

W. 3. G. 1.

ABBREVIATED CONSENT CALENDAR MEMO

Memorandum Date: 19 September 2008
Order Date: 1 October 2008

TO: Board of County Commissioners

DEPARTMENT: Lane County Sheriff's Office

PRESENTED BY: Judy Simpson

**AGENDA ITEM TITLE: IN THE MATTER OF DELEGATING AUTHORITY
TO THE COUNTY ADMINISTRATOR TO EXECUTE
WIRELESS COMMUNICATIONS SITE SHARING
AGREEMENT BETWEEN THE STATE OF OREGON
AND LANE COUNTY**

I. MOTION

MOVE TO APPROVE EXECUTION OF THE WIRELESS COMMUNICATIONS SITE
SHARING AGREEMENT WITH THE STATE OF OREGON

II. DISCUSSION

A. Background/Analysis

The Wireless Communications Site Sharing Agreement is an Intergovernmental Agreement (IGA) which each county in the State of Oregon will execute with Oregon State Police on behalf of the Oregon Wireless Interoperability Network (OWIN) regarding the sharing of wireless communication sites and services.

There are limited communication sites in Oregon which are suitable for government and public safety wireless communication purposes.

It is in the public interest for agencies to share sites in order to avoid inefficiencies of multiple site development.

The Site Sharing Agreement sets out the procedures and conditions for sites that are shared with OWIN, and requires the sharing agreement to be incorporated into any supplemental site-specific agreement with other parties desiring to locate their communication equipment at our sites(s).

Lane Manual 21.145 requires Board of Commissioner approval for execution of an Agreement which is longer than three (3) years in length.

The Wireless Communications Site Sharing Agreement has an initial term of ten (10) years with an option to renew for two additional 10-year terms.

B. RECOMMENDATION

Staff recommends approving execution of the IGA for the sharing of wireless communication sites and services.

Sharing of Sites and services for wireless communications is cost effective for public agencies.

II. ATTACHMENTS

1. Proposed Board Order No. _____.
2. State of Oregon Wireless Communications Site Sharing Agreement.

WIRELESS COMMUNICATIONS SITE SHARING AGREEMENT

This intergovernmental agreement for the sharing of wireless communication sites and services (the "Sharing Agreement") is between _____, a political subdivision of _____ (Agency), and the State of Oregon acting by and through the Oregon State Police on behalf of the Oregon Wireless Interoperability Network (OWIN).

DEFINITIONS

Co-location: the locating by one party of communications equipment, including radio, or microwave equipment or the placing of antennae or other transmitters or receivers on a common support structure at a Site owned by another party.

Site: a physical location that typically contains one or more equipment buildings that house communications equipment, including radio or microwave transmitters, receivers, associated accessories and ancillary equipment, or a radio/microwave antenna or satellite support structure, or a combination of the above.

Wireless Communications: communications accomplished without the use of a hard wire connection via radio, microwave or infrared technologies, including but not limited to fixed, mobile, and portable radios licensed under Federal Communications Commission rules and regulations as detailed in 47 CFR Parts 90 and 101, cellular phones, wireless networking (i.e. WiFi, WiMAX), or satellite communications.

Wireless Communications Equipment: communications equipment, including but not limited to routers, antenna, other transmitting or receiving equipment for radio and microwave, and associated accessories and ancillary devices used to support wireless communications.

RECITALS

- A. Sites in Oregon that are suitable for government and public safety Wireless Communications purposes are limited, and it is in the public interest for both parties to share Sites in order to avoid the inefficiencies of multiple Site development by a number of users to serve the common good.

- B. The sharing of Sites in support of government and public safety communications applications requires agreement on specific security,

reliability and accessibility issues, and must be cost effective for public agencies.

In light of these considerations, the parties agree as follows:

1. Co-location Authorized. Co-location is authorized at an available Site, upon request by either party, except:

- a. when Co-location is prohibited by prior agreements;
- b. when Co-location presents a financial burden to the requested party;
- c. when Co-location would cause substantial interference with the Wireless Communications of the party or another third party currently using the Site;
- d. when Co-location is prohibited by physical space limitations; or
- e. if the parties do not agree on the terms of the site-specific Supplemental Agreement, or necessary consents or approvals are not obtained from third parties, including property owners, or other programs using the site.

2. Site-Specific Supplemental Agreements.

a. Whenever a party (the "co-locating party") desires to co-locate at a Site under the control of the other party (the "controlling party"), the co-locating party shall give the controlling party written notice specifying the Site and the character of the Wireless Communications Equipment which the co-locating party desires to install at the Site. The controlling party shall respond in writing to the co-locating party, either approving or denying the request. If the controlling party accepts the request, the parties shall then enter into a Site-specific supplemental agreement that sets forth all relevant terms and conditions for use of the Site (a "Supplemental Agreement"). The parties may enter into multiple Supplemental Agreements under this Sharing Agreement.

b Each Supplemental Agreement must reference and incorporate this Sharing Agreement. In addition, the Supplemental Agreement must:

- i. allocate responsibility for identifying and resolving radio interference issues arising from the Co-location;
- ii. allocate responsibility for removal of Wireless Communications Equipment and restoration of the Site upon termination of the Supplemental Agreement;
- iii. allocate responsibility for repair of damaged Wireless Communications Equipment on the Site;
- iv. specify the co-locating party's limits on access to the Site.
- v. include, if applicable, a requirement that the co-locating party pay reasonable costs of the co-location, including any additional rent or consulting fees; and
- vi. include language indicating that the term, ability to terminate and expiration of the Supplemental Agreements must be subject to the term, expiration and termination rights of any applicable lease or license relating to site and road access, including any amendments.

3. Consents. The parties shall cooperate with each other in obtaining any consents or rights-of-way necessary when the Site is owned by a person other than one of the parties to this Sharing Agreement.

4. Procedures and Conditions. The following procedures and conditions apply to all Co-locations under this Sharing Agreement, unless modified by a Supplemental Agreement:

a. Each party shall designate a communications manager for each Site under its control. Prior to installation of the co-locating party's Wireless Communications Equipment,

i. the co-locating party shall submit a Site installation plan and Wireless Communications Equipment specifications to the controlling party's communications manager, and shall obtain written approval of the plan and specifications from the controlling party; and

ii. the controlling party's communications manager shall test and evaluate the co-locating party's transmitter frequencies to detect potential causes of interference from the co-locating party's Wireless Communications Equipment at the Site. Transmitters must employ isolators, circulators, resonant cavities and other devices to reduce interference as dictated by best business practice and industry engineering practices.

b. If the Site is owned by a third party, the co-locating party shall also submit the Site installation plan and Wireless Communications Equipment specifications to the Site owner and obtain the owner's written approval.

c. The co-locating party shall bear the cost of purchasing, installing and maintaining all of its Wireless Communications Equipment installed at the site.

d. Each party shall obtain and maintain any licenses required by the Federal Communications Commission for the party's Wireless Communications Equipment located at the Site.

e. Any third party vendor working at the Site under contract to one of the parties must be licensed to perform the work and must be escorted by an employee of the contracting party.

f. If the Supplemental Agreement fails to address removal of Wireless Communications Equipment and restoration of the Site, then the co-locating party shall remove its Wireless Communications Equipment within 30 days following termination of Co-location rights under the Sharing Agreement or Supplemental Agreement, and shall restore the Site to the condition existing prior to Co-location of the party's Wireless Communications Equipment, reasonable wear and tear excepted. If the Wireless Communications Equipment is not

removed within 30 days, the controlling party may remove the Wireless Communications Equipment and may charge the co-locating party the reasonable cost of removal and disposal.

5. Wireless Communications Services Reciprocal Use. Agency and OWIN shall cooperate to provide Wireless Communications services that are requested by one party and available from the other party. Services may include:

- a. carriage of traffic over microwave, fiber, or other media;
- b. use of capacity and coverage of communication systems;
- c. access to systems and networks; and
- d. other services that may be appropriate, economically feasible, and within the scope of best practices between government agencies and entities.

6. Term. The term of this Sharing Agreement shall be for 10 years, unless terminated earlier according to its terms, commencing on the last date signed.

7. Option to Extend. Either party may request that this Sharing Agreement be extended for up to two additional 10 year terms upon the same terms and conditions stated in this Sharing Agreement, by providing written notice to the other party at least 60 days prior to the expiration of this Sharing Agreement. If the other party does not respond, the Sharing Agreement will terminate according to its terms.

8. Termination.

a. Unless a longer period of time is agreed upon by the parties or is specified in a Supplemental Agreement, either party may terminate this Sharing Agreement at any time by giving not less than 365 days written notice in advance to the other party. All Supplemental Agreements entered into under this Sharing Agreement will automatically terminate upon the termination date of the Sharing Agreement.

b. Unless modified by a Supplemental Agreement, a co-locating party may separately terminate a Supplemental Agreement by giving not less than 60 days written notice in advance to the controlling party.

c. Unless modified by a Supplemental Agreement, a controlling party may separately terminate a Supplemental Agreement by giving not less than 365 days written notice in advance to the co-locating party.

d. Either party may terminate a Supplemental Agreement: i. when co-location is no longer possible or practicable due to circumstances beyond the control of that party, and shall provide as much advance notice to the other as reasonably possible, ii. upon 90 days notice due to failure to obtain funding and other expenditure authorizations sufficient to continue use of the site, or iii. if the other party substantially breaches and fails to cure within 30 days after receiving notice of the breach.

9. Limitation of Liability; Indemnification. Each party shall take reasonable precautions to protect the other party's Wireless Communications Equipment located at the Site, but neither party is responsible for damage to, or loss of, any Wireless Communications Equipment of the other party due to fire, theft or other events unless the loss is caused by the party's negligence. The parties agree and acknowledge that their relationship is that of independent contracting parties and neither party is an officer, employee, or agent of the other party as those terms are used in ORS 30.265 or otherwise.

State of Oregon Responsibility: The State of Oregon agrees to be responsible for any damage or any third party liability which may arise from its activities performed under this sharing agreement subject to the limitations and conditions of the Oregon Tort Claims Act, ORS 30.260 through 30.300, and the Oregon Constitution Article XI, Section 7, to the extent of liability arising out of the negligence of the Agency. The State shall not be required to indemnify or defend the Agency for any liability arising out of the wrongful acts of employees or agents of the Agency.

OWIN and Agency each shall be responsible, to the extent permitted by the Oregon Tort Claims Act (ORS 30.260-30.300), only for the acts, omissions or negligence of its own officers, employees or agents.

10. Insurance. OWIN and Agency are self-insured under ORS 30.282(2) and shall have and maintain insurance coverage upon execution of a final Supplemental Agreement under this Sharing Agreement of the types and up to the limits described in ORS 30.270. In addition, Agency has qualified for self-insurance under ORS 806.130 of the Oregon Vehicle Code and shall maintain the types of coverage up to the limits as set forth in ORS 806.070. Upon request by either party, the other party shall provide written proof of such insurance coverage to the requesting party. Both parties are subject employers and agree to comply with ORS 656.017 and provide Oregon workers' compensation coverage for all of their subject workers, respectively.

11. Successors and Assigns. This Sharing Agreement is binding upon the parties and their successors. Neither party may assign its rights or delegate its obligations under this Sharing Agreement without the written consent of the other party.

12. Modifications. Any amendments or modifications of this Sharing Agreement must be in writing and will be effective only after each party has signed the amendment. In the event of any conflict between the provisions of this Sharing Agreement and any Supplemental Agreement, the provisions of the Supplemental Agreement will control.

13. Waiver. No waiver of any breach of any term, covenant or condition of this Sharing Agreement constitutes a waiver of any subsequent breach of the same or any other term or condition.

14. Mediation. The parties shall exert every effort to cooperatively resolve any disagreements they may have under this Sharing Agreement. If the parties are unable to resolve a conflict under this Sharing Agreement, they shall present their disagreements to a mutually agreeable mediator for mediation. Each party shall bear its own costs for mediation and the parties shall share the cost of the mediator. This procedure must be followed to its conclusion prior to either party seeking relief from the court, except in the case of an emergency.

15. Notice. Any notice required or permitted to be sent under this Sharing Agreement will be deemed sent when it is deposited in the United States Mail, postage prepaid, addressed to the other party or parties at the following address, or at a new address, if such new address has been given to the other parties:

AGENCY: _____
Attn: _____

Phone: (____) _____
Fax: (____) _____
Email: _____

OWIN: OWIN Administration
Attn: Janet Chambers
1351C Tandem Avenue NE
Salem, Oregon 97301
Phone: 503-934-6945
Fax: 503 934-6949
Email: Janet.chambers@state.or.us

16. Force Majeure. No party is liable for breach or delays in the execution of its obligations due to causes beyond its reasonable control including but not limited to acts of God, fires, strikes, labor disturbances, floods, epidemics, quarantine restrictions, war, insurrection or riot, acts of a civil or military authority, compliance with priority orders or preference ratings issued by the federal government, acts of government authorities with respect to revocation of export or re-export permits/licenses, wrecks, or unusually severe weather. The party that cannot perform shall, however, make all reasonable efforts to remove or eliminate such cause of delay or breach and, upon the cessation of the cause, shall diligently pursue performance of its obligations under this Sharing

Agreement. In the event of any such delay, the required date of services will be extended for a period of time equal to the period of the delay, or as short a period as is reasonably possible.

17. Governing Law. The terms of this Sharing Agreement are to be construed according to the laws of the State of Oregon. Any claim, action, suit or proceeding ("claim") between the parties that arise from or relate to this Agreement or a Supplemental Agreement shall be brought and conducted solely and exclusively in a state or federal court in Lane County, Oregon. Except as provided in this section, neither party waives any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. **THE PARTIES, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS.** The parties acknowledge that this is a binding and enforceable agreement and, to the extent permitted by law, expressly waive any defense alleging that either party does not have the right to seek judicial enforcement of this Agreement or a Supplemental Agreement.