

AGREEMENT BETWEEN OKANOGAN COUNTY AND NCI DATACOM FOR JOINT
PURCHASE UPGRADE MAINTENANCE AND OPERATION OF THE TUNK
MOUNTAIN RADIO SITE

THIS AGREEMENT is between Okanogan County (County), a political subdivision of the State of Washington, and NCI Datacom (NCI), a Washington Corporation.

WHEREAS, currently Washington Communications LLC, DBA Day Wireless Systems (Day Wireless) owns telecommunications assets including a building, tower and utility services located at the Tunk Mountain Radio Site (site), and

WHEREAS, the site is located on public land and operates under a site lease permit issued by the US Forest Service; and

WHEREAS, both parties currently maintain radio telecommunications equipment at the site; and

WHEREAS, the parties have become aware of an opportunity to purchase the assets located on the site and desire to enter into a mutual agreement for acquisition, upgrade, maintenance and operation of the telecommunications facility located on the site.

NOW, THEREFORE, the parties agree as follows:

1. PURPOSE: The purpose of this agreement is to acknowledge the parties mutual desire to jointly purchase the telecommunications assets located at the site as well as share the costs and responsibilities of necessary upgrades, maintenance and operation of the radio telecommunications facility on the site.
2. ADMINISTRATION: No new separate or legal administrative entity is created to administer the provisions of this agreement.
3. RESPONSIBILITIES OF BOTH PARTIES. It is the intent that the parties share equally the costs of the acquisition and initial necessary upgrades to the site. These anticipated costs are as follows:
 - a. Site acquisition from Day Wireless Systems - \$40, 000.
 - b. Installation of a backup power system including propane generator set, LPG tank, electrical transfer switch and necessary installation modifications - \$10,000.
 - c. Power line upgrade by the Okanogan County Public Utility District - \$50,000.

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Both parties agree to fully cooperate and coordinate all negotiations with the Okanogan County Public Utility District for acquisition and upgrade of the sites power line, which shall be by separate agreement.

The parties agree to share any future costs of maintenance and operation of the site on an equal basis. Any general site maintenance costs or repairs shall be paid out of the Maintenance and Repair fund created by this agreement. Should the cost of maintenance or repair exceed the amount available in the fund, the costs shall be shared equally. **The only exception to equal cost sharing shall be in regards to the USFS Special Use Permit.** The cost of the permit is based on a formula generated by the USFS and includes separate rates for commercial, private non-commercial and government users. Each party and third party user shall pay their assessed portion of the permit fee.

Each party will be responsible for the operation, maintenance and repair of its own equipment, both inside the building and on the tower.

If either party desires to allow new third party users to be brought into the site, each shall communicate and coordinate with the other as to proposed placement of equipment within the building and on the tower. Parties shall work towards the goal of coordinated site development and growth.

4. RIGHTS AND RESPONSIBILITIES OF NCI. The following rights and responsibilities shall fall to NCI:

a. Shall act as the designated agent for the partnership in matters of representation to third parties.

b. Shall handle the finances for the site, including the creation and maintenance of bank accounts needed to pay expenses and to receive income.

c. Will be responsible for paying all site expenses out of the accounts created.

d. May place communications equipment in site, including building and tower, for itself, or any other commercial users.

e. May charge other users for site rental, tower space, electrical costs, and site maintenance.

f. Will pay its proportional share of actual costs associated with the structure, including electrical power, USFS permit fees and regular repair and maintenance costs.

5. RIGHTS AND RESPONSIBILITIES OF THE COUNTY. The following rights and responsibilities shall fall to the County:

a. OCSO will perform the function of site manager, overseeing installation and/or modification of equipment in the building.

b. OCSO will act as the Point of Contact for the other site users on Tunk Mountain.

c. OCSO will be responsible to maintain the site and perform regular maintenance.

d. OCSO will make or coordinate repairs to the site, after notifying and receiving agreement for said expense with NCI.

e. May place at no cost, communications equipment in site, including building and tower, for itself, or other county agencies, or government agencies, or organizations serving the public interest (such as amateur radio operators).

f. Will pay for its share of actual costs associated with the building, including electrical power, USFS permit fee, and repair and maintenance costs.

6. THIRD PARTY USERS. Parties acknowledge that the site may be used by third parties to serve their communications needs. No third party including private entities and government agencies, will be allowed access to site without mutual agreement from NCI and OCSO to accept the third party user. Third parties will comply with a stipulations agreed upon elsewhere in this agreement. The parties will develop a rate sheet listing costs for these third party users.

7. EQUIPMENT INSTALLATION PRACTICES. All installations in the facility will conform to Motorola R56 standards attached as Exhibit A.

8. FACILITY SPACE ALLOCATION. Each party shall be entitled to space as needed for their equipment. If placing new equipment, parties and third party users will allow a minimum of one linear foot of working space between the newly installed equipment and currently installed equipment. Working space of any equipment shall not be encroached upon by any other user unless by agreement with that user. All equipment installation shall be coordinated with the site manager in order to prevent conflict or desensing. The site manager shall be entitled to thirty days notice prior to installation.

9. FACILITY ACCESS AND SECURITY.

a. Parties shall have free access the facility at any time.

b. Each party agrees to maintain the security of the site at all times, including locking of doors, cabinets, etc.

c. Third party users shall not be given a key to the building, except by agreement between both parties. Third party users not given a key may only access the building with an escort.

d. Distribution of keys to any third party user shall be the responsibility of the party issuing those keys.

10. FINANCIAL ACCOUNTING.a. Two funds will be set up, with associated bank account, for the purpose of paying for 1) site operating costs, and 2) repair and maintenance.b. Initially, both parties will share the costs, including electrical, USFS permit fee, propane, and maintenance/repairs on a prorated basis, based upon actual usage and/or actual identified costs, such as in the USFS permit.c. If there are other users in the building, who are paying Fair Market Value for site usage, revenue from said users will first be used to pay for site costs, thereby reducing the costs to the two parties in this agreement.d. Revenue shall first be placed into a general fund, to be maintained by NCI, on a monthly prorated basis, bases on estimated yearly costs for electrical power and USFS fees. e. If all site costs have been paid for with other user fees, remaining funds will go into the site repair/maintenance fund, until it reaches a balance of \$3000.f. If the repair/maintenance fund is at \$3000, with no repairs pending, and all additional revenue will be retained by NCI, as a for-profit company, for which NCI is liable for all applicable taxes.g. NCI will forward a report to OCSO once per quarter, showing revenues, costs, and status on the two funds.h. Both parties will agree before allocating funds to any costs other than normal operating costs.

11. AUTHORITY AND GOVERNANCE. As equal Partners, each Partner has equal rights with regard to any decisions on the site, including, but not limited to: 1) fee schedules, 2) financial expenditures, 3) third party users, 4) sale of property. These equal rights or exceptions to them are further delineated elsewhere in this agreement

12. ASSET OWNERSHIP.

a. NCI and OCSO cash contribution will be in the form of purchasing specific site assets. These assets will be the property of the purchasing partner. Allocation of assets will be as follows:

- i. NCI: 120' Self supported tower, backup generator, propane tank
- ii. OCSO: 14 x 14 building

b. Each Partner will retain 50% of ownership and legal rights (equal partnership), with regard to operation of site, although NCI will specifically own the tower and generator, and OCSO will specifically own the building.

13. TERMINATION/PURCHASE OF PARTY'S INTEREST.

Termination shall occur on any of the following events:

- a. Cessation of the business.
- b. Sale of all or substantially all of the parties' property.
- c. Bankruptcy, receivership or dissolution between the parties.
- d. Written agreement by the parties, however, subject to the first option to purchase as set forth below:

I. In the event either party wishes to terminate their interest in this Agreement, the remaining party shall have the right to purchase the interest of the leaving party as set forth below:

a. Sale of Interest. The leaving party agrees to sell to the remaining party their interest in the telecommunication facility and all assets acquired by the parties in the Tunk Mountain Radio Site according to the following payment:

As consideration for said transfer of the party's interest, the remaining party agrees to pay the leaving party the value which shall be the sum of an amount equal to the following:

- i. Twenty Thousand U.S. Dollars (\$20,000.00);
- ii. Plus an additional one-half (1/2) the actual costs of all amounts spent to upgrade the facility, site, equipment, or power line to said site;
- iii. The parties have thirty (30) days to set the value of the leaving party's interest in the Agreement. If the parties fail to agree within sixty (60) days, the fair market value shall be determined by arbitration in Okanogan County, Washington, as follows:

The leaving partner (seller) and the remaining partner (buyer) shall each name one arbitrator. If the two arbitrators cannot agree on the value of the interest within ten (10) days, they shall appoint a third arbitrator and the decision of the majority of the three arbitrators shall be final and binding on both parties.

b. Once the parties establish the purchase price based on the formula set forth above, the remaining party shall notify the leaving party of acceptance of the terms in writing within fifteen (15) days at the following addresses:

If to County:

Scott Miller
Okanogan County Sheriff's Office
123 5th Avenue
Okanogan, WA 98840

If to NCI:

John Andrist
700B Okoma Drive
Omak, WA 98841

and full cash payment shall be made within thirty (30) days unless otherwise agreed.

II. Liquidating Event. In the event the parties do not agree to a purchase price, or if neither party chooses to have full ownership of the assets described in this Agreement, then the property shall be placed on the market for sale for a period of ninety (90) days. In the event that no bona fide purchase and sale agreement is provided, the parties agree to dissolve the entity as follows:

The agreement shall dissolve and commence winding up and liquidation upon the liquidating event set forth above.

a. Winding Up. Upon the occurrence of the liquidating event set forth above, the parties will continue solely for the purpose of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors and parties. No parties shall take any action that is inconsistent with, or not necessary to, or appropriate for the winding up of the parties' business and affairs. The parties shall be responsible for overseeing the winding up and dissolution of the parties' affairs and shall take full account of the parties' liabilities and property/assets, and the parties' property shall be liquidated as promptly as is consistent with obtaining the fair value thereof and the proceeds therefrom to the extent sufficient therefor, and shall be applied and distributed in the following order:

i. First, to the payment and discharge of all of the parties' debts and liabilities to creditors other than the partners;

ii. Second, to the payment and discharge of all the parties' debts and liabilities to the parties;

iii. The balance, if any, to the parties in accordance with their respective interests, after giving effect to all contributions, distributions and allocations for all periods.”

14. INDEMINIFICATION AND HOLD HARMLESS.

a. NCI agrees to hold harmless, indemnify, and defend the County, its elected officials, officers, employees, and agents from and against any and all suits, actions, claims, liability, damages, judgments, costs and expenses (including reasonable attorney's fees) which result from or arise out of the sole negligence NCI, its elected officials, officers, employees, and agents in connection with or incidental to the performance or non-performance of NCI's services, duties and obligations under this Agreement.

b. The County agrees to hold harmless, indemnify, and defend NCI, its elected officials, officers, employees, and agents from and against any and all suits, actions, claims, liability, damages, judgments, costs and expenses (including reasonable attorney's fees) which result from or arise out of the sole negligence of the County, its elected officials, officers, employees, and agents in connection with or incidental to the performance or non-performance of the County's services, duties and obligations under this Agreement.

c. In the event that the officials, officers, agents, and/or employees of both NCI and the County are negligent, each party shall be liable for its contributory share of negligence for any resulting suits, actions, claims, liability, damages, judgments, costs and expenses (including reasonable attorney's fees).

d. Nothing contained in this Section or this Agreement shall be construed to create a right of indemnification in any third party.

e. This Paragraph 14 shall survive the termination of this Agreement.

15. ASSIGNMENT. Neither this Agreement, nor any rights, duties or obligations described in this Agreement, shall be assigned or subcontracted without the prior written consent of either party, which shall not be unreasonably withheld. In the event that the parties approve of an assignment, each and all of the terms and conditions of this Agreement shall extend to the benefit of the successors and assigns of.

16. GOVERNING LAW. This Agreement shall be governed by the laws of the United States and the State of Washington as to all matters, including but not limited to matters of validity, construction, effect and performance.

17. FORUM AND VENUE. All actions regarding this Agreement shall be forumed and venued in a court of competent subject matter jurisdiction in Okanogan County, Washington State.

18. ENTIRE AGREEMENT. This Agreement and any documents referred to herein constitute the complete understanding of the parties and merge and supersede any and all other discussions, agreements and understandings, either oral or written, between the parties with respect to the subject matter hereof.

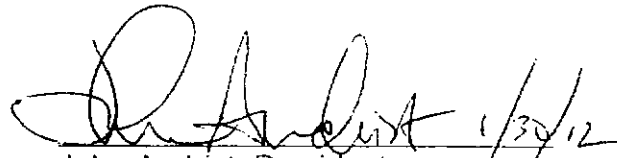
19. SEVERABILITY. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions of this Agreement.

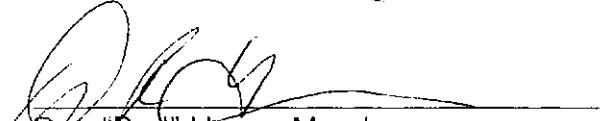
IN WITNESS WHEREOF, the parties have executed this agreement at Okanogan, Washington on February 7, 2012.

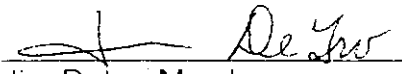
BOARD OF COUNTY COMMISSIONERS
OKANOGAN COUNTY, WASHINGTON

NCI DATACOM,


Andrew Lampe, ~~Chairman~~

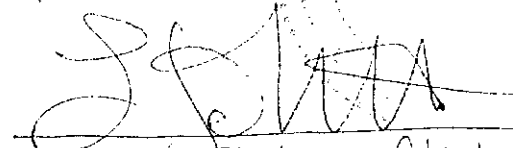
 1/30/12
John Andrist, President

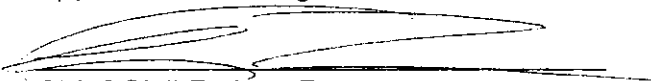

Don "Bud" Hover, Member


Jim Detro, Member *CHAIR*

Attest:

Approved as to Legal Form.


Lalenia Johns, Clerk of the Board


Chief Civil Deputy Prosecutor

