



WASHOE COUNTY

Integrity Communication Service

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STAFF REPORT

MEETING DATE: February 3, 2023

DATE: Tuesday, January 31, 2023

TO: 800 MHz Joint Operating Committee

FROM: Quinn Korbolic, Regional Services IT Manager, Washoe County
Technology Services, 775-328-2348, qkorbolic@washoecounty.gov

THROUGH: Behzad Zamanian, Chief Information Officer, Washoe County

SUBJECT: Recommendation that the 800 MHz Joint Operating Committee review the lease agreement between Washoe County and Coleman Valley Ranch LLC., and recommend that Washoe County execute the lease for an annual cost not to exceed [\$30,000] in fiscal year 2022/2023.

SUMMARY

Washoe County intends to construct a greenfield public safety radio site in the northern part of the county within Washoe County parcel 061-171-27, centered at 41° 56.522'N 119° 50.890'W. The parcel is owned by Colman Valley Ranch LLC., and Washoe County intends to lease a portion of the parcel based on the terms and conditions of the lease agreement attached, exhibit A.

The lease authorizes Washoe County to construct a public safety radio site on the land in question. The lease includes an initial term of 10 years with the option, at the sole discretion of Washoe County, to renew the lease for an additional 10-years. Thereafter, the lease automatically renews on an annual basis unless Washoe County decides not to renew. Washoe County will pay a fee to lease the land of \$15,000, twice a year for a total annual cost of \$30,000. Lease fees increase by 10% every five years.

BACKGROUND

Washoe County and Washoe County Regional Communication System maintain a number of leases for land or facilities that are critical to operating the radio system. The Washoe County P25 Radio System Interlocal provides authority to Washoe County Technology Services to "Acquire, hold, or dispose of property necessary to operate the P25 System."

FISCAL IMPACT

Budget authority exists within the fiscal year 2022/2023 Washoe County Regional Communication System budget in an amount not to exceed [\$30,000].

RECOMMENDATION

Recommendation that the 800 MHz Joint Operating Committee recommend that Washoe County execute the lease agreement between Washoe County and Coleman Valley Ranch LLC., for an annual cost not to exceed [\$30,000] in fiscal year 2022/2023.

AGENDA ITEM # _____

POSSIBLE MOTION

Should the Committee agree with the recommendation, a possible motion would be:
“Move to recommend that Washoe County execute the lease agreement between Washoe County and Coleman Valley Ranch LLC., for an annual cost not to exceed [\$30,000] in fiscal year 2022/2023.”

**ASH FIELDS
COMMUNICATIONS SITE LEASE AGREEMENT**

This Agreement is made and entered into by and between COLEMAN VALLEY RANCH LLC, hereinafter referred to as the LESSOR, and WASHOE COUNTY, NEVADA, a political subdivision of the State of Nevada, hereinafter referred to as the LESSEE.

W I T N E S S E T H

WHEREAS, LESSOR holds title to Washoe County Parcel 061-171-27, located at Ash Fields, in Washoe County, Nevada, and is willing to lease a portion of this parcel to Washoe County upon the terms and conditions described herein, and

WHEREAS, LESSEE desires to secure the right to locate, construct, and operate a communications site on said premises and to transmit and receive communications signals from and to said premises owned by the LESSOR upon the terms and conditions stated herein;

WHEREAS, LESSOR and LESSEE have met and conferred and negotiated the terms of this Lease Agreement,

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, it is hereby agreed by and between the parties as follows:

ARTICLE 1 - THE PREMISES AND ITS USE

1. The LESSOR hereby agrees to LEASE unto the LESSEE and the LESSEE hereby agrees to LEASE from the LESSOR the following described lands in the County of Washoe, State of Nevada: approximately one-half of one acre within Washoe County Parcel 061-171-27, centered at 41° 56.522'N 119° 50.890'W for such uses as will accommodate the LESSEE's construction, installation and operation of a communications site on the subject property including but not limited to a lattice radio tower, a building, solar panels, radio and microwave antennas, radio transceivers, fiber optic equipment, multiplexers, servers and network equipment, data acquisition and control devices, Remote Weather Information Systems (RWIS), emergency power systems, battery systems, and generators. All equipment at the site, except for the lattice tower, building and solar panels is to be housed inside the building or attached to the tower. The communication site shall not have any permanent nighttime lighting except with the express prior written consent of Lessor.

2. Access: LESSEE shall provide to LESSOR the names of the Authorized Personnel to be granted the key for access or lock changes at the site. LESSEE personnel or contractors shall only access the site during construction of the communications site; for preventative maintenance as necessary; or for emergency communication site repairs. Access shall be from Barrel Springs Road. LESSEE shall notify LESSOR at least one week prior to accessing the site except in the case of an emergency or other need for immediate access, in which case LESSEE shall notify LESSOR in as expedient a manner as the circumstances reasonably allow. The notice required by this provision is to be provided to Joe Kircher 775 813-6452, and is not subject to the Notice requirements described at Article 12.

ARTICLE 2 - TERM OF LEASE

LESSOR hereby agrees to LEASE unto LESSEE and LESSEE hereby agrees to LEASE from LESSOR, the subject premises heretofore described, with the term of said LEASE commencing upon the date of LESSEE's

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receipt of required building permits for the facility being constructed on the Premises, and this Agreement shall terminate Ten (10) years later unless this LEASE Agreement is terminated earlier or is renewed according to the provisions hereinafter set forth.

ARTICLE 3 - COMPLIANCE WITH THE LAW

1. The parties shall comply with all statutes, rules, orders, building codes, ordinances, requirements and regulations of the City, County, State and Federal governments, to the extent applicable to the premises, including but not limited to OSHA, The Americans With Disabilities Act of 1990 (ADA) set forth in 42 U.S.C. Section 12101 through 12213 and 47 U.S.C. Sections 225.611.,

ARTICLE 4 - RENTAL FEES AND CHARGES

LESSEE agrees to pay to LESSOR two semi-annual lease fees in the amount of Fifteen Thousand Dollars and Zero Cents (\$15,000.00), with the lease fee increasing every five years by 10%, with such increase effective on January 1, 2028 and every subsequent five years of this Agreement. LESSEE shall tender the first semi-annual payment to LESSOR upon execution of this Agreement and then every six months following that first payment.

ARTICLE 5 – CONSTRUCTION, REPAIR AND MAINTENANCE

1. LESSEE agrees to maintain the leased premises in as good a state of repair as when first occupied.
2. During construction, LESSEE agrees to only disturb the land for the following purposes: construction or extension of access road, construction of communications tower and building foundations, and installation of footings for solar array as described in Article 1.1. No other land on the leased premises or the surrounding land shall be disturbed in any way.
3. LESSEE agrees to be responsible for all replacements and or repairs of communication site equipment within the leased premises.
4. LESSEE agrees to be responsible for and to repair any damage to the access road caused by LESSEE's use of the access road. This does not include regular wear on the road or wear not caused by negligence of the LESSEE.
5. The parties agree that the LESSEE shall be entitled to an abatement and or reduction in the lease fee charged under this LEASE Agreement in the event of any impairment of the LESSEE'S use of the LEASED premises for which Lessor is responsible.

ARTICLE 6 – RADIO SIGNAL INTERFERENCE

1. In the event that radio signal interference occurs after initialization of equipment operation, the parties agree that LESSEE shall be responsible for identification and resolution of the interference. If the interference is determined to be caused by other nearby operators at the site, LESSEE will be responsible for contacting the other operators to attempt to resolve the interference. If any resolution is not economically feasible, as determined by the LESSEE, the LESSEE may remove its equipment and the Agreement will be terminated.

ARTICLE 7 - LIABILITY AND INDEMNIFICATION

1. LESSOR shall not be liable for any damage to LESSEE's equipment on account of criminal burglary, vandalism, power failure, lack of heat, weather conditions, wild fire, natural and man-made phenomena such as "skip" interference, power line or ignition noise, and co-channel interference, or any other causes, so long as the cause for such activity is not attributable to Lessor's negligence or more culpable acts or omissions.
2. LESSOR shall hold harmless, indemnify and defend LESSEE from and against any loss, damage, claim, suit or liability due to injury, including death, or property damage, to any third party arising out of the negligent or more culpable acts or omissions of the LESSOR, its agents or employees, in connection with the ownership of the premises and the real property upon which they are located and the LESSOR's duties and responsibilities pursuant to this Agreement.
3. LESSEE shall hold harmless, indemnify, and defend LESSOR from and against any loss, damage, claim, suit, or liability due to injury, including death, or property damage, to any third party arising out of the negligent or more culpable acts or omissions of the LESSEE, its agents, contractors, or employees, arising out of the use of the demised Premises and the LESSEE's duties and responsibilities pursuant to this Agreement. LESSEE will not waive and intends to assert all defenses and liability limitations available under state and defenses in all circumstances.
4. Liability of both parties shall not be subject to punitive or exemplary damages. Actual damages for any LESSEE breach shall never exceed the amount of funds that have been appropriated for payment under this LEASE Agreement but not yet paid for the fiscal year budget in existence at the time of the breach.

ARTICLE 8 - QUIET ENJOYMENT

It is agreed to by and between the parties that the LESSEE, upon keeping and performing the covenants herein contained, shall at all times during said LEASE peaceably and quietly have, hold and enjoy the LEASED premises without suit, trouble or hindrance from the LESSOR, provided, however, and it is further agreed, the LESSEE will perform and fulfill each and every condition and covenant contained herein, unless such performance is excused.

ARTICLE 9 - NOTICE OF THIRD PARTY CLAIMS

LESSOR shall serve the LESSEE with written notice of any third-party claim, suit and or legal action which may affect LESSEE's use of the premises, with LESSOR to serve the LESSEE with such written notice within thirty (30) days of the LESSOR's receipt of oral and or written notice of actual or pending claim, suit and or legal action. LESSEE shall have the right to defend and compromise the actual or pending claim, suit and or legal action and LESSOR shall indemnify the LESSEE against all liability, actions, damages, losses and expenses, including but not limited to reasonable attorney's fees and costs arising out of the LESSEE's defense and compromise of such actual or pending claims, suits and or legal actions, to the fullest extent authorized under the terms of this LEASE Agreement.

ARTICLE 10 - OPTION TO RENEW

1. LESSEE shall have the option at its sole discretion to renew this lease for one (1) additional term of ten (10) years by giving the LESSOR written notice at least ninety (90) days before the expiration of the initial term of this lease. If LESSEE exercises its option to renew this Agreement for an additional ten (10) year period, the option period shall commence on the next day after the expiration of the initial term of this Agreement and all the terms and conditions set forth in this Agreement shall apply throughout the

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renewal period. The rental amount paid by Lessee to Lessor shall be increased in the same manner as described in Article IV above.

2. Following the additional ten (10) year renewal period, this Agreement shall automatically renew from year-to-year, under the same terms and conditions set forth in this Agreement, on the anniversary of the commencement date of this Agreement, unless Lessee delivers written notice of non-renewal to Lessor at least thirty (30) days prior to said anniversary date. The rental amount paid by Lessee to Lessor shall be increased in the same manner as described in Article IV above.

ARTICLE 11 - NOTICES

Except as otherwise provided for within this LEASE Agreement, all notices or other communications required or permitted to be given under this LEASE shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile or electronic mail with simultaneous certified mail effective three days after date of mailing, or mailed certified mail, return receipt requested, postage prepaid on the date received by the other party at the address set forth below:

For LESSEE:
Washoe County
ATTN: Technology Services
1001 E. Ninth Street
Reno, Nevada 89512
And: Washoe County
ATTN: IT Manager
1001 E. Ninth Street
Reno, Nevada 89512

For LESSOR:
Coleman Valley Ranch LLC
Joe Kircher
P.O. Box 40
Adel, Oregon 97620
Phone Number: 775-813-6452

ARTICLE 12- PAYMENT OF TAXES

LESSOR shall timely pay all applicable sales, use and personal property taxes or any other assessment on the demised premises.

ARTICLE 13 - TERMINATION, BREACH AND DEFAULT

1. The continuation of this LEASE Agreement is subject to and contingent upon sufficient funds being appropriated, budgeted and otherwise made available by the Board of County Commissioners. The Lessee may terminate this Agreement with one years' written notice, if for any reason the LESSEE' s funding is not appropriated or is withdrawn, limited or impaired. In the event of such a termination, the LESSOR waives any and all claims for damages.

2. Any party asserting a breach of this Agreement by reason of a failure by Lessee to make any payment, or the failure of either party hereto to observe or perform any covenants, conditions or provisions of this Agreement required to be made, observed or performed by such party, shall provide written notice of such

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default. The defaulting Party shall have 30 days within which to cure the default except in circumstances where the nature of the default (other than the payment of money) is such that more than thirty (30) days are reasonably required for completion of the cure, in which case the defaulting party shall not be deemed to be in default if such party commences such cure within the thirty (30) day period and thereafter diligently prosecutes such cure to completion. A failure to cure or initiate the default, as applicable, shall constitute a material breach of this Agreement by such party. Upon the failure to cure or initiate the cure, as applicable, shall entitle the non-defaulting party to pursue all remedies available under Nevada law, including termination of the Lease and recovery of all damages caused by such default.

3. Failure to declare a breach, or a waiver of any particular breach, of the LEASE Agreement or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

4. Except as otherwise provided for by law or this LEASE Agreement, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including but not limited to actual damages. Neither party shall be entitled to an award of attorney's fees and costs.

5. The parties agree that upon termination of this LEASE Agreement, the LESSEE will peaceably and quietly leave, surrender and yield up to the LESSOR the leased premises in good order and in the same condition as delivered to the LESSEE, ordinary wear and tear and damage caused by earthquake, fire, public calamity, the elements and or the act of God excepted. Further, the LESSEE shall remove or cause to be removed, at its own expense, any and all improvements erected or placed by it on said Premises so long as damage to the Premises is avoided or repaired by Lessee within 6 months of the date of termination. Alternatively, LESSOR may choose to take ownership of any improvements by paying lessee fair market value for said improvements.

ARTICLE 14 – GENERAL TERMS:

1. This Agreement and the performance of the duties described in the Agreement are governed, interpreted and construed in accordance with Nevada law, without regard to choice of law principles. Each party consents to personal jurisdiction and exclusive venue in the Second Judicial District Court in and for the County of Washoe located in Washoe County, Nevada. All rights and remedies specified herein are in addition to any other rights or remedies at law or in equity, unless designated as an exclusive remedy in this Agreement.

2. Neither party shall assign, transfer or delegate any rights, obligations or duties under this LEASE Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld. It is understood and agreed to by the Parties hereto that a change in tenants from one government agency to another shall not constitute an assignment or subletting. Upon such assignment, all covenants and agreements herein contained shall extend to and be obligatory upon the heirs, executors, administrators, and successors, as the case may be, of the respective parties.

3. The parties hereto represent and warrant that the person executing this Agreement on behalf of each party has full power and authority to enter into this Agreement.

4. As used herein, the terms "LESSEE" and "LESSOR" shall include the plural as well as the singular and the feminine as well as the masculine.

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5. This Agreement and its attached exhibits constitute the entire agreement of the parties and such is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Agreement specifically displays a mutual intent to amend a particular part of this Agreement, general conflicts in language between any such attachment and this Agreement shall be construed consistent with the terms of the Agreement. Unless otherwise expressly authorized by the terms of the Agreement, no modification or amendment to the Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

6. Severability. If any provision of this Agreement is determined to be illegal, invalid, or unenforceable, the provision shall be deleted and the parties shall, if possible, agree on a legal, valid, and enforceable substitute provision that is as similar in effect to the deleted provision as possible. The remaining portion of the Agreement not determined to be illegal, invalid, or unenforceable shall, in any event, remain valid and effective for the term remaining unless the provision found illegal, invalid, or unenforceable goes to the essence of this Agreement.

7. The effective date of this Agreement shall be the last date of the signatories shown below.

IN WITNESS WHEREOF, the LESSEE has signed and the LESSOR has caused its name to be signed, hereon on the date first written above.

Coleman Valley Ranch, LLC

By: _____
Joseph G. Kircher, Manager

WASHOE COUNTY, a political subdivision of the State of Nevada

By: _____

Name: _____

Title: _____