PACIFIC COUNTY
COMMUNICATIONS FACILITY USE AGREEMENT

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

WHEREAS, such facilities are capable of supporting certain other communications systems without degrading or encumbering the COUNTY's systems, the COUNTY hereby enters into this Site Use Agreement with **Columbia River Bar Pilots** (hereinafter called **COLUMBIA**), this 1st day of January, 2015.

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

1. **TERM**: Unless Section Two (2) applies, the term of this Use Agreement shall run for a period of five (5) years from date of this Agreement and is renewable, upon agreement by both parties, at the end of this term.

2. **TERMINATION BY LESSEE**:

   2.1 **COLUMBIA** shall have the right to terminate this lease upon thirty (30) days' written notice to the COUNTY upon the happening of any of the following events:

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

   b. If **COLUMBIA** determines at any time that the premises are not appropriate for **COLUMBIA's** equipment for technological reasons, including, but not limited to, signal interference.

   c. If **COLUMBIA's** license to operate the equipment/services that pertain to this 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 Use

Agreement, or fails to abide by a condition binding on such party contained in this Use Agreement, or if **COLUMBIA** 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) 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) days of delivery of the notice delivered pursuant hereto.

4. **PAYMENT**: **COLUMBIA** shall pay the COUNTY annually the amount as determined by Exhibit A of this Use Agreement. Such annual amount shall be paid in advance by January 31 for the term January 1st to December 31st.

5. **RATES**: At the end of the first five years of this Use Agreement, COUNTY shall review the rates and make adjustments as are 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. **INDEMNIFICATION**: In accepting this Agreement, **COLUMBIA**, including its successors and assigns, does hereby covenant and agree to indemnify and protect and save harmless the COUNTY and its officers and employees from all claims, actions, or damages of every kind and description which may accrue to or be suffered by any person, partnership, corporation, or other entity of any kind that arise in whole or in part from intentional tort(s), or negligent act(s) or omission(s), or strict liability of **COLUMBIA** or its employees, agents, successors, or assigns. If the above sentence applies and any suit or action is brought against the COUNTY, its officers, its employees, or any combination thereof, **COLUMBIA**, including its successors or assigns, shall defend the suit or action at his or her or

their sole cost and expense and shall fully satisfy any judgment that is rendered against the COUNTY, its officers, its employees, or any combination thereof.

7. **INSURANCE:** **COLUMBIA** shall maintain and provide proof of occurrence based general business professional liability insurance in the amount of $1,000,000 or greater per occurrence and $2,000,000 aggregate for the term of this CONTRACT. **COLUMBIA** must name the COUNTY as an additional insured. **COLUMBIA** shall provide the COUNTY a copy of the additional insured endorsements prior to the start of this contract. **COLUMBIA** agrees that its liability insurance shall be primary and non-contributory to the COUNTY's and that **COLUMBIA's** liability insurance policy shall so state. **COLUMBIA** shall be responsible at its own expense to provide any and all employment insurance coverage, including but not limited to, unemployment insurance, worker's compensation insurance, etc. for any and all of its employees as might apply.

8. **PREMISES**: The COUNTY shall provide **COLUMBIA** tower and shelter space in addition to fenced security and access to the facility. **COLUMBIA** shall install communications equipment as described in Exhibit A of this Use Agreement. Facilities covered by this Use Agreement, and reserved for **COLUMBIA's** exclusive use, are located on the following described land: Pacific County Property located at 46° 17' 10" North Latitude, 123° 53' 50" West Longitude (Megler Site).

9. **EQUIPMENT**: **COLUMBIA** shall install and maintain equipment using good communication practices, and in accordance with all applicable codes. **COLUMBIA** shall also adhere to the Pacific County Facility Use Standards described in Exhibit B and made a part of this Agreement.

10. **INTERFERENCE**: **COLUMBIA** shall provide all necessary equipment to eliminate any interference to existing site users* from the installation of its communications system. Such 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 **COLUMBIA's** equipment, **COLUMBIA** shall cooperate; however, **COLUMBIA** shall not be required to bear the financial cost. If equipment installed at the site interferes with equipment previously installed at the site by another user, then the equipment formerly installed shall have priority over the equipment subsequently installed. If technical conflicts between items of equipment cannot be resolved, then the equipment first installed shall remain operational and the other equipment causing the interference shall be modified or removed. The COUNTY shall retain final authority regarding what equipment can be installed and what interference mitigating methods must be employed. The COUNTY has approved placement of the equipment described in Exhibit A attached hereto.

***(Defined as pre-existing site users whose installation of equipment at the Megler Site predates the installation of COLUMBIA' equipment at the Megler Site).**

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

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

13. **CASUALTIES**: If a tower or building is damaged or destroyed that contains equipment of **COLUMBIA** and the COUNTY fails to commence rebuilding within thirty (30) days of the occurrence of the damage or thereafter fails to prosecute

completion of such repairs in a diligent manner, then **COLUMBIA** shall be entitled to terminate the Use Agreement according to Paragraph 2. In the event of damage by fire or other casualty loss to the tower or building that renders the property unusable by **COLUMBIA**, there shall be an equitable reduction of rent until the damage has been repaired.

14. **TAXES**: **COLUMBIA** agrees to pay the COUNTY all applicable leasehold taxes pursuant to the provisions of Chapter 82.29A RCW, and any State and Local regulations issued thereto.

15. **OWNERSHIP OF EQUIPMENT**: All transmitting and receiving equipment, shelters, and support facilities listed under Exhibit A, installed at the site by **COLUMBIA** shall be and remain the property of **COLUMBIA** and may be removed or replaced by **COLUMBIA** at any time from time to time, provided that **COLUMBIA** repairs any damage caused in conjunction with such removal and replacement.

16. **ASSIGNMENTS AND SUBLETTING**: It is agreed that this Use Agreement may be assigned by either party with the prior approval of the other party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, **COLUMBIA** may assign this Use Agreement upon prior written notice to, but without the consent of COUNTY to (i) any affiliate of **COLUMBIA**, or (ii) any entity which buys all or substantially all of the assets of **COLUMBIA** used in connection with the operation of **COLUMBIA**. The assignee or transferee shall have the right to assume this Use Agreement with all its terms and conditions for the remaining lease term.

17. **DISPUTES, VENUE AND ATTORNEY'S FEES**: Should any litigation be commenced by a party concerning this Use Agreement, then the party prevailing in any such action or proceeding or appeal thereon shall be entitled to recover its court costs and reasonable attorneys' fees from the other party. Any action taken to enforce a provision of this 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.

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

19. **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.

20. **WAIVER OF SUBROGATION**: COUNTY and **COLUMBIA** 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.

21. **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:

Pacific County Board of County Commissioners
PO Box 187
South Bend, WA 98586
Attn: Communications Engineer

If to COLUMBIA:

Columbia River Bar Pilots
100 16th Street
Astoria, OR 97103

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

Columbia River Bar Pilots

_____
Signature

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

_____
Chairperson

_____
Commissioner

_____
Commissioner

APPROVED AS TO FORM:

_____

ATTEST:

_____
Clerk of the Board

EXHIBIT A
PACIFIC COUNTY, WASHINGTON
(MEGLER SITE)

Item No.	Quant.	Equipment List	Annual Rate
1	2	VHF Marine Transmitter (Channels 9 & 16)	$1,380.00
2	2	VHF Antenna	$940.00
3	½	Rack Space	$190.00
4	2	UHF Radio Link	$680.00
5	1	VHF AIS Receiver	$760.00
		TOTAL ANNUAL RATE	$3,950.00

EXHIBIT A AGREED TO:

COLUMBIA INITIALS_____ DATE _____

COUNTY 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 _____