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AGENDA COVER MEMORANDUM

TO: Board of County Commissioners
DEPARTMENT: Lane County Sheriff's Office
PRESENTED BY: Judy Simpson
SUBJECT: **IN THE MATTER OF DELEGATING AUTHORITY TO THE COUNTY ADMINISTRATOR TO EXECUTE CAPE PERPETUA COMMUNICATION SITE LEASE AGREEMENT BETWEEN THE STATE OF OREGON, DEPARTMENT OF TRANSPORTATION AND LANE COUNTY**

I. MOTION

MOVE THAT THE BOARD OF COUNTY COMMISSIONERS DELEGATE THE AUTHORITY TO THE COUNTY ADMINISTRATOR TO EXECUTE THE COMMUNICATION SITE LEASE AGREEMENT FOR SPACE AT CAPE PERPETUA

ISSUE/PROBLEM

Should Lane County lease a site in order to obtain good radio coverage along Hwy 101.

II. DISCUSSION

A. Background

Lane County Sheriff's Office (LCSO) desires to install a radio communications repeater at Cape Perpetua in order to have good radio coverage along Hwy 101 on the north coast.

The State of Oregon, Department of Transportation (ODOT) owns a communication shelter and is willing to lease space to LCSO for their equipment.

Rental fee shall be \$750 per year.

Communication Site Lease shall be effective October 2006 and remains in effect for five years, with the option to renew for three additional 5-year terms.

B. Analysis

LCSO has never had good radio coverage along Hwy 101 on the north coast, and leasing space at Cape Perpetua will provide much better communications.

C. Alternatives/Options

1. Adopt the order to approve execution of the Communication Site Lease Agreement with ODOT.
2. Do not approve the order.

D. Recommendations

Recommends Board approval of proposed Board Order.

E. Timing

As indicated above.

III. IMPLEMENTATION/FOLLOW-UP

Intergovernmental agreement will be executed.

IV. ATTACHMENTS

1. Proposed Board Order No. _____.
2. Intergovernmental Agreement between ODOT and Lane County.

IN THE BOARD OF COUNTY COMMISSIONERS OF Lane County, OREGON

ORDER NO.

**)IN THE MATTER OF DELEGATING AUTHORITY
)TO THE COUNTY ADMINISTRATOR TO EXECUTE
)CAPE PERPETUA COMMUNICATION SITE LEASE
)AGREEMENT BETWEEN THE STATE OF OREGON,
)DEPARTMENT OF TRANSPORTATION AND LANE
)COUNTY**

THIS MATTER having come before the Board of County Commissioners for approval of Communication Site Lease Agreement between the State of Oregon, Department of Transportation and Lane County through the Lane County Sheriff's Office for building space at Cape Perpetua.

WHEREAS, Lane Manual 21.145 requires Board of Commissioner approval for execution of contracts exceeding three (3) years in length.

WHEREAS, the Communication Site Lease Agreement is effective October 2006 and will remain in effect for five years, with the option to renew for three additional 5-year terms.

IT IS HEREBY ORDERED that the Board of County Commissioners delegate authority to the County Administrator to execute Cape Perpetua Communication Site Lease Agreement between the State of Oregon, Department of Transportation and Lane County, in substantial conformity with the attached Exhibit "A".

Signed this day of , 2006

Chair, Lane County Board of Commissioners

COMMUNICATION SITE LEASE

THIS LEASE, made and entered into this 15th day of October, 2006, by and between the State of Oregon, Department of Transportation, hereinafter referred to as ODOT, and Lane County through the Lane County Sheriff's Office, a political subdivision of the State of Oregon, hereinafter referred to as Lessee;

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

- 1) **PREMISES.** ODOT hereby leases to Lessee the following described property, hereinafter referred to as the premises:

Rack space within a ODOT communication shelter for placement of one radio repeater and radio link and space for one battery backup system and repeater system. The shelter is located upon premises leased to ODOT by the United States Dept. of Agriculture, Forest Service, and is located in Section 2, Township 15 S, Range 12 WWM, Lincoln County, Oregon, commonly known as the Cape Perpetua Site.

- 2) **USE.** Lessee is authorized to use the premises for any lawful purpose in its capacity as a microwave radio station provider/operator. All permits and licenses and their associated fees, required to the construction and operation on the site, are the sole responsibility of Lessee. ODOT does not in any way warrant the suitability of the site for the purpose or use intended by Lessee.
- 3) **ACCESS.** Access to premises will be by a gravel access road across property of the United States Forest Service, Lessee will comply with any applicable conditions or restrictions placed upon such road by the USFS Waldport Ranger District. ODOT or USFS may, at their discretion, change or modify access routes but will not intentionally hinder Lessee's access to the premises. Lessee will limit access to the premises to its authorized employees, agents, and contractors, and only for purposes related to the construction, operation, and maintenance of its premises.
- 4) **SERVICES.** This agreement is for a communications shelter space lease only and does not include any other services. ODOT does not plow snow to the premises and will not provide any other services related to access control or utilities.
- 5) **TERM.** To have and to hold said premises for the term beginning October 15, 2006 through October 14, 2011, inclusive. Lessee has three five-year extension options, each to be executed in writing 90 days prior to the expiration date of the previous term. ODOT will approve these extensions based on its continued ownership of the property of which the premises are a portion and that the lease is not in default.
- 6) **CONSIDERATION.** The rental fee shall be \$750 per year. Rent shall be paid in advance and sent to:

**Oregon Department of Transportation
ISB Wireless Unit
455 Airport Rd SE Bldg C
Salem, Oregon 97301-4989**

- 7) **TERMINATION.** Lessee may terminate this lease by giving not less than 30 days written notice to ODOT. Rent shall continue to accrue until Lessee has vacated and restored the

Cape Perpetua/Lane Co. Sheriff Communication site lease.

premises as provided for in this agreement. If notice to extend is not received in accordance with Paragraph 5) above, this lease will be considered terminated. If after the expiration of the lease, Lessee retains possession of the premises (holdover), the lease shall continue in force and effect on a month to month basis, not to exceed six months. Rent for any holdover period shall be paid monthly, in advance, on a prorated basis, at the rate paid during the lease term. This holdover period shall continue until Lessee has signed a new lease with ODOT or vacated the premises, but not to exceed six months. ODOT may terminate this lease, by giving not less than 180 days written notice to Lessee, if ODOT determines the premises are needed for its purposes as an authorized Agency of the State of Oregon, or if ODOT does not retain ownership of the property of which the premises are a part.

- 8) **RESTORATION.** Lessee shall, at the expiration or termination of this agreement, restore the premises to as good condition as that existing at the time of Lessee's initial entry upon the premises under this lease or any preceding lease, damage caused by circumstances over which Lessee has no control excepted. Lessee may use the holdover period provided for in Paragraph 7), for purpose of completing this restoration and rent will continue to accrue.
- 9) **IMPROVEMENTS.** Any improvements or construction on or to the premises must be approved in writing by ODOT's authorized ISB wireless unit representative before any work begins. Any modification or alteration to the premises after initial construction must also be approved by ODOT.
- 10) **LESSEE'S LIABILITY COVERAGE.** Lessee is a self-insured public agency and as such, is subject to the applicable limitations of Article XI, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.270), limits presently at \$500,000 per occurrence. Property limits are \$50,000.
 - a) Lessee shall indemnify, defend and hold harmless ODOT, including its officers, divisions, agents and employees, from all claims, suits, or actions of any nature resulting from the acts or omissions of Lessee, its officers, contractors, employees or agents under this lease. Lessee's indemnity and hold harmless obligations are subject to the limitations of the Oregon Tort Claims Act and Article XI, Section 10 of the Oregon Constitution.
 - b) The liability insurance coverage required hereinabove shall name ODOT, including its officers and employees, as additional insurers, only with respect to negligent acts or omissions of Lessee, its officers, contractors, employees, or agents, under this lease.
- 11) **ODOT's LIABILITY COVERAGE.** ODOT, as an Agency of the State of Oregon, is self-insured for its property and liability exposures, as subject to the Oregon Tort Claims Act, ORS 30.260 through 30.300.
 - a) ODOT agrees to be responsible for any damage or third party liability which may arise from its use of the property of which the premises is a part, in its capacity as an Agency of the State of Oregon, subject to the limitations and conditions of the Oregon Clams 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 ODOT. ODOT shall not be required to indemnify or defend Lessee for any liability arising out of the wrongful acts of employees or agents of Lessee.
- 12) **WAIVER OF SUBROGATION.** Neither ODOT nor Lessee shall be liable to the other for any loss arising out of damage to or destruction of or access to the premises, when such damage or destruction is caused by any of the perils which are or could be included within or insured against by a standard form of fire insurance with extended coverage. All such claims against one another for any and all loss, however caused, hereby are waived. Said absence of liability shall exist whether or not the damage or destruction is caused by the negligence of either ODOT or Lessee or by any of its respective agents or employees. Each party shall

Cape Perpetua/Lane Co. Sheriff Communication site lease.

fully provide its own property damage insurance protection at its own expenses, and each party shall look to its respective insurance carriers for reimbursement of any such loss, and further, the insurance carriers involved shall not be entitled to subrogation under any circumstance.

- 13) **CASUALTY DAMAGE.** If the premises, or access to the premises, or improvements thereon, are damaged or destroyed by fire or other casualty to such a degree that they become unusable for the purpose set forth in this agreement, Lessee may elect to terminate this lease without further obligation. Lessee shall not be entitled to a refund of prorated rents if the premises are destroyed by fire or other casualty.
- 14) **INTERFERENCE.** Lessee agrees not to erect or install any structure, equipment, or improvement that interferes with any existing operation on the property containing the premises at the time this agreement is entered into.
- 15) **HAZARDOUS SUBSTANCE CONTAMINATION.** ODOT certifies that, to the best of its knowledge, there is no hazardous substance contamination that would interfere with Lessee's operation on the premises. Lessee shall remediate and hold ODOT harmless from any hazardous substance contamination that may occur as a result of the construction, installation, operation, and/or maintenance of Lessee's facilities, to the extent allowed by law. "Hazardous Substances" as used here is defined according to Oregon Law and regulations.
- 16) **QUIET ENJOYMENT.** ODOT warrants that they have a current lease with the U. S. Forest Service for the premises, and rights of ingress and egress, and warrants and covenants to defend Lessee's use and enjoyment of said premises against third party claims.
- 17) **SUCCESSOR AND ASSIGNS.** This lease may not be assigned in whole or in part by Lessee without prior written consent of ODOT, which consent will not be unreasonably withheld. Additionally, Lessee may, upon notice to ODOT, mortgage or grant a security interest in any of Lessee's equipment, inventory, or other property, and may assign such equipment, inventory or property to any such mortgagees or holders of security interest including their successors or assigns (hereinafter collectively referred to as "Mortgagees"). Mortgagees shall have the same right to cure any default as Lessee except that the cure period for any Mortgagees shall not be less than ten (10) days after the receipt of the default notice.
- 18) **NOTICES.** All notices/correspondence shall be in writing, and shall be addressed as follows (or to such other address as either party may designate from time to time by notice or correspondence to the other).

The State (for notice) is:

**ODOT Right of Way Manager
355 Capitol St. NE, Room 417
Salem, OR 97301-3871
Phone: (503) 986-3636
Fax: (503) 986-3625**

The Lessee (for notice) is:

**Lane County Sheriff's Office
Attn: David Kemp
125 E. 8th Avenue
Eugene, OR 97401
Phone: 541/682-8595
Fax: 541/682-8596**

Cape Perpetua/Lane Co. Sheriff Communication site lease.

19) COMPLETE AGREEMENT.

THIS CONTRACT CONSTITUTES THE ENTIRE CONTRACT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE, OR TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. LESSEE, BY THE SIGNATURE BELOW, HEREBY ACKNOWLEDGES READING THIS CONTRACT UNDERSTANDING IT AND AGREEING TO BE BOUND BY ITS TERMS AND CONDITIONS.

IN WITNESS HEREOF, the parties have executed this lease:

State of Oregon, by and through its Department of Transportation

Deolinda G. Jones
Right of Way Section Manager

Date

Lane County

William A. Van Vactor
County Administrator

Date

Russel E. Burger
Sheriff

Date

Cape Perpetua/Lane Co. Sheriff Communication site lease.