

**PACIFIC COUNTY
INTERAGENCY COMMUNICATIONS FACILITY USE AGREEMENT
HOLY CROSS SITE**

WHEREAS, Pacific County, (LESSOR hereafter called COUNTY) owns, operates, and maintains certain communications facilities throughout the county for the usage by municipal, local, and county government, and;

WHEREAS, Washington State Department of Transportation, (LESSEE hereafter called WSDOT) is authorized to lease property pursuant to RCW 47.12.010 for highway purposes and desires to lease a portion of Pacific County's Holy Cross communications site for wireless communications.

WHEREAS, COUNTY is the grantee of an Easement, permanent non exclusive for ingress, egress, and utilities, for the purpose of constructing, maintaining, and operating a communications site from Rayonier Forest Resources, LP. (formerly known as, Rayonier Timberlands Operating Company, L.P.), No. 67481, dated March 25, 1996, commonly referred to as the Holy Cross site and is authorized by said Easement to sublease the site for local, state, and federal government use and;

WHEREAS, such communications site are capable of supporting certain other communications systems without degrading or encumbering the COUNTY's systems, COUNTY hereby enters into this Facility Use Agreement with WSDOT.

WITNESSETH: The parties hereto, for consideration hereinafter mentioned, covenant and agree as follows:

1. **TERM:** Unless Section Two (2) applies, the term of this Facility Use Agreement shall run for a period of five (5) years from January 1, 2014 and is renewable for one additional five (5) year term, upon written agreement by both parties.

2. **TERMINATION BY LESSEE:**

2.1 WSDOT shall have the right to terminate this Facility Use Agreement upon thirty (30) calendar days' written notice to COUNTY upon the happening of any of the following events:

- If the approval of any agency, board, court or other governmental authority necessary for construction and/or operation of WSDOT's equipment cannot be obtained, or if WSDOT determines in its judgment that the cost of obtaining such approval is prohibitive.

- If WSDOT determines at any time that the Premises are not appropriate for WSDOT's equipment for technological reasons, including, but not limited to, signal interference.
- If WSDOT's license to operate the equipment/services that pertain to this Facility Use Agreement is revoked, removed or suspended.

3. **EVENTS OF DEFAULT, NOTICE AND OPPORTUNITY TO CURE:** If either party fails to comply with a covenant made by such party in this Facility Use Agreement, or fails to abide by a condition binding on such party contained in this Facility Use Agreement, or if WSDOT fails to make a payment hereunder when due, (each individually, an "Event of Default"), then the other party shall deliver notice of such Event of Default to the defaulting party, who shall be permitted to cure the same within fifteen (15) calendar days of delivery of such notice. If such Event of Default cannot reasonably be cured within such fifteen day period, then the defaulting party shall be deemed to have cured the same if it takes all reasonable steps to do so within such fifteen day period and thereafter diligently proceeds to effect such cure; provided, that, such cure is actually and fully effected within ninety (90) calendar days of delivery of the notice delivered pursuant hereto.

4. **PAYMENT:** WSDOT shall pay COUNTY annually the amount as determined by Exhibit A, attached hereto and incorporated herein, of this Facility Use Agreement. Such annual amount shall be paid in advance by January 31st for the term January 1st to December 31st; Provided that, such payment shall be made by WSDOT within thirty (30) calendar days of receipt of a Rental Statement from COUNTY. Rental Statements shall be mailed to WSDOT HQ Facilities Office, Attn: Financial Manager, P.O. Box 47328, Olympia, WA 98504-7328.

All rent for the Premises prepaid beyond the effective termination date shall be refunded to WSDOT within thirty (30) calendar days of the effective termination date.

5. **RATES:** At the end of the first five (5) years of this Facility Use Agreement, COUNTY shall review the rates and make adjustments as appropriate. The adjusted rates shall consider the consumer price index, the DNR rates for comparable sites, and rates charged by the private sector; however, in no case shall the adjustment exceed twenty-five (25%) percent.

6. **INDEMNITY:**

- a. To the extent permitted by law, WSDOT agrees to defend, indemnify and hold harmless COUNTY from and against all claims, actions, losses, costs, expenses, or damages from a third party, arising from:
 - (i) The negligence or willful misconduct of WSDOT, or its authorized agents, employees, or contractors: or
 - (ii) Any material breach by WSDOT of any provision of this Facility Use Agreement.

This indemnity and hold harmless agreement will include indemnity against all reasonable costs, expenses, and liabilities incurred in or in connection with any such claim, and the defense thereof. Notwithstanding the foregoing, WSDOT will have no liability to COUNTY to the extent any claims, actions, losses, costs, expenses, or damages arise out of or result from any act, omission, or negligence of COUNTY, or of COUNTY's authorized agents, employees or contractors. If the claims or damages are caused by or result from the concurrent acts of (i) COUNTY, its authorized agents, employees or contractors, and (ii) WSDOT, its authorized agents, employees or contractors, or (iii) involves actions covered by Ch. 4.24.115 RCW, then this Section shall be valid and enforceable only to the extent of the acts of WSDOT and its authorized agents, employees or contractors.

WSDOT specifically assumes potential liability for actions brought by WSDOT's own employees against COUNTY and, solely for the purpose of this indemnification and defense, WSDOT specifically waives any immunity under the state industrial insurance law, Title 51 RCW, which waiver has been mutually negotiated by the parties.

- b. To the extent permitted by law, COUNTY agrees to defend, indemnify and hold harmless WSDOT from and against all claims, actions, losses, costs, expenses, or damages from a third party, arising from:
 - (i) The negligence or willful misconduct of COUNTY, or its authorized agents, invitees, contractors, lessees, or employees,; or
 - (ii) Any material breach by COUNTY of any provision of this Facility Use Agreement.

This indemnity and hold harmless agreement will include indemnity against all reasonable costs, expenses, and liabilities incurred in or in connection with any such claim, and the

defense thereof. Notwithstanding the foregoing, COUNTY will have no liability to WSDOT to the extent any claims, actions, losses, costs, expenses, or damages arise out of or result from any act, omission, or negligence of WSDOT, or of WSDOT's authorized agents, employees or contractors. If the claims or damages are caused by or result from the concurrent acts of (i) COUNTY, its authorized agents, employees or contractors, and (ii) WSDOT, its authorized agents, employees or contractors, or (iii) involves actions covered by Ch. 4.24.115 RCW, then this Section shall be valid and enforceable only to the extent of the acts of COUNTY and its authorized agents, employees or contractors.

COUNTY specifically assumes potential liability for actions brought by COUNTY's own employees against WSDOT and, solely for the purpose of this indemnification and defense, COUNTY specifically waives any immunity under the state industrial insurance law, Title 51 RCW, which waiver has been mutually negotiated by the parties.

7. **INSURANCE:** It is recognized that WSDOT is an agency of the State of Washington and is self-insured for all exposure to general liability and vehicle liability as provided in Ch. 4.92 RCW and RCW 43.19.760 through 43.19.781. Under these provisions, the State of Washington is continuously self-insured up to a predetermined self-insurance retention level at which point excess insurance provides coverage. The self-insurance program is funded by the liability account established by RCW 4.92.130 and financed by annual premiums assessed to state agencies, including WSDOT.

If WSDOT requests proof of liability insurance by COUNTY, COUNTY shall provide evidence of such insurance. Currently COUNTY is insured by the Washington Counties Risk Pool.

8. **PREMISES:** COUNTY shall provide WSDOT tower and shelter space in addition to fenced security and access to the facility. WSDOT shall install communications equipment as described in Exhibit A of this Facility Use Agreement. The Premises covered by this Facility Use Agreement, and reserved for WSDOT's exclusive use, are located on the following described land: Pacific County Property located at 46° 41' 43.0" North Latitude, 123° 46' 21.2" West Longitude (Holy Cross Site). Portions of the SE ¼ SW ¼ of S14, T14N, R9W, W.M.

9. **EQUIPMENT:** WSDOT shall install and maintain communications equipment using good practices, and in accordance with all applicable codes. WSDOT shall also

adhere to the Pacific County Facility Use Standards described in Exhibit B, attached hereto and incorporated herein, and made a part of this Facility Use Agreement. Antenna feeds shall be one half inch (½") or larger jacketed solid sheathed transmission line.

- Cable shall be clamped to cable trays in accordance with existing methods.
- Equipment shall be bonded to existing ground grid in accordance with applicable codes.

10. **INTERFERENCE:** WSDOT shall provide all necessary equipment to eliminate any interference to existing site users* from the installation of its communications equipment. Such communications equipment shall include, but not be limited to, filters, cavities, isolators, combiners, amplifiers, and splitters. Should subsequent site users find it necessary to install interference mitigating devices on WSDOT's communications equipment, WSDOT shall cooperate; however, WSDOT shall not be required to bear the financial cost. If communications equipment installed on the Premises interferes with communications equipment previously installed on the Premises by another user, then the communications equipment formerly installed shall have priority over the communications equipment subsequently installed. If technical conflicts between items of communications equipment cannot be resolved, then the communications equipment first installed shall remain operational and the other communications equipment causing the interference shall be modified or removed. COUNTY shall retain final authority regarding what communications equipment can be installed and what interference mitigating methods must be employed. COUNTY has approved placement of the communications equipment described in Exhibit A.

11. **SECURITY AND MAINTENANCE:** COUNTY shall provide security for the Premises (equal to the security provided to the County's own equipment) throughout the term of the Facility Use Agreement at no additional charge to WSDOT. COUNTY, at its expense, shall maintain the Premises, and all related facilities in good order and condition and in accordance with all applicable laws and regulations throughout the term of the Facility Use Agreement. WSDOT shall be responsible for maintenance of its communications equipment. In the event that COUNTY fails to maintain the Premises with respect to any FCC/FAA regulations, WSDOT shall notify COUNTY of such default and COUNTY shall cure the default within ten (10) calendar days.

12. **ROAD ACCESS:** During the term of this Facility Use Agreement, County shall provide **WSDOT** with a non-exclusive right to use to existing access road for ingress and egress to the Premises over and across the location shown on Exhibit C, attached hereto and incorporated herein, and for the purpose of operating equipment used for the construction, operation, use and maintenance of **WSDOT** communications equipment installed on the Premises. COUNTY shall maintain the access road throughout the term of this Facility Use Agreement. If, during the term of this Facility Use Agreement, the existing road is destroyed or the rights to the road are terminated or revoked, COUNTY will provide permanent replacement access adequate for all purposes stated herein.

13. **IMPROVEMENTS:** All construction, improvements and/or alterations of the Premises at any time whatsoever shall be subject to COUNTY's prior written approval, which shall not be unreasonably withheld.

14. **CASUALTIES:** If the Premises is damaged or destroyed that contains communications equipment of **WSDOT** and COUNTY fails to commence rebuilding within thirty (30) calendar days of the occurrence of the damage or thereafter fails to prosecute completion of such repairs in a diligent manner, then **WSDOT** shall be entitled to terminate the Facility Use Agreement according to Section Two (2). In the event of damage by fire or other casualty loss to the Premises that renders the property unusable by **WSDOT**, there shall be an equitable reduction of rent until the damage has been repaired. COUNTY shall refund to **WSDOT** the difference between the amount of the prepaid rent and said equitable reduction of rent within thirty (30) calendar days of the causality event.

15. **TAXES:** **WSDOT** agrees to pay COUNTY all applicable leasehold taxes pursuant to the provisions of Chapter 82.29A RCW, and any applicable state and local regulations issued thereto.

16. **OWNERSHIP OF EQUIPMENT:** All communications equipment listed in Exhibit A and installed on the Premises by **WSDOT** shall be and remain the property of **WSDOT** and may be removed or replaced by **WSDOT** at any time from time to time, provided that **WSDOT** repairs any damage caused in conjunction with such removal and replacement.

17. **ASSIGNMENTS AND SUBLETTING:** It is agreed that this Facility Use Agreement may be assigned by either party with the prior written approval of the other

party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, **WSDOT** may assign this Facility Use Agreement upon prior written notice to, but without the consent of COUNTY to (i) any affiliate of **WSDOT**, or (ii) any entity which buys all or substantially all of the assets of **WSDOT** used in connection with the operation of **WSDOT**. The assignee or transferee shall have the right to assume this Facility Use Agreement with all its terms and conditions for the remaining agreement term.

18. **DISPUTES, VENUE AND ATTORNEY'S FEES:** In the event of any controversy, claim, or dispute arising out of the Facility Use Agreement, each party shall be solely responsible for the payment of its own legal expenses, including but not limited to attorney's fees and costs. Any action taken to enforce a provision of this Facility Use Agreement shall be subject to Washington State Law and shall be filed in Pacific County Superior Court. The parties agree that prior to filing any action in Superior Court that they will attempt to meet and resolve any potential disputes.

19. **AUTHORITY:** Each party warrants to the other that it has authority to enter into and perform this Facility Use Agreement and it has taken all action required to authorize execution of this Facility Use Agreement.

20. **ALL WRITINGS CONTAINED HEREIN:** This agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind the parties hereto.

21. **WAIVER OF SUBROGATION:** COUNTY and **WSDOT** hereby waive any and all rights of recovery against the other party, and its employees and officers for loss or damage to the party or its property where such loss is or could be insured against under any fire and extended coverage policy available in the State of Washington. Each party shall cause all insurance policies obtained by it to contain a waiver of subrogation consistent with the foregoing.

22. **NOTICES:** All notices, requests, demands and other communications given under this Use Agreement shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, addressed as follows:

If to COUNTY (Lessor):

Pacific County Board of County Commissioners

PO Box 187
South Bend, WA 98586
Attn: Communications Engineer-DPW

If to WSDOT (Lessee):

Washington State Department of Transportation
Attn: Real Estate Facilities Liaison
P.O. Box 47338
Olympia, WA 98504-7338

With copy to:

Washington State Department of Transportation
Attn: Facilities Financial Manager, Misun Peck
P.O. Box 47328
Olympia, WA 98504-7328

23. **HAZARDOUS SUBSTANCES:** COUNTY hereby agrees to defend, indemnify and hold WSDOT harmless from and against any and all claims, causes of action, demands and liability including, but not limited to, any costs, liabilities, damages, expenses, assessments, penalties, fines, losses, judgments and attorneys' fees associated with the removal or remediation of any hazardous substances that have been released, or otherwise come to be located on the site, including those that may have migrated from the site through water or soil to other properties. COUNTY further agree to retain, defend, indemnify and hold WSDOT harmless from any and all liability arising from the offsite disposal, handling, treatment, storage, or transportation of any hazardous substances removed from the site. For the purposes of this Facility Use Agreement, "Hazardous Substances" shall include all those substances identified as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq., and the Washington Model Toxic Control Act, RCW 70.105D et seq., and shall include gasoline and other petroleum products. For the purposes of this Easement, "Costs" shall include, but not be limited to, all response costs, disposal fees, investigatory costs, monitoring costs, civil or criminal penalties, and attorney fees and other litigation costs incurred in complying with state or federal environmental laws, which shall include, but not be limited to, the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq.; the Clean Water Act, 33 U.S. C. Section 1251 et seq.; the Clean Air

Act, 42 U.S.C. Section 7401 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901; and the Model Toxics Control Act, RCW 70.105D.010.

This indemnity provision shall survive termination of this Facility Use Agreement.

24. **MODIFICATIONS AND AMENDMENTS:** The terms of the Facility Use Agreement may not be modified orally or in any other manner other than by a written agreement signed by the authorized parties thereto.

25. **BINDING CONTRACT:** It is understood and agreed that the delivery of this Facility Use Agreement is hereby tendered and that the terms and obligations hereof shall not become binding upon WSDOT unless and until accepted and approved hereon in writing for WSDOT, by the Secretary of Transportation or her duly authorized representative.

IN WITNESS THEREOF, THE PARTIES HAVE HEREUNTO SET THEIR HANDS THIS ____ day of _____, 2014.

WASHINGTON STATE
Department of Transportation

James M. Salter,
Acquisition Program Manager

BOARD OF COUNTY COMMISSIONERS
PACIFIC COUNTY, WASHINGTON
PO BOX 187
SOUTH BEND, WA 98586

Chairperson

Commissioner

Commissioner

APPROVED AS TO FORM:

Patricia K. Nightingale,
Assistant Attorney General

ATTEST:

Clerk of the Board

COUNTY ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss
COUNTY OF PACIFIC)

On this _____ day of _____, 2014 before me personally appeared _____, to me known to be the duly appointed Board of County Commissioners, Board Chair, and that s/he executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said State of Washington, for the uses and purposes therein set forth, and on oath states that s/he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the _____ day of _____, 2014.

(Signature)

(Print or type name)

Notary Public in and for the State of Washington

residing at _____

My commission expires _____

**EXHIBIT A
PACIFIC COUNTY, WASHINGTON
(HOLY CROSS SITE)**

<u>Item No.</u>	<u>Quant.</u>	<u>Equipment List</u>	<u>Each</u>	<u>Total</u>
1	2	MICROWAVE RADIO, TX/RX 800 MHZ	\$1,518	\$3,036
2	1	800 MHZ POLE ANT 140' AGL	\$715	\$715
3	10	STANDARD EQUIP. RACK UNITS	\$397	\$397
TOTAL ANNUAL RATE				<u>\$4148</u>

EXHIBIT A AGREED TO:

LESSOR INITIALS _____ DATE _____

LESSEE INITIALS _____ DATE _____

EXHIBIT B
PACIFIC COUNTY FACILITY USE STANDARDS

The following minimum standards have been adopted for Pacific County's Communications sites. The purpose is to assure the mechanical and electrical integrity of the facility and the safety of personnel working at the facility.

GENERAL

1. Pacific County Communications Facilities are access restricted to County personnel, and authorized personnel of agencies under agreement with Pacific County for the use of the facilities. All other personnel are denied access to the facilities.
2. Where applicable, personnel entering a facility building shall use the security access device before entering.
3. All personnel while working at the facilities shall observe and follow Radio Frequency Exposure safety rules.
4. Personnel engaged in tower work shall be experienced and trained in tower climbing and shall be equipped with the proper personal safety and fall restraint equipment.

TOWERS

1. All hardware, brackets, antenna mounts and other fixtures shall be constructed of hot dipped galvanized steel, stainless steel or aluminum of a grade suitable for the coastal atmosphere.
2. Tower structural members shall not be drilled or punched.
3. Appropriate clamping devices manufactured for the specific purposes shall be used for attachment to tower structural members.
4. Cable clamps designed to be fastened to tower structural members or cable ladders when available shall support transmission lines, cables and waveguides. Tie wrapping to the tower legs is not allowed.
5. Each user shall be responsible for supporting their transmission lines, cables or waveguides. Tie wrapping to another user is not allowed.
6. Transmission lines, cables and waveguides shall enter the building through the building entrance panels. Each user shall be responsible for using the appropriate sealing hardware.
7. Transmission lines one-half inch or larger shall be the solid sheathed, jacketed type.

EQUIPMENT BUILDING

1. Transmission lines, cables and waveguides shall follow building and equipment rack lines and be supported by cable trays when available.
2. With the exception of waveguide, solid sheathed transmission lines shall transition to superflex type transmission line upon entering the building at the protective grounding point.
3. All transmission lines and waveguides shall be grounded upon entering the building, preferably at the outside entrance and shall be tagged and identified.
4. Lighting arrestors are recommended at the building entrance.
5. Equipment wiring shall be installed in a neat workmanlike manner. Cables shall be of the necessary length and shall not have excess stored in racks or cable trays. Equipment and racks shall be grounded to the building ground system.
6. Excess equipment not in use shall not be stored at the site. Spares should be packaged and identified for ownership.
7. Each user shall be responsible for cleanliness around their equipment and work areas. The buildings have multiple vacuum system outlets for convenient cleaning. Packing materials and debris shall be removed from the premises.
8. Emergency power system and HVAC system controls shall not be tampered with, changed or turned off. Site alarms are generated and County personnel may be dispatched unnecessarily.

EXHIBIT B AGREED TO:

LESSOR INITIALS _____ DATE _____
LESSEE INITIALS _____ DATE _____