

**PACIFIC COUNTY
COMMUNICATIONS FACILITY USE AGREEMENT**

WHEREAS, Pacific County ("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 Communications Facility Use Agreement ("Use Agreement") with **Oregon Public Broadcasting ("OPB")** as of January 1, 2020 ("Effective Date").

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 the Effective Date of this Use Agreement and is renewable, upon agreement by both parties.
2. **TERMINATION**: This Use Agreement may be terminated by either party if the other party fails to timely cure an Event of Default under Exhibit C, Section 1. In addition, either party may unilaterally terminate this agreement on any date by giving the other party notice of intent to terminate this Use Agreement at least thirty (30) days prior to the date.
3. **PAYMENT**: **OPB** shall pay the COUNTY annually the amount described in Exhibit A of this Use Agreement. Such annual amount shall be paid in advance by January 20th for the period January 1st to December 31st. Any partial calendar year period shall be prorated on a full month basis.
4. **RATES**: At the end of the first year of this Use Agreement and each year thereafter, the COUNTY shall review the rates and make adjustments as are appropriate. The adjusted rates shall consider the consumer price index, the Department of Natural Resources (DNR) rates for comparable sites, and rates charged by the private sector. However, in no case shall the adjustment exceed five (5) percent/year.
5. **PREMISES**: The COUNTY shall provide **OPB** tower and shelter space in addition to fenced security and access to the facility. **OPB** may install and operate communications equipment as described in Exhibit A, attached and made a part of this Use Agreement. Facilities covered by this Use Agreement, and reserved for **OPB'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).
6. **EQUIPMENT**: **OPB** shall install and maintain its equipment using good communications practices, and in accordance with all applicable codes. **OPB** shall also adhere to the Pacific County Facility Use Standards described in Exhibit B, attached and made a part of this Use Agreement.

7. **INTERFERENCE:** OPB 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 OPB's equipment, OPB shall cooperate; however, OPB 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 OPB equipment at the Megler Site)**
8. **SECURITY AND MAINTENANCE:** 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 OPB. 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. OPB shall be responsible for maintenance of its facilities and equipment. In the event the COUNTY fails to maintain the tower with respect to any FCC/FAA regulations, OPB shall notify the COUNTY of such default.
9. **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. OPB may make routine repairs and replacements of its existing equipment without obtaining COUNTY's prior approval.
10. **OWNERSHIP OF EQUIPMENT:** All transmitting and receiving equipment, shelters, and support facilities listed under Exhibit A installed at the site by OPB shall be and remain the property of OPB and may be removed or replaced by OPB at any time from time to time, provided that OPB repairs any damage caused in conjunction with such removal and replacement.
11. **EXTENDED LEGAL REQUIREMENTS:** For additional legal requirements, see Exhibit C attached and made a part of this Use Agreement.

(THIS SPACE INTENTIONALLY LEFT BLANK.)

IN WITNESS THEREOF, THE PARTIES HAVE HEREUNTO SET THEIR HANDS ON THE DATES GIVEN BELOW.

OREGON PUBLIC BROADCASTING

Steven M. Bass, President and CEO
Name Title

Signature Date

APPROVED AS TO FORM:

Prosecutor’s Office WSBA #

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

Frank Wolfe, Chair

Lisa Olsen, Commissioner

Mike Runyon, Commissioner

ATTEST:

Marie Guernsey Date
Clerk of the Board

**EXHIBIT A
EQUIPMENT LIST & RATES
(MEGLER SITE)**

<u>Item No.</u>	<u>Quant.</u>	<u>Equipment List</u>	<u>Annual Rate</u>
1	1	1000 Watt UHF Television Transmitter	\$3,928.10
2	1	UHF TX Antenna (shared with one other user)	\$499.40
3	1	12" Diameter Dish	<u>\$220.00</u>
TOTAL ANNUAL RATE			\$4,647.50

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 _____

EXHIBIT C
EXTENDED LEGAL REQUIREMENTS

1. **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 **OPB** fails to make a payment hereunder when due (each individually an “Event of Default”), then the other party shall deliver written 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 to Section 11 of this Exhibit C.
2. **INDEMNIFICATION/HOLD HARMLESS:**
 - A. **Indemnification by OPB.** To the fullest extent permitted by law, **OPB** agrees to indemnify, defend, and hold the COUNTY and its departments, elected and appointed officials, employees, agents, and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney’s fees, and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death, and for any damage to or destruction of any property (including the loss of use resulting therefrom), which 1) are caused in whole or in part by any action or omission, negligent or otherwise, of the **OPB**, its employees, agents or volunteers or **OPB’s** subcontractors and their employees, agents, or volunteers; or 2) are directly or indirectly arising out of, resulting from, or in connection with performance of this Use Agreement; or 3) are based upon the **OPB’s** or its subcontractors’ use of, presence upon, or proximity to the property of the COUNTY. This indemnification obligation of the **OPB** shall not apply in the limited circumstance where the claim, damage, loss, or expense is caused by the negligence of the COUNTY. This indemnification obligation of **OPB** shall not be limited in any way by the Washington State Industrial Insurance Act RCW Title 51, or by application of any other workmen’s compensation act, disability benefit act, or other employee benefit act, and **OPB** hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the **OPB** are a material inducement to COUNTY to enter into the Use Agreement, are reflected in **OPB’s** compensation, and have been mutually negotiated by the parties.
 - B. **Participation County – No Waiver.** The COUNTY reserves the right, but not the obligation, to participate in the defense of any claims, damages, losses, or expenses and such participation shall not constitute a waiver of **OPB’s** indemnity obligations under the Use Agreement.

- C. **Survival of OPB's Indemnity Obligations.** OPB agrees all OPB's indemnity obligations shall survive the completion, expiration or termination of this Use Agreement.
3. **INSURANCE:** Without limiting OPB's indemnification of COUNTY, and prior to commencement of this Use Agreement, OPB shall obtain, provide, and maintain during the term of this Use Agreement, policies or insurance of the type and amounts described below and in a form satisfactory to the COUNTY.
- A. **General Liability Insurance.** OPB shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability.
- B. **Workers' Compensation Insurance.** OPB shall, at its own expense, maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).
- OPB shall submit to COUNTY, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of COUNTY, its officers, agents, employees, and volunteers.
- C. **Waiver of Subrogation.** All insurance coverage maintained or procured pursuant to this Use Agreement shall be endorsed to waive subrogation against COUNTY, its elected or appointed officers, agents, officials, employees, and volunteers, or shall specifically allow OPB or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss.
- D. **Automobile Liability Insurance.** OPB shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of OPB arising out of or in connection with work to be performed under this Agreement, including coverage for any owned, hired, non-owned, or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.
- OPB must name the COUNTY as an additional insured. OPB agrees that its liability insurance shall be primary and non-contributory to the COUNTY's and that OPB's liability insurance policy shall so state.
4. **CASUALTIES:** If a tower or building is damaged or destroyed that contains equipment of OPB 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 OPB shall be entitled to terminate the Use Agreement according to Section 2. In the event of damage by fire or other casualty loss to the tower or building that renders the property unusable by OPB, there shall be an equitable reduction of rent until the damage has been repaired.

5. **TAXES:** OPB 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. OPB, at its expense, may seek an exemption for any such taxes and COUNTY will take reasonable efforts to assist OPB in such effort.
6. **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, OPB may assign this Use Agreement upon prior written notice to, but without the consent of COUNTY to (i) any affiliate of OPB, or (ii) any entity which buys all or substantially all of the assets of OPB used in connection with the operation of OPB. The assignee or transferee shall have the right to assume this Use Agreement with all its terms and conditions for the remaining lease term.
7. **ATTORNEY'S FEES/COST OF SUIT AND VENUE:** If either party files suit to enforce this Use Agreement, parties agree that the prevailing party in any such action shall be entitled to collection costs, reasonable attorney's fees, and costs of suit. The parties agree that any suit pertaining to this Contract shall be filed in the Cowlitz County Superior Court.
- A. **Disputes.** Differences between OPB and the COUNTY, arising under and by virtue of this Use Agreement, shall be brought to the attention of the COUNTY at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due OPB shall be decided by the COUNTY'S contract representative or designee. All rulings, orders, instructions, and decisions of the COUNTY'S contract representative shall be final and conclusive, subject to their right to seek judicial relief pursuant to **Choice of Law, Jurisdiction and Venue**.
- B. **Choice of Law, Jurisdiction, and Venue.** This Use Agreement has been and shall be construed as having been made and delivered within the State of Washington and it is agreed by each party hereto that this Use Agreement shall be governed by the laws of the State of Washington, both as to its interpretation and performance.
- Any action at law, suit in equity, or judicial proceeding arising out of this Use Agreement shall be instituted and maintained only in any of the courts of competent jurisdiction in Cowlitz County, Washington.
- C. **Severability.** If a court of competent jurisdiction holds any part, term, or provision of this Use Agreement to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Use Agreement did not contain the particular provision held to be invalid.
- If any provision of this Use Agreement is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

Should the COUNTY determine that the severed portions substantially alter this Use Agreement so that the original intent and purpose of the Use Agreement no longer exists, the COUNTY may, in its sole discretion, terminate this Use Agreement.

8. **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.
9. **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.
10. **WAIVER OF SUBROGATION**: COUNTY and **OPB** 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.
11. **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 using certified mail with a return receipt requested and addressed as follows:

If to COUNTY:

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

If to OPB:

Oregon Public Broadcasting
7140 S Macadam Avenue
Portland, OR 97219-3099
Attn: CTO/VP, Technology

With a copy to:
Oregon Public Broadcasting
7140 S Macadam Avenue
Portland, OR 97219-3099
Attn: General Counsel

12. **PUBLIC RECORDS ACT**: This Use Agreement and all public records associated with this Use Agreement shall be available from the COUNTY for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of **OPB** are needed for the COUNTY to respond to a request under the Act, as determined by the COUNTY, **OPB** agrees to make

them promptly available to the COUNTY. If **OPB** considers any portion of any record provided to the COUNTY under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, **OPB** shall clearly identify any specific information that it claims to be confidential or proprietary. If the COUNTY receives a request under the Act to inspect or copy the information so identified by **OPB** and the COUNTY determines that release of the information is required by the Act or otherwise appropriate, the COUNTY's sole obligations shall be to notify **OPB** (a) of the request and (b) of the date that such information will be released to the requester unless **OPB** obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If **OPB** fails to timely obtain a court order enjoining disclosure, the COUNTY will release the requested information on the date specified. The COUNTY has, and by this section assumes, no obligation on behalf of **OPB** to claim any exemption from disclosure under the Act. The COUNTY shall not be liable to **OPB** for releasing records not clearly identified by **OPB** as confidential or proprietary. The COUNTY shall not be liable to **OPB** for any records that the COUNTY releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

OPB agrees to indemnify and, to the greatest extent legally possible, to hold harmless the COUNTY in any action by a third party due to the negligence, recklessness, or intentional actions by **OPB** relating to its performance of this contract. This includes any lawsuit filed by a third party for the COUNTY's allegedly improper release of confidential information or actions by **OPB** relating to its performance of this contract. This includes any lawsuit filed by a third party for the COUNTY's allegedly improper release of confidential or proprietary information pursuant to a public records request.

EXHIBIT C AGREED TO:

LESSOR INITIALS _____ DATE _____

LESSEE INITIALS _____ DATE _____