

LEASE AGREEMENT
FIRE WATCH TOWER STRUCTURE AND SURROUNDING AREA

DC-2022-775

THIS AGREEMENT is made and entered into by and between Sabrina Enright (“Lessor”) and the Deschutes County 911 Service District (“Lessee”), on the following terms and conditions:

Recitals

- A. The Lessor is the owner of the property known as the Fire Watch Tower Structure and the immediately surrounding area located at Henkle Butte in the town of Sisters, Oregon (“Property”);
- B. The Lessee desires to lease a portion of the Property, consisting of 10’ X 20’, approximately 200 square feet within the first story of the existing Fire Watch Tower Structure and a nearby area for a radio transmission tower (“Communications Facilities”), including the access easement as set forth in this Agreement, for the sole purpose of installing and operating public safety communications; and,
- C. Lessor is willing to lease to Lessee the areas for the Communications Facilities at the Property upon the terms and conditions contained in this Agreement.

NOW THEREFORE, it is agreed by and between the Parties hereto as follows;

- 1. Leased Rights: In accordance with the terms of this Agreement, Lessor hereby leases to Lessee the portion of the Property containing the Communications Facilities, subject to the following terms and conditions:
 - a. The Communications Facilities, which is approximately 200 square feet within the first floor of the Fire Watch Tower Structure and one radio tower in the nearby area of the Property, shall be an exclusive lease for maintenance and operation of the Communications Facilities located therein;
 - b. The remainder of the Property, including the easement for ingress and egress to the Communications Facilities, are non-exclusive and may be used by the Lessor in any manner that does not interfere with or is not inconsistent with the Lessee’s construction, maintenance and operation of the Communications Facilities. Lessee shall be guaranteed unrestricted access to the Property and the Communications Facilities at any time, all year round.
- 2. Tower Co-Occupancy: The Parties agree that Lessee will install a radio transmission tower on the Property that is sufficiently and appropriately designed and constructed to allow for the mounting and operation of Lessee’s antenna systems (antennas, transmission lines, tower-mounted amplifiers, mounting brackets, etc.) or other tower-mounted equipment of the following third parties:
 - a. Oregon Department of Forestry
 - b. United States Forrest Service
 - c. Yellowknife Wireless
 - d. The Oregon Hazards Lab, ALERT Wildfire Project

Should any of the above-listed third parties, or any other third party seek to install and operate additional antenna systems or other tower-mounted equipment onto the tower, that third party shall not do so until they:

- a. Contact Lessor and Lessee regarding interest of tower occupancy or expansion;
 - b. Conduct at their own cost a tower mapping and structural analysis to determine if the tower, as loaded with their proposed additional equipment, is capable of successfully meeting (“passing”) the requirements of the then current version of the Telecommunications Industry Association’s Structural Standard for Antenna Supporting Structures, Antennas and Small Wind Turbine Support Structures (“TIA-222”) and any other required state or local codes or regulations;
 - c. If the structural analysis shows that the tower in its then current condition, does not meet the requirements of TIA-222 and other required state or local codes or regulations, implement at their own cost any additions or improvements to the tower as may be needed to allow the tower, with their proposed additional equipment, to successfully meet those requirements;
 - d. Supply both Lessor and Lessee with copies of the structural analyses that confirm that the tower, as loaded with their proposed equipment, meets the requirements of TIA-222 and other required state or local codes or regulations;
 - e. At their own cost, make any other additions or improvements to the tower as may be needed to meet their operational requirements (e.g., add height to the tower);
 - f. Provide Lessee an interference/intermodulation analysis, subject to Lessee’s approval, that the radio equipment associated with their tower-mounted antenna systems will not degrade the operation of that of Lessee; and,
 - g. Establish a lease agreement with Lessor and MOU with Lessee regarding tower use and access stipulations.
3. Lease Term: The initial term of this Agreement shall be for five (5) years beginning on September 1, 2022 and terminating on September 1, 2027.
 4. Lease Renewal: Lessee has the option to renew this Agreement for up to four (4) additional five-year terms by providing written notice to Lessor no less than ninety (90) days prior to the date of expiration of the five-year lease term.
 5. Rent: During the Initial Term and any subsequent Renewal Terms of this Agreement, Lessee shall pay Lessor rent in the amount of \$2,000 (“Initial Term Rent”) per month, payable in advance each month, commencing when the construction or operation begins by Lessee (“Commencement Date”) and payable on each anniversary thereof. Each subsequent year, the Lessee agrees to pay a 2% annual increase over the previous year’s monthly amount unless another amount is mutually agreed in writing to at the initiation of a Renewal Term.

6. Late Payments: Lessee agrees to make payments under Section 5 of this Agreement upon receipt of Invoice and as due; any unpaid amount shall bear interest at a rate of ten (10) percent per annum from the date of such default until payment is received by Lessor.
7. Assignment and Subletting: Lessor shall have the right to assign this Agreement and all of Lessor's respective rights and duties hereunder without restriction. Lessee may not assign this Agreement or sublet the Property without the prior written permission of Lessor. Lessor's permission and/or consent shall not be unreasonably withheld.
8. Ownership of Communications Equipment: The equipment installed by Lessee within the Communications Facilities for the delivery of public safety radio communications services ("Communications Equipment") shall at all times be owned by Lessee and shall be removed by Lessee upon termination of this Agreement. In the event Lessee does not remove the Communications Equipment on or after 30 days from the date of termination of the Lease, Lessor may, at its opinion, remove and dispose of the Communications Equipment and Lessee shall reimburse Lessor for all costs of removal.
9. Repair and Maintenance: Lessee shall, during the term of this Agreement, at its own cost and expense, keep and maintain the Communications Facilities in good order and repair and shall allow no nuisances to exist or to be maintained therein. Lessee shall not cause or permit any hazardous material to be brought upon, kept, or used in or about the Property by Lessee, its agents, employees, contractors, or invitees, without the prior written consent of the Lessor.
10. Road Maintenance: Lessee, at its own expense, will annually evaluate the need to have Henkle Butte Road graded. Every other year, Lessee will evaluate and determine the need for gravel to be added as the road is graded. Grading and graveling will be provided on a portion of Henkle Butte Road, from Station 4 to Station 12A, as identified on the Survey of Hinkle Butte Lookout, dated April 1960 and recorded in Deschutes County Records (Deed Vol. 125 Page 590), annotated and included as Exhibit A.
11. Liability for Damages: Lessee shall repair, or pay to Lessor the full cost of repair, for any damage done to the Property, or any improvements therein, as a result of Lessee's construction, operation, maintenance, repair, or removal of the Communications Facilities. Lessee may, at its own expense, control or remove natural vegetative growth on the Property, except the Lessee cannot remove timber absent prior written consent of Lessor. Any timber so removed shall be the property of Lessor.
12. Liens: Lessee shall keep the Property free from liens arising out of the work performed, common materials furnished, or obligations incurred by Lessee, and Lessee shall indemnify, hold harmless and defend Lessor from any liens and encumbrances arising out of work performed or materials furnished by or at the direction of the Lessee.
13. Restrictive Covenants:
 - a. Lessee – Lessee shall not have priority over or interfere with existing uses on the Property, with the exception of the Communications Facilities. Lessee covenants and agrees it shall have the sole duty to prevent its use of the Property from interfering in any manner, with any other existing use or uses of the Property.
 - b. Lessor – Lessor covenants that it has title to the Property that it has the right and authority to enter into this Agreement. During the term of this Agreement, Lessor shall not erect or place on the Property any structure which would obstruct the transmission of

radio frequencies to or from the Communications Facilities or otherwise interfere with operation of the Communications Facilities or use of the Property.

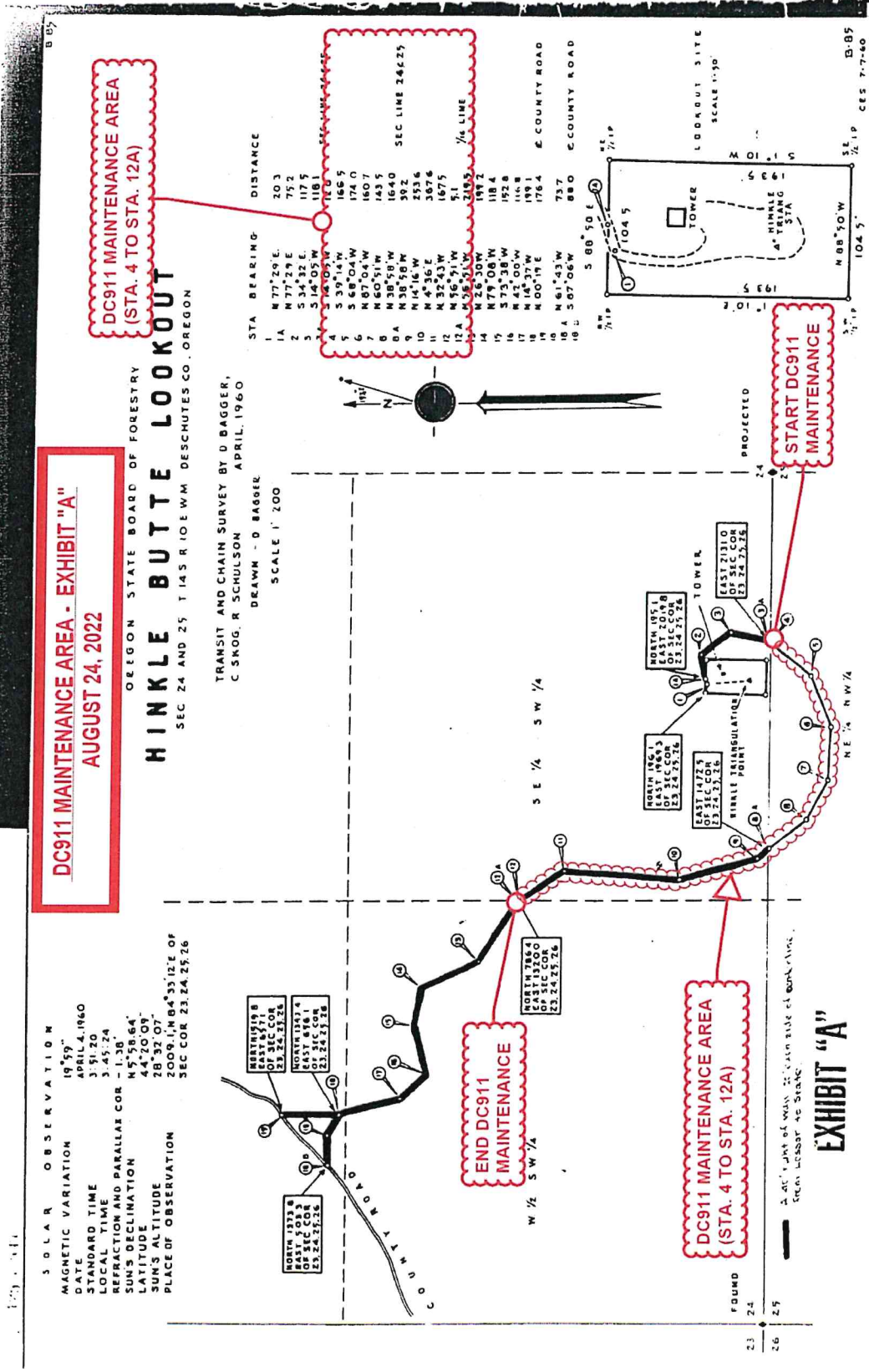
14. Taxes and Assessments: Lessor shall pay when due all taxes on its personal property located on the Property. In addition, Lessor shall pay all real property or personal property tax or fire protection assessments attributable to the improvements themselves and the increase in the value of land occasioned by such improvements. In the event the Lessor shall fail to pay any such tax or assessment when due, Lessee may terminate this Agreement upon thirty (30) days written notice to Lessor.
15. Indemnity: Lessee shall defend, indemnify and hold harmless Lessor, its officers, directors, employees, agents, affiliates and subsidiaries, from and against any and all claims arising from Lessee's use of the Property, the Communications Facilities, the Easement, or the conduct of its business, or from any activity, work or thing done, permitted or suffered by Lessee in or about the Property, including contamination by hazardous materials, and Lessee shall further indemnify and hold harmless Lessor from and against any and all claims arising from any breach or default by Lessee in the performance of its obligations hereunder and from and against any and all costs expenses and liabilities, including, but not limited to, attorney's fees and litigation costs, incurred in connection with such claim at trial and on appeal.
16. Cooperation of Parties: The Parties agree to cooperate from time to time in obtaining all necessary permits from federal, state, and local governments, insofar as the cooperation of the other party is required by those governments. Lessor warrants that so long as Lessee complies with the terms and provisions of this Agreement, Lessee shall be entitled to peaceable and undisturbed possession of the demised premises free from any efforts at eviction or disturbance by Lessor. Either party will, within ten (10) days of receipt of a written request from the other execute, acknowledge and deliver to the other party a certificate certifying: (1) whether or not this Agreement has been modified and is in full force and effect; (2) whether there has been any modification or alleged breach by the other party; (3) the dates to which the rent has been paid; and (4) any other facts that may reasonably be requested. Failure to deliver the certificate within the specified time shall be conclusive upon the party of whom the certificate was requested that the Agreement is in full force and effect and has not been modified except as may be represented by the party requesting the certificate. From time to time, if requested by the Lessor, Lessee shall execute, acknowledge, and deliver estoppels certificates and attornment agreements on such terms as may reasonably be requested by Lessor.
17. Default: The following shall be events of default:
 - a. Default in Rent – Failure of Lessee to pay any rent or other charge within thirty (30) days after written notice from the Lessor that such amount is due.
 - b. Default in Other Covenants – Failure of either party to comply with any of the covenants, obligations or conditions on its part to be performed or observed under this Agreement (other than the obligation to pay rent) within sixty (60) days after written notice of such default by either party. If the claimed default related to a matter other than payment, which due to its nature cannot reasonably be cured within sixty (60) days and where the other party is diligently working at the cure of said default, the defaulting party may

- request to grant a longer period of time as may be reasonably required to cure such default as the harmed party shall not refuse the defaulting party's reasonable request. If at the expiration of the applicable period, cure has not occurred, the harmed party may exercise any available right of remedy including termination of this Agreement.
- c. Remedies on Default – In the event of a default, the Agreement may be terminated at the option of either party by written notice to the other party. Such remedy shall be in addition to, and shall not be in limitation of, any other remedies available to the harmed party under applicable laws.
18. Rights on Termination: Upon the expiration or termination of this Agreement, including the options to renew, Lessee shall relinquish all rights in and to the Property. Provided it has paid all sums due and payable hereunder, Lessee shall have the right to remove all of its personal property and equipment from the Property.
19. Condemnation: If the whole of the Property or such-portion thereof as will make the Property unusable for Lessee's intended use of the Property is condemned for any public use or purpose by any legally constituted authority, then in either of such events, at Lessee's opinion, this Agreement shall terminate as of the time when possession is taken by such public authority and Lessor will refund to Lessee, on a pro-rata basis, all pre-paid rents.
20. General:
- a. Notices – All notices, requests, demands or other communications provided for by this Agreement shall be deemed given and received upon the earlier of actual delivery in writing or three (3) days after such shall be deposited in the United States Mail, postage paid by registered or certified mail, return receipt requested, addressed as indicated on the Signature Page.
- b. Entire Agreement – This Agreement supersedes any prior oral and written agreements or understandings. This Agreement may be modified only by written amendments.
- c. Time – Time is of the essence of this Agreement.
- d. Governing Law – This Agreement and all rights and liabilities of the parties hereunder shall be construed and governed by the laws of the State of Oregon.
- e. Captions – The paragraph and other headings in this Agreement are for reference purposes only and shall not affect the interpretation of this Agreement.
- f. Successors of Interest – This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.
- g. Entry for Inspection – Lessor shall have the right to enter upon the Property upon reasonable notification to Lessee to determine the Lessee's compliance with the terms of this Agreement.

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Exhibit A:



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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date of execution by the last party to sign this Agreement.

LESSOR

By: _____
Signature

Name: _____

Title: _____

Date: _____

Address: PO Box 119, Sisters OR 97759

THE DISTRICT:

DESCHUTES COUNTY 9-1-1 SERVICE DISTRICT, acting by and through the BOARD OF COMMISSIONERS OF DESCHUTES COUNTY, OREGON, AS THE GOVERNING BODY OF THE 9-1-1 COUNTY SERVICE DISTRICT

DATED this _____ Day of _____ 2022

Patti Adair, Chair

Anthony Debone, Vice Chair

Phil Chang, Commissioner

Address for Notices:

ATTEST:

, Board Executive Assistant