

EQUIPMENT SPACE LEASE AGREEMENT 5011

This lease is made and entered by and between and among the State of Oregon acting by and through its OREGON DEPARTMENT OF CORRECTIONS, hereinafter called ("Lessor") and the City of Salem, hereinafter called ("Lessee") effective as of the date that all requirements have been met and all required signatures have been provided.

RECITALS

By the authority granted in ORS 190.110 and 283.110, state agencies may enter into agreements with units of local government or other state agencies for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.

WITNESSETH

Lessor owns a communications site at the Oregon Department of Corrections' Central Distribution Center located at 3601 State Street, Salem, Oregon, 97301. A tract of land in lot 5 "Marion Gardens" in the southwest quarter of Section 30, township 7 South, Range 2 West, Willamette Meridian, Marion County, Oregon. Said tract being more particularly described as follows:

Commencing at a point on the south line of lot 5 "Marion Gardens", S89°32'49"E 440.35 feet from the southwest corner thereof; thence NO°22'49"W 82.90 feet, parallel with the west line of lot 5, to the true point of beginning; thence continuing NO°22'49"W 50.00 feet; thence N89°37'11"E 50.00 feet; thence SO°22'49"E 50.00 feet; thence S89°37'11"W 50.00 feet to the true point of beginning. Hereinafter the ("Premises").

Lessor, for and in consideration of the covenants, conditions, agreements, and stipulations of Lessee contained in this lease, hereinafter called (the "Lease"), will allocate and lease space in its accessory structures for Lessor's radio equipment located on the premises, together with the right of access for Lessor's uses from the nearest public right of way to the Premises set forth in the Access section of this Lease.

In consideration of the leasing of the Premises and of the mutual agreements hereinafter contained, the parties hereto expressly covenant and agree as follows:

1. **TERM.**

The Term of this Lease is three years, beginning on the date all required approvals and signatures have been received (the "Commencement Date"), unless sooner terminated as hereinafter provided (the "Term").

- (a) Option to Extend. There is no option to extend the Lease.

2. **Rent.**

- (a) Total annual rent to be paid to Lessor will be \$0.00. Lessee will be invoiced for the first year of this Lease upon signing. Thereafter, Lessor will invoice Lessee annually during the month of May. Annual rent payments shall be made out to Oregon Department of Corrections and sent to the following address:

**DOC Accounts Receivable
2575 Center Street NE
Salem, OR 97301-4667**

3. **Notices.**

- (a) Any notice required or permitted to be sent under the Lease will be deemed sent when it is deposited in the United State Mail, postage prepaid, addressed to the other party or parties at the following addresses, or new addresses, if such new addresses have been given to the other party or parties. Address changes and contact information may be submitted using United States Mail, email, or facsimile, if appropriate.
- (b) Either Lessor or Lessee may change the place for the giving of notice to it by thirty days' prior written notice to the other as provided herein.
- (c) The Lessor and Lessee contacts identified in this Lease are:

If to Lessor: Wayne Siver, CSA III
Wireless Communications Unit
3601 State Street NE
Salem, OR 97301
Office: (503) 378-8104
Cell: (503) 580-6304
Fax: (503) 373-7888
Wayne.A.Siver@doc.state.or.us

Lessor's 24 Hour Contact
Wayne Siver, CSA III
Wireless Communications Unit
3601 State Street NE

Salem, OR 97301
Office: (503) 378-8104
Cell: (503) 580-6304
Fax: (503) 373-7888
Wayne.A.Siver@doc.state.or.us

If to Lessee: WVCC Project Manager
555 Liberty St.
RM P-107
Salem, Or 97301
drice@cityofsalem.net

4. **Severability.**

- (a) The agreements, conditions, covenants and terms, contained herein and to be performed by the parties, are separate and independent; and the performance of each and every one is not conditional or dependent upon performance of any other, unless specifically so stated with the language of the provision. Any provision of the Lease which shall prove to be invalid, void or illegal shall in no way impair or invalidate any other provision hereof and such provisions shall remain in full force and effect.

5. **Representations and Warranties.**

- (a) Lessee's Obligations:
- (A) Lessee shall provide Lessor approved lightning and surge protection devices on any of Lessor's cables entering or located on the exterior of Lessor's facilities. Lessor reserves the right to specify the placement and location of lightning and surge protection devices.
 - (B) Lessee shall only utilize double-shielded, double braided, or helix coaxial cable from radio equipment through isolators, band pass devices, and duplexers to jacketed heliax transmission line. **No RG-8 type cable** shall be allowed at the Premises.
 - (C) Radio equipment must be housed in relay rack(s) and be connected to the Premise's earth ground system.
 - (D) Lessee agrees that all radio equipment, including associated cables, wiring and auxiliary equipment shall be maintained in a workmanlike, professional, and permanent manner, and that all such installations shall be electrically and mechanically sound.
 - (E) Lessee shall not tamper with thermostats, timers, and control devices at the Premises.

- (F) Lessee shall remove waste material or surplus equipment from the Premises.
- (G) Lessee shall not leave any gates, locks, or doors in an open state and unattended.
- (H) Lessee shall utilize a portion of one rack for its equipment.
- (I) Lessee shall utilize Lessor's generator for power.
- (J) Lessee shall, at its own expense and without contribution from Lessor, keep and maintain its own equipment in good condition, reasonable wear and tear and damage from the elements accepted.
- (K) Lessee is responsible for all applicable permits, easements, or other instruments required for ingress and egress, or to operate its equipment on the Premises.
- (L) Lessee shall use the Premises for the maintenance and use of the radio equipment and for no other purpose.
- (M) Lessee shall be responsible for payment and acquisition of any permits solely required by Lessor.
- (N) Lessee shall not relocate its equipment from its/their assigned location(s) without a minimum of thirty days prior notification and written approval of Lessor.
- (O) Lessee shall at all times comply with all future modifications which Lessor may deem reasonable and necessary to insure conditions of the Premises and radio compatibility with other companies or Lessor.
- (P) Lessee shall repair and pay, within thirty days of receipt of invoice, for all damage to property of Lessor resulting from acts or omissions of Lessee.
- (Q) No new improvements shall be placed in or on the Premises, and no alterations shall be made to existing improvements on the Premises without the prior written consent of Lessor. All such improvements made shall be done at the sole expense of Lessee.
- (R) Lessee is duly organized, validly existing, and in good standing and has the right, power, and authority to enter into and perform its responsibilities under this Lease.

- (S) Lessee understands that when delivered and executed, the Lease is a valid and legally binding obligation of Lessee enforceable in accordance with its terms.
 - (T) Lessee's execution and performance of this Lease does not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, or other agreement binding on Lessee.
- (b) Lessor's Obligations:
- (A) Lessor shall allow a portion of one rack for Lessee's radio equipment.
 - (B) Lessor shall provide space for Lessee's other peripherals.
 - (C) Lessor shall provide for all utilities associated with the use of Lessee's equipment.
 - (D) Lessor shall, at its own expense and without contribution from Lessee, maintain the Premises and access thereto in good and tenantable condition, subject to reasonable wear and tear and damage from the elements.
 - (E) Lessor acknowledges it is the legal lessee of the Premises.
 - (F) To the best of Lessor's knowledge, the Premises are in full compliance with applicable state and federal environmental laws and regulations affecting it.
 - (G) Lessor guarantees the Premises are not encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record, which would adversely affect the permitted use and enjoyment of the Premises under this Lease.
 - (H) When delivered and executed, the Lease is a valid and legally binding obligation of the Lessor enforceable in accordance with its terms.
 - (I) The individual(s) signing this Lease on behalf of Lessor has the authority to enter into the Lease on behalf of Lessor.

6. Environmental

- (a) Lessee shall not (a) install facilities for or operate on Premises a gasoline supply station or gasoline pump; (b) allow vehicles used or designed for the transportation of gasoline, petroleum products or explosives on Premises; (c) store bulk gasoline, petroleum products or explosives on Premises. Except with the

prior written approval of Lessor, which approval may be withheld at Lessor's sole discretion, Lessee shall not cause, permit, or suffer any "Hazardous Material" (defined below) to be brought upon, treated, kept, stored, disposed of, discharged, released, produced, manufactured, generated or used upon, about or underneath the Premises or any portion thereof by Lessee, its agents, employees, contractors, or invitees, or any other person. Any request for written consent by Lessee shall be in writing and shall demonstrate to the satisfaction of Lessor that the Hazardous Material is necessary to the business of Lessee, and will be stored, used and disposed of in a manner that complies with all federal, state or local laws, statutes, rules, regulations, ordinances, orders, permits or licenses applicable to the Hazardous Material. Any such approved use of Hazardous Materials shall continue during the term of this Lease to comply with all federal, state, and local laws, statutes, rules, regulations, ordinances, orders, permits or licenses applicable to Hazardous Materials.

- (b) "Hazardous Material" is defined for purposes of this Lease as any substance:
 - (A) The presence of which requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy or common law; or
 - (B) Which is or becomes defined as a "hazardous waste", "hazardous substance", pollutant, or contaminant under any federal, state or local statute, regulation, rule or ordinance or amendments thereto including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act (42 USC 9601 et seq.) and/or the Resource Conservation and Recovery Act (42 USC 6901 et seq.); or
 - (C) Which is or becomes defined as toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and or becomes regulated by any governmental authority, agency, department, commission, board, agency, or instrumentality of the United States, the State of Oregon, or any political subdivision thereof.
- (c) Lessor guarantees there are no threatened or pending proceedings or actions by any governmental entity under any state, federal, or local laws regulating the discharge of hazardous or toxic materials or substances into the environment.
- (d) Lessor has not stored, produced, or disposed of any hazardous or toxic material on the Premises.

7. Governmental Approvals.

- (a) Lessor and Lessee agree that each party's ability to use the Premises is contingent upon the suitability of the Premises for Lessor's and Lessee's intended use and

both party's ability to obtain and maintain all licenses, permits, approvals or other relief required of or deemed necessary or appropriate by regulatory agencies for its use of the Premises, including, without limitation, zoning variances, zoning ordinances, amendments, special use permits, construction permits, Federal Communications Commission (FCC), and other approvals required by any level of government (collectively, the Government Approvals). To the extent that the application or request for Government Approvals must be initiated or executed by either Lessor or Lessee, each party shall cooperate with the other and shall, as necessary and appropriate, support the application for any required Government Approvals, when requested by Lessor or Lessee in writing, including signing applications and granting written consents as needed.

8. Contribution

- (a) Both Lessor and Lessee agree to notify the other party in the event it receives notice or knowledge of any claims arising out of the performance of, or the agencies' activities under this Lease.
- (b) Both Lessor and Lessee understand that Lessor is insured with respect to tort liability by the State of Oregon Insurance Fund, a statutory system of self-insurance established by ORS 278, and subject to the Oregon Tort Claims Act (ORS 30.260-30.300). Lessee, as a government body, may fulfill the insurance obligations listed above through a program of self-insurance, provided that the self-insurance program complies with all applicable laws and provides insurance coverage equivalent to both type and level of coverage to that listed above. Both Lessor and Lessee agree to accept that coverage as adequate insurance of the other party with respect to personal injury and property damage.

9. Indemnity

- (a) Subject to the limitations of Article XI, Section 7 of the Oregon Constitution and the Oregon Tort Claims Act, Lessee shall save and hold harmless, and indemnify Lessor from any and all claims, suits, or actions at law or in equity, including attorney's fees and court costs, which may arise out of any injury to or death of persons or damages to property caused by, arising from, or in any manner connected with the exercise of any right, privilege or obligation granted or conferred by this Lease.

10. Condemnation

- (a) If during the Term there is a taking or damaging of all or any portion of the Premises by the exercise of any governmental power, whether by legal proceedings or otherwise, or a transfer by Lessor either under threat of condemnation or while legal proceedings for condemnation are pending (a "Condemnation), such that there can be no reasonable use of the Premises by Lessee, this Lease will terminate on the date the government agency has the right

to possession of the property being condemned. That portion of the award constituting compensation for the taking of Lessor's interest in the Premises must be paid to Lessor, but any portion of the award attributable to Lessee's sub-leased interest must be paid to Lessee.

- (b) If during the Term there is a partial taking of a part of the Premises by Condemnation, and Lessor and Lessee determine that a reasonable use can be made of the Premises, then this Lease will remain in full force and effect. To the extent where there are restoration costs associated with such taking, the condemnation award must be applied to pay for these restoration costs.

11. Casualty

- (a) If any part of the Premises is damaged by fire or other casualty so as to render the Premises unsuitable, in Lessor's sole determination, then Lessor may terminate this Lease by providing written notice to Lessee, which termination will be effective as of the date of such damage or destruction. If notice of termination is given, or if Lessor undertakes to rebuild the Premises, Lessor agrees to use reasonable efforts to permit Lessee to place temporary transmission and reception facilities on the Premises at no additional Rent until such time as Lessor is able to secure a replacement transmission location or the reconstruction of the Premises is complete.

12. Limitation of Liability

- (a) Notwithstanding anything to the contrary in this Lease, Lessor and Lessee each waive any claims that each may have against the other with respect to consequential, incidental, or special damages. Further, Lessor and Lessee shall take reasonable precautions to protect the other party's equipment or personal property located on the Premises, but neither Lessor or Lessee is responsible for damage to, or loss of, any equipment or personal property of the other party for any reason unless the loss is caused by the negligence or wrongful acts of the non-owning party.

13. Amendment and Waiver

- (a) This Lease cannot be amended, modified, or revised unless done so in writing and signed by an authorized agent of Lessor and an authorized agent of Lessee. No provision may be waived except in a writing signed by both parties.

14. Mediation

- (a) Lessor and Lessee shall cooperate to resolve any disagreements under the Governing Documents. If Lessor and Lessee are unable to resolve a conflict, they shall present their disagreements to a mutually agreeable mediator for mediation. Lessor and Lessee shall bear their own costs for mediation and shall share the cost equally for the mediator. This procedure must be followed to its conclusion prior

to either Lessor or Lessee seeking relief from the court, except in case of emergency.

15. **Default.**

The following shall be events of default:

- (a) Lessee fails to comply with any term or condition or to fulfill any obligation of this Lease within ten days after written notice by Lessor specifying the nature of the breach with reasonable particularity. If the breach is of such a nature that it cannot be completely remedied within a ten day period, this provision shall be complied with if Lessee begins correction of the default within the ten day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

16. **Termination.**

The Lease may be terminated as follows:

- (a) In the event of a default the Lease may be terminated. Lessee shall, by the date of said termination, peaceably and quietly leave, vacate completely and surrender Premises, including those improvements and fixtures placed or made thereon by Lessee that belong to Lessor, in a good and sightly condition, reasonable use and wear, damage by earthquake, fire, public calamity, the elements, acts of God, or other circumstances over which Lessee has no control, excepted. If Premises are not voluntarily surrendered, Lessor may, without notice, re-enter and take possession of the Premises and may, with the use of reasonable force, and with or without legal process, evict and dispossess Lessee from Premises.
- (b) In the event of termination or retaking of possession following default, Lessor shall be entitled to recover immediately, without waiting until the due date of any future rent or until the date fixed for expiration of the Lease term, the following amounts as damages: (1) The loss of rental from the date of default until a new lessee is secured, or until the termination of the Lease, whichever is sooner; and (2) The reasonable costs of reentry and re-letting including without limitation the cost of any cleanup, refurbishing, removal of Lessee's property, or any other expense occasioned by Lessee's default, including but not limited to, any repair costs, attorney's fees, and court costs.
- (c) Lessor may terminate this Lease at any time with thirty days' prior written notice.
- (d) This Lease may be terminated at any time by written consent of both Lessor and Lessee.

- (e) Lessee may terminate this Lease with thirty days written notice that they no longer have need for the site and will remove all radio equipment and antenna systems that Lessee has placed on the Premises at its own expense.
- (f) Immediately, or at such later date as agreed upon by Lessor and Lessee upon written notice from Lessor, if Lessee is (1) unable to obtain or maintain, any required Government Approval necessary for the operation of the Premises as now or hereafter intended by Lessee; or (2) Lessor determines in its sole discretion that the Premises do not meet Lessor's requirements for continued use, as described in the Governmental Approvals section; or (3) for interference in accordance with the Interference section.
- (g) Lessee shall surrender possession of said Premises upon expiration or other termination of this Lease; provided, however, that subsequent to any such termination, Lessee may remove, within ninety days thereafter, all radio equipment and antenna systems that Lessee has placed on the Premises at its own expense pursuant to this Lease.
- (h) Ninety days after expiration or termination of this Lease all permanent improvements made by Lessee shall be considered abandoned and become the property of Lessor.

17. Assignment

- (a) The rights and privileges granted by this Lease shall not be assigned or transferred without the express prior written consent of Lessor.

18. Insurance

- (a) Both Lessor and Lessee shall provide insurance or self-insurance for this Lease as described below:
 - (A) Both Lessor and Lessee are self-insured under ORS 30.282(2) up to the limits described in ORS 30.269 to 30.273. In addition, both Lessor and Lessee are qualified for self-insurance under ORS 806.130 of the Oregon Vehicle Code up to the limits as set forth in ORS 806.070. Upon request, Lessor or Lessee shall provide written proof of self-insurance to the requesting party.
 - (B) All employers that employ subject workers who work under this Lease in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Both Lessor and Lessee shall ensure that each of its subcontractors complies with this requirement.

- (C) The insurance certificates shall be located in the Premises file and will be made available upon request by either Lessor or Lessee.

19. Access.

- (a) At all times throughout the Term of this Agreement, and at no additional charge to Lessee, with background check, and with the approval of Lessor, as evidenced by its signature below, Lessee and its employees, agents, and subcontractors, shall have pedestrian and vehicular access (including snowmobile/snowcat and helicopter) to and over the Premises, from a public road to the Premises, for the installation, maintenance and operation of the radio equipment and any utilities serving the Premises from 7:00 a.m. to 3:30 p.m. Monday through Friday. Lessee agrees to schedule all non-emergency maintenance in a manner that will allow completion during the 7:00 a.m. to 3:30 p.m. Monday through Friday time period. For emergency access after-hours Lessee shall contact the 24 hour contact listed in Section 3. Lessee will provide Lessor with a list of its staff that will be accessing the Premises. Lessee will be responsible for keeping the list of its staff accessing the Premises current. An escort of Lessor's will not be required for Lessee's visits to Premises.

20. Interference

- (a) The operation of the radio equipment of Lessee shall not impair or interfere with the operation and use of communications equipment operated by Lessor or any other operations now or in the future. Upon notice to Lessee of any such impairment or interference, Lessee shall take all reasonable and necessary measures to rectify such impairment or interference within ten working days.
- (b) Lessee will provide additional protection devices and bear the cost of those protection devices should they be required to resolve radio frequency interference. Lessor reserves the right to recommend any electronic devices required for elimination of system interference. Lessee reserves the right to secure these devices in cases where interference is caused to Lessee.

This Lease constitutes the entire agreement between the parties on the subject matter hereof and supersedes all prior agreements and understandings of the parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective. This Lease may be modified only by a writing signed by both parties in interest at the time of modification.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed and subscribed, the day and year last written below.

STATE OF OREGON, by and through its
Department of Corrections (Lessor)

By: 

Date: 5/22/2014

CITY OF SALEM (Lessee)

By: 

Date: 5/15/14