upon 60 days notice to APC and have no further obligation to APC.

**2.7. Licensing.** VZN shall obtain and maintain at its expense all licenses required by the FCC for VZN Equipment. A copy of VZN's FCC license shall be furnished to APC and KPB on or before the first effective day of this Agreement. Notwithstanding any other term or provision in this Agreement to the contrary, in the event that any license required by the FCC for either the APC or VZN is terminated or revoked (or the FCC threatens to terminate APC's license because of this Agreement), APC may, upon five days written notice, terminate this portion of the Agreement and APC shall have no further obligation to VZN hereunder.



**2.8. Interference.** VZN shall not use, nor shall VZN permit its employees, invitees, or agents to use VZN equipment in any way that interferes with (as determined by APC in its sole discretion) the operations of APC's microwave radio communication system or other utility operations. Upon notice from APC, VZN shall take all actions necessary to correct and eliminate said interference at VZN's cost and expense. The parties acknowledge that continuing interference will cause irreparable injury to APC, and APC shall have the right, in addition to any other rights that it may have at law or in equity, to bring action to enjoin such interference. APC agrees that VZN will be permitted to install only such radio and other equipment that is of the type and frequency which will not cause interference to APC. In the event of termination, APC shall have no further obligation to VZN.

**2.9. Utilities.** VZN, at their sole expense, shall arrange for its own supply of electrical power to VZN's equipment. APC will not be responsible for any power interruption or outage, regardless of the cause of such interruption or outage. With prior written consent of KPB and APC, VZN may, at VZN's sole expense, add new utilities and/or install an emergency power generator at the Kalifornsky location.

**2.10. Taxes.** VZN shall pay any personal property taxes assessed on VZN equipment. APC shall pay when due all real property taxes. However, upon notice from APC, VZN shall pay as additional rent any increase in real property taxes levied against the Kalifornsky property, which increase is directly attributable to VZN's use of said property.

**2.11. Insurance.** VZN shall, at its expense, procure and maintain insurance on all of its operations, with carriers reasonably acceptable to APC, including the following coverages:

Workers' Compensation in compliance with the statutory requirement of the state(s) of operation and Employer's Liability insurance with a limit of (\$1,000,000) each accident/disease/policy limit;

Commercial General Liability insurance with a limit of \$1,000,000 per occurrence from bodily injury and property damage and \$1,000,000 general aggregate covering all operations; and

Commercial Automobile Liability insurance in an amount of \$1,000,000 combined single limit each accident for bodily injury and property damage, covering all owned, hired and non-owned automobiles.

VZN shall include APC as additional insured as their interest may appear under this

Agreement under the Commercial General Liability policy and provide APC with a Certificate of Insurance, including a blanket waiver of subrogation endorsement as required by Paragraph 2.13 below before commencing operations under this Agreement. Upon receipt of notice from its insurer(s), VZN shall use commercially reasonable efforts to provide APC with thirty (30) days' prior written notice of cancellation of any required coverage.

**2.12. Indemnification.** Except as otherwise provided in Paragraph 2.17 below, to the fullest extent permitted by law, VZN agrees to indemnify, defend and hold APC harmless from and against any and all claims, liabilities, or causes of action (including, without limitation, court costs and reasonable attorney's fees) that may arise directly or indirectly from VZN's occupancy of APC buildings or other facilities and/or the installation, maintenance and operation of VZN equipment. Except as otherwise provided in Paragraph 2.17 below, to the fullest extent permitted by law, VZN agrees to indemnify, defend and hold APC harmless from and against any and all claims, liabilities, or causes of action (including, without limitation, court costs and reasonable attorney's fees) that may arise directly or indirectly from the installation, maintenance and operation by APC of APC's microwave radio communication system. The indemnity obligations under this paragraph shall survive termination of this Agreement. APC agrees to indemnify and hold VZN harmless from and against any and all claims, liabilities, or causes of action (including, without limitation, court costs and reasonable attorney's fees) that may arise directly or indirectly from any hazardous substance, pollutant or contaminant attributable to APC's personal property interest or APC's use of the premises hereunder. The parties recognize that VZN is only leasing a small portion of the Property, and that VZN shall not be responsible for any environmental condition except to the extent caused by VZN.

**2.13. Waiver of Subrogation.** To the extent it does not void either party's insurance coverage, the parties release each other and their respective authorized representatives from any claims for damage to any person or the premises and to the fixtures and personal property that are caused by or result from risks insured against under any insurance policies carried by the parties and in force at the time of any such damage. If available, each party shall cause each insurance policy obtained by it to provide that the insurance carrier waives all right of recovery by way of subrogation against either party in connection with any damage covered by any policy.

**2.14. Notices.** Notices shall be given by hand delivery, mail, or email to the following

addresses:

VZN:

Cellco Partnership  
d/b/a Verizon Wireless  
180 Washington Valley Road  
Bedminster, New Jersey 07921  
Attention: Network Real Estate

APC:

Alaska Pipeline Company  
401 E. International Airport Road  
Anchorage, Alaska 99519  
Telephone: 907-334-7983  
Email: [matt.bendis@enstarnaturalgas.com](mailto:matt.bendis@enstarnaturalgas.com)

**2.15. No Warranty.** Neither APC nor VZN make any representation (except as stated herein) or warranty of any kind or nature, directly or indirectly, express or implied, as to any matter whatsoever, including merchantability or fitness for a particular purpose.

**2.16. Waiver and Consent.** Neither party shall be deemed to have waived any rights under this Agreement unless such waiver is in writing and signed by the party claimed to have waived a provision of this Agreement. No delay or omission on the part of either party in exercising any right shall operate as a waiver of such right or any other right. A waiver by either party of a provision of this Agreement shall not prejudice the party's right to demand strict compliance with that provision in the future.

**2.17. Waiver of Certain Damages.** Neither party shall be liable to the other for exemplary, punitive, incidental or consequential damages resulting from or arising out of this Agreement, whether the claim is based in contract, tort or strict liability.

**2.18. Destruction of or Damage to Premises.** If the premises that are the subject matter of this Agreement become substantially unusable, as determined in APC's sole discretion, due to fire, flood, earthquake or other cause, APC is not obligated to repair or restore the premises. VZN's sole remedy is to terminate this Agreement with APC. If the premises are damaged but are not rendered substantially unusable, as determined in APC's sole discretion, APC shall endeavor to repair such damage within 24 hours, subject however to the provisions of Paragraph 2.19 below.

## 2.19. Force Majeure.

Force Majeure Event. "Force Majeure Event" shall mean any act, event or circumstance that (a) renders it impracticable for the affected party to perform its obligations under this Agreement, (b) is beyond the affected party's reasonable control, (c) is not due to the affected party's fault or negligence and (d) cannot be avoided by the exercise of due diligence, including the expenditure of any reasonable sum of money and insurance proceeds available to the parties. The term "Force Majeure Event" shall include by way of example and not limitation, acts of God, natural catastrophes, acts of the public enemy or terrorists, strikes, lockouts or industrial disputes or disturbances, breakage or accident to equipment, interference or regulation by public bodies or officers acting under claim of authority, or any other cause whether or not similar to the foregoing, beyond the reasonable control of the party so unable to perform. Force Majeure.

APC's obligations under this Agreement shall be suspended insofar as the performance of its obligations is rendered impracticable by a Force Majeure Event, and any delay or failure that is directly and proximately caused by such Force Majeure Event shall not constitute a default under this Agreement.

(ii) A Force Majeure Event shall be effective upon its occurrence. APC shall promptly, and in any event not later than two days from such occurrence, deliver to VZN and KPB a notice declaring that a Force Majeure Event has occurred. Such notice shall set forth in reasonable detail (i) the events, conditions, circumstances or occurrences that constitute the Force Majeure Event, (ii) whether the Force Majeure Event is continuing, and (iii) the date and time on which such Force Majeure Event first occurred. Promptly thereafter, APC shall deliver to VZN a statement describing in reasonable detail all material facts and events with respect to the measures taken or proposed to be taken by it to resume APC's obligations under this Agreement.

(iii) APC shall use due diligence and reasonable commercial efforts and shall take reasonable precautions or pursue reasonable alternative measures available to it to prevent the occurrence or continuation of a Force Majeure Event, or to mitigate the effects thereof.

**2.20. Independent Entities.** For all purposes under this Agreement, APC and VZN are independent entities and are not the agent, partner or employee of the other.

**2.21. Outside Beneficiary.** Nothing in this Agreement is intended to benefit any party

not a signatory hereto.

**2.22. No Parties as Draftsperson.** The parties recognize that this Agreement is the product of the joint efforts of all parties and agree that it shall not be construed against one party or the other as a result of the preparation, submittal or other event of negotiation, drafting or execution hereof.

**2.23. Assignment.** Without approval or consent of APC, the interests of APC and VZN as defined under this section of the Agreement may be sold, assigned or transferred by either APC or VZN to (i) any entity in which the Party directly or indirectly holds an equity or similar interest; (ii) any entity which directly or indirectly holds an equity or similar interest in the Party; or (iii) any entity directly or indirectly under common control with the Party. It is expressly understood that this consent applies only to the relationship between APC and VZN as defined under this Agreement. Approval of above referenced transfers will require consent and approval of KPB. VZN may assign this Agreement to any entity which acquires all or substantially all of VZN's assets in the market defined by the FCC in which the improvements are located by reason of a merger, acquisition or other business reorganization without approval or consent of APC. VZN will not directly or indirectly sell, assign, sublet or otherwise transfer all or a portion of its interest under this Agreement, without the prior written consent of KPB and APC, which consent shall not be unreasonably withheld. The foregoing notwithstanding, VZN may, upon written notice to KPB and APC, and in accordance with Section 1.25 above, mortgage or grant a security interest in this Agreement and VZN's telecommunications facilities and may assign this Agreement and VZN's telecommunications facilities to any such mortgagees or holders of security interest including their successors or assigns (collectively, the "Mortgagees").

**2.24. Successors and Assigns.** This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns.

**2.25. Governing Law.** The laws of the State of Alaska shall govern the jurisdiction, venue, interpretation and construction of this Agreement, excluding any choice of law rules that may direct jurisdiction, venue, interpretation or construction of this Agreement to other jurisdictions.

**2.26. Condition of Leased Premises following Termination.** Within 60 days following termination of this Lease Agreement, VZN, at VZN's sole cost, will remove from the leased premises all personal property including antennas, dishes and other equipment, unless

APC consents in writing to VZN leaving equipment in place on the property. Any equipment remaining on or attached to the personal property interest of APC with APC's consent will become the property of APC at no cost or charge.

**2.27. Miscellaneous.** This Agreement constitutes the entire agreement between APC and VZN and supersedes any and all previous agreements between them. This Agreement will not be amended, altered, or changed except by written agreement signed by all parties.

**2.28. Termination.** This Agreement may be terminated, without penalty or further liability, on thirty (30) days' written notice as follows:

by either party, upon a default of any covenant or term thereof by the other party, if such default is not cured within sixty (60) days (except for the payment of rent which must be cured within ten (10) days) from receipt of written notice of default (without limiting any other rights available to the parties pursuant to any other provisions hereof);

by VZN, if it is unable to obtain or maintain any license, permit or other governmental authority necessary for the construction and/or operation of the VZN's telecommunications facilities or VZN's business;

by VZN, upon the annual anniversary of the Commencement Date, following the expiration of the Agreement's initial five (5) year term, upon three (3) months' prior notice to KPB and APC, notwithstanding anything to the contrary contained herein, provided VZN is not in default hereunder beyond applicable notice and cure periods;

by APC, if it is unable to obtain or maintain any license, permit or other governmental authority necessary for the operation and maintenance of the APC's microwave radio communication system;

by APC, if a change in technology or change in law or other governmental regulation makes it necessary or desirable to cease operation and maintenance of the APC Kalifornsky tower.

This Lease Agreement may be terminated by either party for any reason or no reason, without penalty or further liability, on six months' written notice.

**2.29. Cellco Partnership Identity.** Cellco Partnership d/b/a Verizon Wireless is a general partnership formed under the laws of the State of Delaware. A disclosure statement

regarding Cellco Partnership identity is attached as Exhibit G and incorporated herein by reference.

**PART THREE:** Terms defining the relationship of this Agreement between KPB and APC.

**3.1 Mutual Consent to Colocation.** KPB as Fee Owner and Lessor hereby consents to the colocation of wireless apparatus, necessary components and improvements as they may specifically relate VZN's proposed use as defined in this Agreement. The KPB-approved colocation is to be confined to the existing tower and ground improvement locations as they may currently exist or as proposed on the site plan attached as Exhibit A. The approved colocation is exclusive to VZN. No future or additional colocation or expansion of the original use is allowed without approval from KPB. APC consents to the colocation and use by VZN as defined in this Agreement. KPB consents to the terms of the Agreement between APC and VZN, notwithstanding the rights and limitations of the 1963 Right-of-Way Grant attached hereto as Exhibit D, and to the extent it does not conflict with the terms of the agreement between VZN and KPB and APC and KPB.

**3.2 Only Agreement.** This Agreement, including all referenced Exhibits shall be the sole governing document authorizing the lease terms of the Property by VZN. APC may not enter into, modify, amend, assign or otherwise redefine the above stated relationship without KPB's written approval.

**3.3 No Alteration of BLM 1963 Right-of-Way Grant to APC.** APC is the grantee of that BLM Right-of-Way grant filed December 16, 1960 as BLM Serial Number 0535888 (Attached as Exhibit D). It is expressly understood and the intention of KPB and APC that the existence of this Agreement in no way modifies, alters, or implies changes to the rights of APC or KPB as provided under the Right-of-Way Grant. Acquisition of personal property as provided for under Section 2.26, shall in no way imply consent by KPB of expanded use by APC under the original Right-of-Way Grant. Notwithstanding any provisions in this Agreement to the contrary, this Agreement does not amend or supersede the BLM Right-of-Way Grant to APC.



**PART FOUR:** Three party provisions between KPB, VZN and APC.

**4.1. Three Party Provisions.** The provisions in this Agreement shall apply to one or all parties as defined.

**4.2. No Modifications.** No modifications shall be made to any part of this Agreement without the specific involvement of all parties. Any changes to this Agreement must be in writing and must bear the signature of all parties regardless of the relationship or specific part of the Agreement being addressed.

**4.3. Counterparts.** This Agreement may be executed in counterpart, and may be executed by electronic signature in compliance with AS 09.43 and 15 USC 7002, each of which when so executed and delivered shall be considered an original and all of which when taken together will constitute one and the same instrument.

**4.4. Memorandum.** A short-form Memorandum of Lease may be recorded in the form as depicted in Exhibit C, attached hereto. KPB will promptly execute any Memorandum of Three-Party Agreement and Real Property Lease, or corrective amendments thereto, upon written request of APC or VZN.

**4.5 Sole Agreement:** This Agreement and Exhibits, appendices or incorporated attachments hereto, constitute the only documentation memorializing the relationship of the parties and providing the authority and consent required for the proposed uses by VZN.

**4.6 Entire Agreement.** This Agreement its sections, parts, Exhibits, appendices or incorporated attachments hereto, constitute the entire "Agreement" and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement.

**4.7 Conflicting Terms.** In the event conflicting terms are discovered at any point during the term of the Agreement, all parties agree to endeavor to resolve the conflict by incorporating mutually approved language and; those changes may be addressed by way of addendum to the Agreement executed by all parties.

**4.8 No Parties as Draftsperson.** The parties recognize that this Agreement is the product of the joint efforts of all parties and agree that it shall not be construed against one party or the other as a result of the preparation, submittal or other event of negotiation, drafting or execution hereof.





**SO AGREED.**

OWNER OF KALIFORNSKY TOWER:

ALASKA PIPELINE COMPANY, A Subsidiary of SEMCO Energy, Inc.

\_\_\_\_\_  
By: \_\_\_\_\_ (Print Name)

Its: \_\_\_\_\_ (Title)

Dated: \_\_\_\_\_

**APC ACKNOWLEDGMENT**

STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_, as \_\_\_\_\_ of ALASKA PIPELINE COMPANY, A Subsidiary of SEMCO Energy, Inc., on behalf of the corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

\_\_\_\_\_  
Notary Public in and for Alaska  
Commission expires: \_\_\_\_\_

**SO AGREED.**

LESSOR:

KENAI PENINSULA BOROUGH, a Municipal Corporation

By: Charlie Pierce

Its: Mayor (Title)

Dated: \_\_\_\_\_

ATTEST:

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY BY:

\_\_\_\_\_  
Johni Blankenship  
Borough Clerk

\_\_\_\_\_  
A. Walker Steinhage  
Deputy Borough Attorney

**KPB ACKNOWLEDGMENT**

STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by Charlie Pierce, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public in and for Alaska  
Commission expires: \_\_\_\_\_

**EXHIBIT A**  
***SITE PLAN***

[See attached]

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**EXHIBIT B****RENTAL SCHEDULE KPB - VZN***Paid Monthly and Subject to Increase 3% annually*

<b>Year</b>	<b>Monthly Amount Due</b>
1	\$1,499.00
2	\$1,543.97
3	\$1,590.29
4	\$1,638.00
5	\$1,687.14
6	\$1,737.75
7	\$1,789.88
8	\$1,843.58
9	\$1,898.89
10	\$1,955.86
11	\$2,014.53
12	\$2,074.97
13	\$2,137.22
14	\$2,201.33
15	\$2,267.37
16	\$2,335.39
17	\$2,405.45
18	\$2,477.62
19	\$2,551.95
20	\$2,628.51
21	\$2,707.36
22	\$2,788.58
23	\$2,872.24
24	\$2,958.41
25	\$3,047.16
26	\$3,138.57
27	\$3,232.73
28	\$3,329.71
29	\$3,429.60
30	\$3,532.49

## **EXHIBIT C**

### *Memorandum of Lease*

[See attached]

DRAFT

## **MEMORANDUM OF THREE-PARTY AGREEMENT AND REAL PROPERTY LEASE**

This Memorandum of Three-Party Agreement and Real Property Lease is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2022 by and between the Kenai Peninsula Borough, an Alaska municipal corporation, whose address is 144 North Binkley Street, Soldotna, AK 99669 (as real property owner and Lessor), and Cellco Partnership, dba Verizon Wireless whose address is 180 Washington Valley Road, Bedminster, NJ 07921 ("VZN") and Alaska Pipeline Company, a subsidiary of SEMCO Energy, Inc., whose address is P.O. Box 190288, Anchorage, Alaska 99519-0288, (as grantee of BLM Right-of-Way Grant dated April 25, 1963 and owner of improvements referred to as the Kalifornsky Tower).

Pursuant to the terms of that certain Three-Party Agreement and Real Property Lease ("Agreement") by and between Kenai Peninsula Borough (KPB), Cellco Partnership, dba Verizon Wireless (VZN), and Alaska Pipeline Company, a subsidiary of SEMCO Energy, Inc. (APC) dated XX/XX/XX, and for the consideration therein stated, Parties have hereby agreed to a Third-Party Lease Agreement and leased unto VZN, and VZN has thereby hired and taken from KPB and APC certain real property, personal property and authorized rights located within Section 01, Township 04 North, Range 12 West, Seward Meridian, Third Judicial District, State of Alaska, and more particularly described as follows:

Located within the N1/2NE1/4NE1/4 and adjacent to an existing microwave relay tower station owned by the Alaska Pipeline Company and authorized under a Right-of-Way Grant dated April 25, 1963, and amended on December 27, 1972, from the United States Department of the Interior and serialized as Anchorage 053588.

The term of the Agreement as provided therein is for 5 years, commencing XX/XX/XX, and VZN has the option to extend the term of the Agreement for 5 additional five-year terms, according to the terms and conditions thereof.

All of the terms, conditions, warranties, covenants, and agreements pertaining to the rights granted and as set forth in the executed Agreement are unchanged hereby and incorporated herein by this reference. True and correct copies of the Agreement has been retained by all parties to be used for any legal purpose, including but not limited to disclosure to purchasers or lenders entitled to a security interest in the Agreement or any portion thereof or any person having a lawful right to know the content and details thereof.

IN WITNESS WHEREOF, the Parties to the Agreement have executed this instrument as of the date first above written.

KENAI PENINSULA BOROUGH

CELLCO PARTNERSHIP, DBA  
VERIZON WIRELESS

\_\_\_\_\_  
By: Charlie Pierce, Mayor

Dated: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_(Name, Title)

Dated: \_\_\_\_\_

Alaska Pipeline Company,  
a subsidiary of SEMCO Energy, Inc

\_\_\_\_\_  
By: \_\_\_\_\_(Name, Title)

Dated: \_\_\_\_\_

Record in the Kenai Recording District

Return to:

KPB Land Management Division  
144 North Binkley Street  
Soldotna, AK 99669



**EXHIBIT D**  
*1963 Right-of-Way Grant*

DRAFT

RECEIVED  
COMMUNICATIONS SECTION

APR 24 1963

10/10/10

### DECISION

\$1300 for 5 year period  
April 25, 1963 through April:  
1968. The rental is subject  
to review prior to the end of  
each 5 year period.

71/8/17/65

**E7-33**

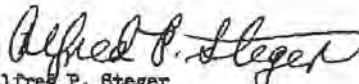
AIO-244-31  
(Page 2)

Terms and Conditions of Grant

Pursuant to the authority vested in the undersigned by Order No. 684 of the Director, Bureau of Land Management, dated August 28, 1961 (26 F.R. 8216), as amended, a right-of-way, the details of which are shown above, is hereby granted for the public lands involved 1/, subject to the following terms and conditions:

1. All valid rights existing on the date of the grant.
2. All regulations in the circulars specified herein.
3. Filing of proof of construction within five years from date of the grant.
4. Other:

None

  
Alfred P. Steger  
Chief, Lands Section

Attachment: Map  
Acknowledgment  
cc: Director

---

1/ For the purpose of this grant, public domain lands include those reserved or withdrawn for specific purposes, entered, selected, occupied and/or settled, and leased. Questions of priorities and/or damages are questions for the courts to determine.

NOTARIAL PUBLIC

UNITED STATES OF AMERICA

STATE OF ALASKA

SS.:}

THIS IS TO CERTIFY that on this 25<sup>th</sup> day of April, 1968, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared Albert P. Stear known to me and to me known to be the Chief, Lands Section of the United States Department of the Interior, Bureau of Land Management, Anchorage Land Office, who acknowledged to me that he signed the foregoing instrument in his said capacity for the uses and purposes therein stated.

Dolores B. Watson  
Notary Public in and for Alaska  
My Commission Expires: February 8, 1966



2800 (931)  
A-053588

ES  
12/12/72  
JAB  
12/19

State Office  
555 Cordova Street  
Anchorage, Alaska 99501

DEC 27 1972

DECISION

Alaska Pipeline Company	:	A-053588
P.O. Box 6288	:	
Anchorage, Alaska 99502	:	Right-of-Way

Partial Relinquishment Accepted

On May 4, 1972, Alaska Pipeline Company filed a partial relinquishment for the above-identified right-of-way which was granted for a plant site for a microwave relay station necessary to the operation of approved right-of-way A-051647 under Section 28 of the Act of February 25, 1920 (41 Stat. 449), as amended, (43 CFR 244, Subparts A & I). The land involved in the relinquishment is the S<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub> section 1, T. 4 N., R. 12 W., Seward Meridian with 20 acres remaining in the right-of-way grant designated as the N<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub> section 1, T. 4 N., R. 12 W., Seward Meridian.

The lands covered by the partial relinquishment have been examined, and it has been determined that the lands are suitable for return to the public domain. Therefore, the relinquishment filed May 4, 1972 is hereby accepted.

In view of the acceptance of the partial relinquishment, the advance rental as submitted is sufficient to cover the 5-year rental period.

Sincerely yours,

/s/ J. A. Hagans

J. A. Hagans  
Chief Adjudicator

CSHobe:cad 12/12/72

Found 1/2" Brass Capped Nail  
Marked 1/4 1/6

740 00 (Record)

Surveyed Dec. 2, 1960, under the direction  
of Carl H. Steeby, Registered Professional  
Civil Engineer.

BUREAU OF LAND MANAGEMENT  
JAN 13 1962 2:25 PM

STATE OF ALASKA  
1960  
Carl H. Steeby  
NO. 454-E  
REGISTERED  
PROFESSIONAL ENGINEER

ALASKA PIPELINE COMPANY ANCHORAGE, ALASKA			
DELTA ENGINEERING CORP. HOUSTON, TEXAS			
Drawn by R. H. Burt	CHECKED C. H. S.	APPROVED W. A. Spence	APPROVED

Board of Engineers  
Kemp Reporting District

BOARD OF ENGINEERS  
KEMP REPORTING DISTRICT



**EXHIBIT E**

*Entity Authority Documentation*

[attached]

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## **EXHIBIT F**

### *Property Description*

#### Section 01, Township 04 North, Range 12 West, Seward Meridian

Located within the N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ , consisting of approximately 20 acres of land, and as further identified on Exhibit F (hereinafter called "Property").

APC owns a microwave relay tower station (hereinafter "Kalifornsky Tower"), located on the property as authorized under BLM Right-of-Way Grant dated April 25, 1963 (hereinafter "Right-Of-Way Grant"), attached as Exhibit D.

Ingress and egress to the Property is from Bypass Road along an existing traveled way to the Kalifornsky Tower.



# Three Party Agreement Lease Location

