

**PACIFIC COUNTY
COMMUNICATIONS FACILITY USE AGREEMENT
Megler Site**

WHEREAS, Pacific County owns, operates, and maintains certain communications facilities throughout the COUNTY (LESSOR) 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 Facility Use Agreement with **Fisher Broadcasting, Inc.**, (LESSEE hereinafter called **Fisher**), this 1st day of January, 2012.

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 **Fisher** shall have the right to terminate this agreement upon thirty (30) days' written notice to the 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 **Fisher's** equipment cannot be obtained, or if **Fisher** determines in its reasonable judgment that the cost of obtaining such approval is prohibitive.
 - If **Fisher** determines at any time that the premises are not appropriate for **Fisher's** equipment for technological reasons, including, but not limited to, signal interference.
 - If **Fisher'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 **Fisher** 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 reasonable 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:** **Fisher** shall pay the COUNTY annually the amount as determined by Exhibit A of this Use Agreement. Such annual amount shall be prepaid by January 20th for the term January 1st to December 31st.
5. **RATES:** At the end of the first year of this Use Agreement, the 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 five (5%) percent/year.
6. **INDEMNITY:** Each party (the “Indemnitor”) agrees to indemnify, defend, and hold the other party harmless from any liabilities or claims or injuries to property or persons on or about the premises which are occasioned by the use of the premises and caused by reason of the acts or omissions of the Indemnitor, its agents, contractors, licenses, employees, or invitees. Provided that if the claims for damages are caused by or result from the concurrent negligence of (a) the COUNTY, its agents or employees; and (b) **Fisher**, its agents or employees, and involves those actions covered by RCW 4.24.115, this indemnity provision shall be

valid and enforceable only to the extent of the negligence of the Indemnitor's agents or employees. If **Fisher** requests proof of liability insurance by the COUNTY, the COUNTY shall provide evidence of such insurance. Currently the COUNTY is insured by the Washington Counties Risk Pool.

7. **PREMISES:** The COUNTY shall provide **Fisher** tower and shelter space in addition to fenced security and access to the facility. **Fisher** shall install communications equipment as described in Exhibit A of this Use Agreement. Facilities covered by this Use Agreement, and reserved for **Fisher'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).
8. **EQUIPMENT:** **Fisher** shall install and maintain equipment using good communication practices, and in accordance with all applicable codes. **Fisher** shall also adhere to the Pacific County Facility Use Standards described in Exhibit B and made a part of this Agreement. Antenna feeds shall be "1/2" 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.
9. **INTERFERENCE:** **Fisher** 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 **Fisher's** equipment, **Fisher** shall cooperate; however, **Fisher** 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 Fisher equipment at the Megler Site).**

10. **SECURITY AND MAINTENANCE:** The COUNTY shall provide reasonable security for the premises throughout the term of the Use Agreement at no additional charge to **Fisher**. 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. **Fisher** 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, **Fisher** shall notify the COUNTY of such default and request cure within ten (10) days.
11. **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.
12. **CASUALTIES:** If a tower or building is damaged or destroyed that contains equipment of **Fisher** 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 **Fisher** 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 **Fisher**, there shall be an equitable reduction of rent until the damage has been repaired.

13. **TAXES:** **Fisher** 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. In the event of damage by fire or other casualty loss to the tower or building that renders the property unusable by **Fisher** there shall be an equitable reduction of rent until the damage has been repaired.
14. **OWNERSHIP OF EQUIPMENT:** All transmitting and receiving equipment, shelters, and support facilities listed under Exhibit A, installed at the site by **Fisher** shall be and remain the property of **Fisher** and may be removed or replaced by **Fisher** at any time from time to time, provided that **Fisher** repairs any damage caused in conjunction with such removal and replacement.
15. **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, **Fisher** may assign this Use Agreement upon prior written notice to, but without the consent of COUNTY to (i) any affiliate of **Fisher**, or (ii) any entity which buys all or substantially all of the assets of **Fisher** used in connection with the operation of **Fisher**. The assignee or transferee shall have the right to assume this Use Agreement with all its terms and conditions for the remaining lease term.
16. **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.

17. **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.
18. **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.
19. **WAIVER OF SUBROGATION**: COUNTY and **Fisher** 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.

20. **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 FISHER (Lessee):

Fisher Broadcasting – Portland TV, LLC
2153 N.E. Sandy Blvd.
Portland, OR 97232
Attn: Director of Engineering

IN WITNESS THEREOF, THE PARTIES HAVE HEREUNTO SET THEIR HANDS THIS
13th day of September, 2011.

FISHER BROADCASTING, INC.

Signature

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

Chairperson

Commissioner

Commissioner

APPROVED AS TO FORM:

ATTEST:

County Prosecuting Attorney

Clerk of the Board