

**PACIFIC COUNTY
COMMUNICATIONS FACILITY USE AGREEMENT**

WHEREAS, Pacific County owns, operates, and maintains certain communications facilities throughout the COUNTY 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 Site Use Agreement with **CenturyLink of Washington, Inc.**, (hereinafter called **CenturyLink**), 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 **CenturyLink** shall have the right to terminate this lease upon thirty (30) days' written notice to the COUNTY upon the happening of any of the following event:
 - If the approval of any agency, board, court or other governmental authority necessary for construction and/or operation of **CenturyLink's** equipment cannot be obtained, or if **CenturyLink** determines in its reasonable judgment that the cost of obtaining such approval is prohibitive.
 - If **CenturyLink** determines at any time that the premises are not appropriate for **CenturyLink** equipment for technological reasons, including, but not limited to, signal interference.
 - If **CenturyLink'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 **CenturyLink** 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 reasonably 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:** CenturyLink 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. Partial calendar years shall be prorated on a full month basis.
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) CenturyLink, 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 CenturyLink 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 CenturyLink shelter space for its communications interface equipment at the Microwave site at 503 4th Street, Raymond, WA, and at the Services Building site at 318 NE Second Street, Long Beach, WA.
8. **SECURITY AND MAINTENANCE:** The COUNTY shall provide security for the premises (equal to the security provided to the County’s own equipment) throughout the term of the Use Agreement at no additional charge to CenturyLink. 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. CenturyLink 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, CenturyLink shall notify the COUNTY of such default and request cure within ten (10) days.
9. **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.

10. **CASUALTIES**: If a tower or building is damaged or destroyed that contains equipment of **CenturyLink** 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 **CenturyLink** 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 **CenturyLink**, there shall be an equitable reduction of rent until the damage has been repaired.
11. **TAXES**: **CenturyLink** 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 **CenturyLink** there shall be an equitable reduction of rent until the damage has been repaired.
12. **OWNERSHIP OF EQUIPMENT**: **CenturyLink** shall purchase all electronic channel equipment necessary for the digital circuit between the COUNTY'S DS1 cross connect equipment and **CenturyLink's** central offices.
13. **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, **CenturyLink** may assign this Use Agreement upon prior written notice to, but without the consent of COUNTY to (i) any affiliate of **CenturyLink**, or (ii) any entity which buys all or substantially all of the assets of **CenturyLink** used in connection with the operation of **CenturyLink**. The assignee or transferee shall have the right to assume this Use Agreement with all its terms and conditions for the remaining lease term.
14. **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.
15. **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.
16. **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.

17. **WAIVER OF SUBROGATION**: COUNTY and **CenturyLink** 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.
18. **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:

Pacific County Board of County Commissioners
 PO Box 187
 South Bend, WA 98586
 Attn: Communications Engineer

If to CenturyLink of Washington, Inc.:

IN WITNESS THEREOF, THE PARTIES HAVE HEREUNTO SET THEIR HANDS THIS 10th day of April, 2012

CenturyLink of Washington, Inc.

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

 Signature

 Chairperson

APPROVED AS TO FORM:

 Commissioner

ATTEST:

 Commissioner

 Clerk of the Board