

W. G. E. I.

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
RADIO SITE LEASE AGREEMENT BETWEEN
DOUGLAS COUNTY AND LANE COUNTY**

I. MOTION

MOVE THAT THE BOARD OF COUNTY COMMISSIONERS DELEGATE THE
AUTHORITY TO THE COUNTY ADMINISTRATOR TO EXECUTE THE RADIO
SITE LEASE AGREEMENT

ISSUE/PROBLEM

Lane County desires to lease space from Douglas County for better communications.

II. DISCUSSION

A. Background

Douglas County recently completed construction of a new building and installation of a communication tower at Roman Nose.

Lane County (Sheriff's Office) desires to lease space for communication purposes at Roman Nose from Douglas County.

The new building provides a more secure environment, and the tower is much taller than the current building and tower LCSO rents at the Roman Nose site.

The lease agreement has an initial term of five (5) years beginning upon execution, with an option to renew for an additional five (5) years.

Annual rent shall be \$3,265 with an annual rate increase of 2%. The total 5-year cost will be approximately \$16,990.

B. Analysis

A more secure building and taller tower better meets the needs of the communication requirements of Lane County (Sheriff's Office).

C. Alternatives/Options

1. Adopt the order to approve execution of the Lease Agreement with Douglas County.
2. Do not approve the order.

D. Recommendations

Recommends Board approval of proposed Board Order.

E. Timing

As indicated above.

III. IMPLEMENTATION/FOLLOW-UP

Lease agreement will be executed.

IV. ATTACHMENTS

1. Proposed Board Order No. _____.
2. Radio Site Lease Agreement between Douglas County and Lane County.

RADIO SITE LEASE AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 2006, by and between Douglas County, hereinafter referred to as "LESSOR" and Lane County through Lane County Sheriff's Office, hereinafter referred to as "LESSEE."

RECITALS

WHEREAS, LESSOR is possessed of a certain real property and tower site commonly known as Roman Nose, Douglas County, Oregon, more particularly described as: _____.

WHEREAS, LESSEE desires to lease space on Lessor's tower sufficient for installation of Lessee's antennas and space in Lessor's equipment building for housing Lessee's equipment;

WHEREAS, LESSOR is willing to lease said space to LESSEE on the terms and conditions hereinafter set forth, the parties have entered into the following:

AGREEMENT

1. LEASE OF PROPERTY. In consideration of the terms, covenants, and conditions herein contained, LESSOR does hereby rent to LESSEE the right to use a portion of the real property described in the Recitals above in order that LESSEE may use the same for the use of its transmission equipment. In addition LESSEE shall rent space in the appurtenant structures owned by LESSOR. All prior lease agreements between LESSOR and LESSEE will terminate with the execution of this agreement and any previous rent paid by LESSEE will be prorated according to Paragraph 2. "Terms of Rent" below.

Pursuant to this Lease, LESSEE shall be allowed space for one rack for mounting of Lessee's equipment in LESSOR's existing racks, and access to the existing antenna infrastructure, as well as existing emergency power. LESSOR makes no claims to the availability or reliability of emergency power, and will not be held liable for any failure of said emergency power. LESSEE shall have the ongoing right to upgrade its equipment from time to time at LESSEE's sole expense. The installation of the equipment shall be at LESSEE's expense.

LESSEE will install their own antenna equipment. LESSEE must obtain written permission from LESSOR before installation of LESSEE's own antenna infrastructure may occur. This permission may not be duly withheld by LESSOR. LESSEE shall be liable for any damage which it may cause in the installation process and shall remedy same, at its own expense.

2. TERMS OF RENT. The lease shall be for a 5-year term beginning on the ____ day of _____, 2006. The rent for the first year of this five year term shall be as set forth in Attachment A, attached hereto and hereby incorporated by reference. Rent will be paid within thirty (30) days following receipt of an invoice.

3. ADJUSTMENTS TO RENT. The annual rental rate shall be adjusted at the completion of every year by increasing the previous year's rent by 2%.

4. EMERGENCY OPERATIONS AND FUTURE USE REQUIREMENTS. During the term of this Lease, LESSEE shall have the right at its discretion to install other communications equipment on a temporary, emergency or permanent basis at the Roman Nose site. This right shall extend for a period of ninety days from the install date, at which time LESSEE must either remove the new equipment entirely or start paying the additional monthly fees listed in Attachment A if the LESSOR agrees to lease the additional space. During this ninety-day period, LESSEE shall operate their equipment utilizing their antenna duplexer, antenna cable and antenna. If LESSEE requires the use of LESSOR's antenna combining system, then LESSEE will enter into a separate, short-term rental agreement for the use of same, depending on availability of the system. LESSEE

shall adhere to industry standard engineering practices for proper installation and if any harmful interference occurs to existing users, LESSEE shall mitigate that interference, or cease and desist all operations at that site until interference is corrected

5. **TERMS OF RENEWAL.** If the lease has not been in default, LESSEE shall have the option to renew this Lease for an additional 5-year term, which shall be exercised by written notice to LESSOR not later than ninety (90) days prior to the end of the expiring term. The terms and conditions of the Lease for the renewal term shall be identical with the original term .

6. **ACCESS TO PREMISES AND EQUIPMENT.** LESSEE agrees to maintain reasonable security on the building allowing only responsible persons on the property. Such persons shall be instructed not to interfere with the existing equipment and to in no way cause damage to either LESSOR's property or to property of any of LESSOR's other Lessees. LESSEE shall notify the appropriate party or parties that LESSOR designates concerning said changes. LESSOR shall not interfere with LESSEE's installed equipment, including intentional disconnection of the power or antenna system without a minimum of one (1) hour prior notification to and authorization from LESSEE's Radio Network Department or Radio Dispatch Center Supervisor. At the time of notification, radio channel(s) and location affected must be provided. LESSEE's equipment shall not be moved from its original installation location by LESSOR or LESSOR's tenants without written notification to and written approval from LESSEE's Radio Network Department. LESSOR agrees to maintain locked steel entry doors and secure all other building entry and exit points for security purposes. If the building security or steel doors become damaged, LESSOR shall make repairs or affix alternate security locking devices within twelve (12) hours of discovery or notification, except during inclement weather such as snow, preventing safe travel to the facility. LESSOR shall be held harmless in the event the site is vandalized or broken into and LESSEE's equipment is lost, stolen or damaged.

7. **POSTING.** LESSEE shall post, in an appropriate and visible place outside the transmitter housing, copies of all documents of authorization from the Federal Communications Commission (FCC) for the transmitter(s) within said LESSOR's building. LESSOR shall ensure all other building tenants affix, in an appropriate and visible place outside their transmitter housing, copies of all documents of authorization from the FCC for their transmitter(s). In lieu of this, all pertinent documents will be on file at Douglas County Sheriff's Office.

8. **LIABILITY.** Except for its own acts, LESSOR shall not be held liable to LESSEE or to any other party for any loss or damage, regardless of cause. Specifically, but without limiting the generality of the foregoing, LESSOR shall have no liability for any loss or damage due to personal injury, property damage, libel, slander, or imperfect or unsatisfactory communications experienced by LESSEE for any reason whatsoever. Subject to the limitations of the Oregon Tort Claims Act and the Oregon Constitution, LESSEE will indemnify and hold harmless LESSOR from any loss, damage or liability, consequential or otherwise, occasioned by, growing out of or arising or resulting from acts of negligence by LESSEE, its agents or employees.

9. **IMPROVEMENTS.** Upon expiration or termination of this Lease, the site remains the property of LESSOR. LESSEE shall have a reasonable time in which to remove any radio equipment. LESSEE agrees not to make or cause to have made any alterations, changes or improvements to or upon the premises except as expressly authorized herein. Upon the termination of this Lease, all changes, alterations, additions, repairs or improvements to or upon said building shall become the property of LESSOR without liability on its part to pay for same, except, however, that any trade fixtures, shelving, counter, office equipment or other appliances placed in said building may be removed by LESSOR during the term hereby created.

10. **TOWER CONTRACTORS.** LESSEE shall permit only qualified contractors to climb and service equipment placed on the transmission towers. LESSEE will provide notification in writing to LESSOR of pending work to be performed on towers and the name of the contractor who will perform the work. The

insurance carried by the contractor shall protect LESSOR, LESSEE and other tenants and their equipment and shall be of an adequate level as designated by LESSOR. A copy of the insurance will describe the limits that are in force at the time, the work that will be performed and shall be provided to LESSOR before the work may be commenced.

11. **INSURANCE REQUIREMENTS OF LESSEE.** This lease is made upon the expressed condition that LESSOR is to be free from any liability or claims for damages by reason of any injury to any person or persons or to property of any such kind or character whatsoever, including LESSEE, except any such damage as may be caused by LESSOR. Subject to the limitations of the Oregon Tort Claims Act and the Oregon Constitution, LESSEE hereby covenants and agrees to indemnify and hold harmless LESSOR from any such liability, loss, cost or obligations. LESSEE further states that it is self-insured under provisions of ORS 30.260 through 30.300 for all liabilities, including personal injury and property damage. LESSEE further states that it is insured for liabilities the limits of which for this coverage are \$200,000 for bodily injury, \$50,000 for property damage, and \$500,000 combined total for a single occurrence. This coverage will remain in effect during installation and maintenance on the tower, which shall be performed by licensed tower contractors carrying insurance levels of \$1,000,000. Neither party shall be liable to the other for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with an extended coverage endorsement if such insurance was obtainable at the time of such loss or damage.

12. **HOLD HARMLESS CLAUSE.** Subject to the limitations of the Oregon Tort Claims Act and the Oregon Constitution, LESSEE shall save LESSOR harmless from any and all claims or demands in any sort and description which may arise from its occupancy of the property and the conduct of its business thereon, including any possible claims resulting from failure to comply with any laws, ordinances or regulations respecting the conditions, use occupancy, sanitation or safety of the leased premises or any part thereof. Any additions, alterations or improvements to the leased premises required by statute, ordinance, regulation or the rules of proper governmental authority shall be furnished and installed by LESSEE at its sole cost and expense, and if such changes are required as a result of Lessee's occupancy and the conduct of its business. LESSOR shall keep the tower facilities insured and shall maintain the tower facilities in good repair. LESSOR shall not be liable to LESSEE, however, for damages that result from acts of God that cause damage to the property of LESSEE or interruption of Lessee's broadcast operations.

13. **TECHNICAL OPERATIONS.** LESSEE shall cooperate with LESSOR and any other tenants on LESSOR's premises in the installation of all transmitting and receiving equipment so as to avoid interference with other tenants which might cause another tenant to be unable to transmit or receive. The construction, installation and maintenance of all equipment shall be performed to standards set by the Federal Communications Commission, good engineering and electrical practice and LESSOR. LESSOR shall ensure other building tenants operate their transmitters and electronic equipment with the same technical standards set forth in this agreement.

14. **ELECTRICAL.** Generator electrical power to and including any backup electrical power if installed shall be provided to LESSEE sufficient to operate Lessee's equipment. LESSOR does not guarantee quantity and or quality of said power. The cost, unless stated otherwise in this document or attachments shall be included in the monthly rent. All provisions of this agreement apply to generator electrical as well as backup power if installed.

15. **DEFAULT, LATE CHARGES, TERMINATION.** If the rent provided for in this Lease remains unpaid for a period of ninety (90) days after it has become due and payable on any installment, then without additional notice, a late charge of 5% per annum shall immediately be added. In the event the rent remains unpaid for ninety (90) days after it becomes due and payable, LESSOR shall give written notice to LESSEE and LESSEE shall have thirty (30) days to pay said Lease. Following this thirty (30) day period, and without further notice, this Lease shall be in default and shall terminate. LESSOR shall have the authority to take

possession of the leased premises and to hold possession of any or all of Lessee's property until the resolution of rent. LESSOR shall have any other remedies as may be available at law or in equity.

16. **TERMINATION.** In the event of damage, destruction, or condemnation of the Premises or any part thereof, which renders the premises unusable or inoperable, both LESSOR and LESSEE shall have the right, but not the obligation, to terminate this Agreement and all its duties and obligations hereunder, by giving written notice within thirty (30) days after such damage, destruction, or condemnation. The parties may jointly agree to terminate this agreement and upon the terms of such termination. Either party may terminate this agreement at any time for any reason or for no reason with no liability, except compensation for services previously provided, by giving the other party one hundred and ninety (190) days written notice. After any termination by either party, LESSEE shall remove their equipment within two hundred and thirty five (235) days of the original written notice to terminate, weather permitting. LESSEE may leave antenna cables in place when vacating if so desired. Removal delay of equipment due to inclement weather shall not be cause for additional rent charged to the LESSEE. Weather delay would be any reason caused by weather to prevent safe travel to the site location by means of normal 4-wheel drive vehicle. Each weather delay will provide the LESSEE an additional twenty (20) days to remove associated equipment. :

17. **MAINTENANCE.** The maintenance and repairs of the tower and the exterior of the equipment building shall be the responsibility of the LESSOR, unless the tower is owned by another owner(s). The maintenance and repairs of LESSEE's equipment, including that which is hung on LESSOR's tower(s), shall be the responsibility of LESSEE.

18. **WAIVER.** No waiver of any breach of any term, covenant or condition of this Agreement shall be deemed the waiver of any subsequent breach of the same or any other term or condition hereof.

19. **ATTORNEY FEES.** The parties shall exert every effort to cooperatively resolve any disagreements they may have under this Agreement. In the event that the parties alone are unable to resolve any conflict under this Agreement, they agree to 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 shall be followed to its conclusion prior to either party seeking relief from the court, except in the case of an emergency.

If the dispute remains unresolved through mediation, the parties may agree in writing to submit the dispute to arbitration using such arbitration process as they may choose at the time and which includes the following conditions:

- The location of the arbitration shall be in Douglas County, Oregon;
- Each party shall bear its own costs (except arbitration filing costs), witness fees and attorney fees;
- Arbitration filing costs and any arbitrator's fees will be divided equally between the parties; and
- Judgment upon award rendered by the arbitrator may be entered in a court in Douglas County, Oregon.

In the event any suit, action or proceeding is instituted on this Lease, the prevailing party shall be entitled in addition to the costs and disbursements provided by law to such a sum as the court may adjudge reasonable as an attorney fee in said suit, action or proceeding or any appeal thereof.

20. **BINDING ON HEIRS.** This agreement shall be binding upon the heirs, personal representatives and assigns of the parties hereto.

21. **OREGON LAWS.** The terms of this agreement shall be so construed according to the terms of the substantive (rather than choice-of-law) laws of the State of Oregon.

22. NOTICE. Any notice required or permitted to be sent hereunder shall be deemed sent when it is deposited in the United States Mail, postage prepaid, addressed to the other party at the following address, or at a new address, if such new address has been given to the other party:

Douglas County Communications Department
1036 S. E. Douglas Avenue
Roseburg, Oregon 97470

Lane County Sheriff's Office
125 E. 8th Avenue
Eugene, OR 97401

23. EXPIRATION. LESSOR and LESSEE mutually agree that time is of the essence and that LESSEE must execute complete applications to the Federal Communications Commission and all other Governing bodies as needed to relocate facilities to the tower of LESSOR. Failure by LESSEE to take said action shall immediately terminate this agreement without penalty to either LESSEE or LESSOR and relieve both parties from the terms and conditions herein.

24. TOTAL AGREEMENT. It is expressly understood that this agreement contains all the terms, covenants, conditions and agreements between the parties hereto relating to the subject matter of this Agreement, and that no prior agreements or understandings, oral or written, pertaining to the same shall be valid or of any force or effect, and that the terms, covenants, conditions, and provisions of this agreement cannot be changed, altered, or modified or added to except in writing by all of the parties hereto.

THIS INSTRUMENT DOES NOT GUARANTEE THAT ANY PARTICULAR USE MAY BE MADE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT. LESSEE SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY ABOVE USE.

DOUGLAS COUNTY

LANE COUNTY

By _____
Chair
By _____
Commissioner
By _____
Commissioner

Date

William A. Van Vactor
County Administrator

Date

REVIEWED AS TO CONTENT

Communications Director
Date _____

Russel E. Burger
Sheriff

Date

REVIEWED AS TO FORM

Assistant County Counsel
Date _____

APPROVED AS TO FORM
Date _____ Lane County

OFFICE OF LEGAL COUNSEL

ATTACHMENT A

**Recurring Monthly Costs, Roman Nose
Communications Site
Lane County Sheriff's Office
8-Nov-05**

Leased Item	Cost	Note	Count	Cost
Ground Space	\$2 per square foot per month		0	\$0.00
Power				
DC Power	\$0.12 / Watt / month		0	\$0.00
AC Power	\$0.069 / Watt / month	Actual recurring power charge to be based on providing tenant with one 15A 120VAC circuit	1800 W	\$124.20
Special Power Charge for Elkton, Red Butte, Roman Nose and Tiller Sites Only				
In-building leasee	\$41.66 / month		1	\$41.66
Out-of-building leasee	\$83.33 / month		0	\$0.00
Rack Space				
Individual Racks	\$41.66 / month / rack or cabinet		1	\$41.66
Separate Room in Building	\$3.50 per square foot per month	12' by 15' Room Proposed	0	\$0.00
Antenna System Use	\$20.83/ transmitter / month		0	\$0.00
Data Transport				
Entire T1 Circuit	\$102.68 + \$5.92 / air mile / month		0	\$0.00
Individual Circuit on T1	\$8.56 + \$0.49 / air mile / month	Circuit transport charge to be negotiated with Douglas County and paid direct or through Ireland. Cost to be in addition to charges shown here and is estimated below.	0	\$0.00
Tower Space for Dish Antenna	\$4.17 + \$0.08 / feet Above Ground Level / month / feet of occupied space (diameter or length of antenna).		0	\$0.00
Tower Space for Whip Antenna	One-fourth of \$4.17 + \$0.08 / feet Above Ground Level / month / feet of occupied space (diameter or length of antenna).	15 foot UHF Receive antenna at top	1	\$36.17
Tower Space for Whip Antenna	One-fourth of \$4.17 + \$0.08 / feet Above Ground Level / month / feet of occupied space (diameter or length of antenna).	15 foot UHF Transmit antenna 25' below top	1	\$28.37
				\$272.06
Additional Non-Recurring Costs				
T1 Circuit	One time installation fee of \$500		0	\$0.00
Channel card	One-time installation fee per channel of \$1,250		0	\$0.00
Total non-recurring				\$0.00

