

AMENDED AND RESTATED
INTERGOVERNMENTAL AGREEMENT
ESTABLISHING A REGIONAL INTEROPERABLE RADIO SYSTEM
April 1, 2010

Between and Among

Benton, Coos, Curry, Josephine, Lane and Linn Counties, all governments subject to the provisions of Oregon law.

RECITALS

WHEREAS, ORS 190.010 provides that units of government may enter into agreements for the performance of any or all functions and activities that a party to the agreements, its officers or agents, have authority to perform;

WHEREAS the parties to this agreement have certain radio facilities and communications needs, and the opportunity to pool those resources and needs will inure to the benefit of all the parties, and agree that this opportunity can be best realized through joint action;

WHEREAS the parties understand that there is strategic value in joint planning and coordination for public safety communications systems now, and in the future;

WHEREAS the parties agree that joint development of the radio infrastructure and planning for public safety communications will increase interoperability among Counties;

WHEREAS the parties and Douglas County previously executed an Intergovernmental Agreement in 2006 ("initial IGA") to establish a Regional Interoperable Radio System ("the System") for public safety telecommunications purposes;

WHEREAS the parties to this Amended and Restated Intergovernmental Agreement (Agreement) are now Owners of the System and Members of the Committee;

WHEREAS, the parties wish to amend and restate the initial IGA through this Amended and Restated Intergovernmental Agreement ("Agreement"), except that Douglas County has determined not to further participate as a member;

WHEREAS the parties to this Agreement expect that over time the particular components of the System may change as needs and capacities of the technology and the Members change;

The Members who are signatories to this Agreement have established and now jointly own the System and agree to the terms and conditions necessary to manage and operate such a System, including the need to have one Member serve as the Executive Authority;

WHEREAS Lane County is the Member most qualified to assume the responsibilities of the initial Executive Authority, this Agreement serves as an agreement by each Member to allow Lane County to serve as the Executive Authority and to provide such services and perform such responsibilities as herein set forth, and an agreement by Lane County to undertake such activities.

Now therefore the parties agree as follows:

A. The System

1. The System is operable in the Member Counties and the geographical area of Douglas County. The System shall initially consist of: (1) a high capacity digital microwave radio backbone being established throughout the Member Counties by the Executive Authority, which interconnects radio transmit sites throughout the Member Counties to each other, to the Oregon Wireless Interoperability Network (OWIN) developed by the State of Oregon and to the master switch site located at the Central Lane Communications Center in Eugene; and (2) a shared VHF radio repeater system known as VCALL, which allow the users from each county to transmit and receive signals via a shared "VCALL" VHF radio channel throughout the Member County area, and consists of radios on eight sites throughout the Member Counties, a "prime site" at the Blanton Heights Radio Site in Lane County, and radios in dispatch centers within the 7-Counties; and (3) a shared, APCO Project 25 Master Switch located in the Eugene/Springfield Metropolitan area. This switch would allow radio systems to migrate into a trunked, digital communications platform, providing wide-area multi-county operation. The System is defined as composed of these shared radio assets and microwave systems developed by the Regional Interoperable Radio System Members to carry voice and data traffic, as well as any future equipment or systems which the Members may acquire. The System shall also serve as the access point to the State of Oregon's state-wide OWIN communications system. A description of the System as of the date of this Agreement is set forth on Exhibit 1, attached hereto.
2. The System will be developed through the voluntary contributions of land (or access thereto) and equipment owned by Members, as well as through joint development efforts. It is a principle of the System that Members will be credited for their contributions of land (or access thereto), equipment and services. Credits will not be given for jointly developed and owned portions of the system, except as specifically agreed to in advance. It is not necessary or expected that all Members make a contribution of land (or access thereto), equipment or services to be a Member or to use the System. No Member may be compelled to make a contribution or to make resources or sites available to the System, notwithstanding access by Members or their representatives with the respective County's permission for the purpose of site surveys and technical assessment in support of the System.

B. Membership/Ownership

1. Benton, Coos, Curry, Josephine, Lane and Linn Counties shall be the original Members of the Regional Interoperable Radio System Advisory Committee (the "Committee"). Each Member shall be entitled to the same voting rights and general membership rights and responsibilities as every other Member. The original Members are the owners of the System, each owning an equal share of the System.
2. Other units of government may subscribe to the System for communications services. Subscribers shall not have ownership or voting rights in the System, and shall sign a separate contract for services.
3. Additional units of government may become Members of the Committee when that government's request for membership is received by the Committee and approved by a two-thirds vote of the then current membership. Upon approval and execution of a counterpart copy of the then current version of this agreement, such Member shall have the same general membership rights and responsibilities as every other Member. The addition of new members shall be according to terms and conditions negotiated by the Members and the entity seeking membership. Each request for membership shall be evaluated on a case-by-case basis. New members must generally be an Oregon public agency such as the State or a County having a public safety function, possess assets or resources beneficial to the System and be willing to fully participate in and support the interoperable System.
4. Members may use the System as a benefit of membership. Use of the System is defined as connecting one or more demarcation points to the Member's local system or equipment outside the System, and thereafter sending communications along some part of the System. Annually, a Member may nominate one or more agencies within its jurisdiction who will connect subscriber units to the System and receive the Member's preferred rate. The criteria or basis for such nomination of an entity by a Member is within the sole discretion of that Member. For those agencies connecting subscriber units to the System who are not nominated by a Member, they will be considered as Subscribers and pay a non-Member subscriber rate that shall be established. The Committee may also establish new rates for new services or access to the System. Agreements with non Member subscribers will contain provisions granting Members priority system usage if capacity is exceeded. Nothing in this agreement is intended to restrict use of the system by other agencies as appropriate pursuant to any mutual aid, and/or State and Federal interoperability agreements.
5. Obligations of Membership. In addition to the specific rights and obligations discussed elsewhere in this Agreement, while a Member, each Member shall:

- a. Designate a representative on the Committee. Unless otherwise designated by the Board of County Commissioners, the Sheriff shall be the designee. In case of a vacancy, the Member shall designate a replacement representative within thirty (30) days of the vacancy occurring. A Member may designate one or more persons as alternates, to represent the Member in the absence of the regular designated representative. All such designations shall be communicated in writing to the Executive Authority of the System.
 - b. Observe the established provisioning schedules for any equipment or facilities connected to the System.
6. Privileges of Membership. In addition to the specific rights and privileges discussed elsewhere in this Agreement, while a Member, each Member may:
 - a. Use the System for any lawful communication purposes consistent with the design and operation of the System;
 - b. At the Member's sole discretion, nominate agencies within its boundaries who will receive System services through the Member and receive the member rate for services; and however, these nominated agencies will not have voting rights or ownership.
 - c. If approved by the Committee, receive compensation for services and equipment provided to facilitate the operation of the System which may, at the Member's election, be provided in the form of a mutually agreeable discount in rates charged the Member or be received through the payment of one or more invoices sent to other Members, where those invoices reflect costs previously agreed to by the invoiced Member(s), or by a combination of discounts and invoices;
 - d. The above is not intended to require Members to pay an external vendor, nor to prevent or preclude Members from fulfilling these obligations through internal or organic resources which they are otherwise committed to sustain;
 - e. Exercise the rights of Membership on the Committee.
7. Termination.
 - a. Any Member may terminate its participation in the System upon written notice of withdrawal to the other Members given by January 31st with the termination date effective at the end of the fiscal year, June 30th. The Members may agree to another effective date or waive the notice requirement by two-thirds vote. As part of termination, the parties shall negotiate the terms of how the withdrawing Member will use its best

efforts to provide to the System or allow the continuing use by the System of any land (or access thereto), equipment or network provided by the withdrawing Member to support the operation of the System and to facilitate System traffic over any portion of the withdrawing Member's system that had been designated to System purposes, or a reasonable alternative, upon such reasonable terms and conditions as the withdrawing Member shall require, at non-discriminatory rates. The withdrawing Member shall not unreasonably refuse to agree on terms for the continuing use or access to sites. The remaining Members and withdrawing Member shall also negotiate such terms and conditions, if any, for compensation of the value of System Assets or other consideration. Upon withdrawal, the withdrawing Member shall no longer be responsible for any costs that might thereafter be incurred by or for the remaining Members. The withdrawing Member shall remain responsible for any costs previously incurred to the extent permitted by law.

- b. Failure to abide by the terms and conditions of this agreement may result in termination of Membership as provided under Default.
- c. Upon vote of not less than two thirds of the members, this Agreement may be terminated. Following such vote the Members shall agree on an Asset Distribution Plan which shall be approved by not less than two thirds of the Members.

C. Governance

The purpose of this Agreement is not to create a separate intergovernmental entity, rather to establish a joint effort by separate governmental entities. To the extent permitted by law, each Member shall assume its proportional share of liability (based on the potential number of total votes) for the decisions and actions of the Committee, and for decisions and actions taken on behalf of the Committee by the Executive Authority, or as otherwise required or authorized by this Agreement.

- 1. The Organizational structure and provisions concerning operation of the System are provided for in this agreement, which sets forth general principles concerning structure, purpose, operations and similar matters.
- 2. The Committee shall adopt protocols and develop appropriate documents which shall describe with particularity, including but not limited to, the configuration of the network, data management, system security, creation and activation of user accounts, site security, and services to support the operation of the System; and set forth the formula for the calculation of rates for services. The Member users of the Master Switch will develop protocols and rate setting methodology for approval by the Committee.

3. Operational management and provisioning of the network will be supervised by the Committee, and coordinated and managed by the Executive Authority. The Committee may request that such other agency departments or entities designate representatives to assist the Committee. Such representatives shall be non-voting Members of the Committee, not considered for purposes of a quorum. The Committee is authorized to approve policy and operating agreements prior to adoption by the Executive Authority.
 4. The operational responsibility of the Committee includes, but is not limited to: policymaking guiding the provisioning the System; development of necessary documents; development of work plans; establishment of a Financial Plan, subscriber rates and other fees and charges and the allocation of expenditures and revenues among the Members as appropriate; and all other activities necessary or convenient to the efficient operation of the System.
 5. The parties may reach separate agreements relating to matters covered by this Agreement. Any separate agreement shall specify which parties are covered if less than all parties, current and future, are intended to be covered. Any separate agreements attached hereto as exhibits which were made prior to the execution of this Agreement are ratified effective on the original agreement date. Attached is Exhibit 2 (duties relating to purchase of Motorola equipment).
- D. The Regional Interoperable Radio System Advisory Committee
1. Each Member of the System shall be entitled to one vote on the Committee through its designated representative or alternate under Section B.5.
 2. Except as otherwise specified in this section, a quorum of the Committee shall be a majority of the voting membership. The Committee may issue a written quorum call to the Members to ensure sufficient Members are present. When less than all Members are present, there must be sufficient affirmative votes to pass a measure as if all Members had been present.
 3. The Committee may create permanent or temporary subcommittees to facilitate discussion and decision making. The subcommittees may report and recommend to the Committee.
 4. A committee meeting may be called at any time by the Chair, or by the call of any three Members of the Committee. The Committee shall meet not less than quarterly. Notice of the time and place of the meeting shall be sent by electronic mail or by regular mail (written notice) to the designated Member representative at least seven days in advance of the meeting.
 5. The Committee will strive for consensus on all issues. In the event that consensus cannot be reached, an affirmative vote of a majority of the Members shall constitute a binding decision.

6. At its first meeting of each calendar year, the Committee shall elect a Chair and Vice Chair of the Committee. The Chair shall preside over the Committee deliberations and have such other duties and responsibilities as the Committee shall from time to time determine. In the absence or disability of the Chair, the Vice Chair shall assume the duties of the Chair. The role of presiding shall not limit a Member's right to vote.
7. The Committee may from time to time authorize a Member to add or subtract resources to the System. Such actions shall be consistent with the provisioning plan then in effect. When any change to the resources of the System is implemented, the impact of such changes on rates shall be reflected in the System rate structure.
8. The Committee shall undertake the following:
 - Create and approve Operating Protocols for implementation by the Executive Authority or designee;
 - Provide for an audit as needed;
 - Create and approve annual objectives and work plans;
 - Create and approve a Planning Document for System replacements and upgrades with a timeline for implementation, which shall be reviewed and updated annually;
 - Create, approve and update a Financial Plan to implement Planning Documents and annual objectives and work plans;
 - Review contracts to be entered into by the Executive Authority;
 - Provide oversight and direction on System Operations;
 - Approve System Operation Policies;
 - Establish Committees and appoint Committee Members as needed;
 - Determine compensation for direct costs to be paid to the Executive Authority, if any, as part of the budget process;
 - Take other actions as necessary.

E. Executive Authority's Responsibilities

1. In addition to its responsibilities and privileges as a Member of the Committee, Lane County, acting by and through its Sheriff's Office agrees to serve as the Executive Authority and fiscal agent for the Committee, until its successor is elected and qualified.
2. The Executive Authority for the Committee, shall
 - a. Prepare for review by the Committee and adopt the annual budget approved by the Committee as a part of the annual budget of the Executive Authority, subject to the discretion of the governing body of the Executive Authority;

- b. Prepare and provide the proposed budget to the Members along with an allocation of costs for each Member as provided in Section I, Budgeting, Rate Setting and Billing.
 - c. Take necessary steps in accordance with this Agreement to continue the operations of the System and require it to remain self supporting;
 - d. Implement System Operating Protocols;
 - e. Act in accordance with policy recommendations or statements, or decisions of the Committee, except if such action would create risks of violating a law or rule or breaching a contract.”
 - f. If appropriate, enter into contracts for services to facilitate the operation and all aspects of the System and to assure fulfillment of its duties;
 - g. Resolve disputes referred to the Executive Authority by the Committee.
 - h. Provide notices as required by law and otherwise act as staff for the Committee
 - i. Coordinate system operations with OWIN or other entities;
3. As fiscal agent for the Committee, the Executive Authority shall:
- a. Invoice Members and Subscribers, collect and disburse funds as indicated in the Committee Budget and;
 - b. Credit the System accounts with monies received and expended;
 - c. Properly forward invoices to the third party funding source to the extent approved funds are maintained by that funding source; however, for funds available to each Member, such Member is responsible for requesting reimbursement and using funds only for allowable uses and expenses;
 - d. Provide the Committee with at least annual reports on the financial status of the System accounts.
4. The Executive Authority may resign as Executive Authority by providing the Committee with written notification of intent to resign at least 180 days in advance. In this event, the Committee shall choose a new Executive Authority.
5. Annually, at the first meeting of the calendar year, the Committee shall elect an Executive Authority. The current Executive Authority will continue until its successor is elected and qualified.

F. Provisioning

1. The essential component of the System is a uniform communications system, allowing the participants to share a system, providing for secure communication (facility, encryption) when necessary and shared access to information as appropriate. General operational and provisioning decisions for the System shall be made by the Committee; provided, however, that individual agencies or groups of agencies shall be responsible for provisioning beyond System Demarcation Points.
2. The System requires a single system of radio transmission, and a single system of microwave communication. The Committee will adopt, in writing, and may from time to time modify, a uniform system for provisioning the System, including technical standards for equipment security provisions, access provisions and the system's design (System Provisioning Plan).
3. The Committee shall develop and maintain as a part of the System Operations Plan a written description of the network including at least the following:
 - a. A written and/or graphic depiction of the System, including location of major equipment and transmission routes;
 - b. A written and/or graphic depiction of the System's demarcation points, clearly describing the System's boundaries;
 - c. A description of each non-System attachment to the System;
 - d. A description of ownership, maintenance agreements, contact information and other information necessary for maintenance, repair and security for each segment of the System;
 - e. Any other information deemed necessary and useful to the Committee.
4. The System Operations Plan shall include descriptions and the anticipated timing of additions to the System, changes in use of the System by Members and a Financial Plan to implement changes. Modifications to the System shall only be made after approval by the Committee and in compliance with the System Operations Plan then in effect. Inclusion of a specific modification in the approved System Provisioning Plan shall constitute Committee approval for the identified modification to be made in the manner and at the time specified in the System Provisioning Plan.
5. For purposes of this Agreement, the System Demarcation Points shall be defined as those points where voice and data traffic from one Member, or a group of Members less than all Members, is transferred to physical facilities which are

available to transport traffic of all Members. Except as otherwise designated in the System Provisioning Plan, System Demarcation points will be located within System equipment.

G. Resource Acquisition

1. Except as otherwise approved in advance by the Committee, the Executive Authority will act for the Committee in procuring/providing any necessary resources to develop and operate the System in addition to those System components allocated for System use by Members.
2. The Committee shall set standards for reliability and maintenance of System facilities. Such standards shall be in writing and may be modified from time to time by the Committee.
3. Parties providing resources to the System retain ownership of those assets.
4. The Executive Authority may propose projects which further improve, expand, enhance and support the System, including but not limited to, acquisition of real property for sites, for System assets, purchase of hardware, software, and equipment, and to achieve interface with OWIN or other entities.

A Member may propose improvements to the System by giving notice to the Committee, describing the proposed improvements; estimated costs; how the proposed improvement fits with the System, timing and implementation, and such other relevant factors in order for the Committee to make an informed decision. The Committee shall meet to discuss the proposal and determine that there is interest in pursuing this as a Committee project. If so, the Committee shall develop a scope of work, project agreement, and plan amendment if necessary, which will also consider timing and funding of the project. If the Committee determines it is not appropriate and necessary for the System, it may decline. Nothing herein shall prevent the proposing Member or other combination of Members, from making such improvements to their local systems, independently as described in the proposal, so long as they are solely responsible for the costs. Any improvements made shall not in any way interfere with or negatively impact the System.

5. The Members recognize and agree that one of the reasons to enter into this Agreement is to enhance the ability of the Members to obtain grant funding from federal and state sources. It is presumed that grants will be applied for by the Committee for regional use and benefit to reduce the requirements for local share or match to the greatest extent possible in an equitable manner. The Committee shall have first opportunity to apply for grant funding. Each Member agrees to inform the Committee of potential grant sources and thereupon the Committee shall determine if the group should pursue that source. If the Committee declines to pursue that source, then an individual Member may seek

those grant funds on its own and, if successful, may choose to apply the grant funds for the benefit of the group or to its local match or share if it is an allowable use of grant proceeds.

6. Any new agreement for services or equipment the expenditure for which is not included in the Budget and requires Member financial contribution must be approved by the Members.
- H. Operations and Maintenance
1. The Executive Authority will operate the System under the guidance and general direction of the Committee.
 2. The Committee shall establish written service level standards including, but not limited to, the following:
 - a. Minimum equipment standards;
 - b. Reliability standards;
 - c. Repair and service reestablishment priorities;
 - d. Any necessary site access and equipment housing agreements and standards;
 - e. System security including, data security, physical security standards for equipment;
 - f. Disaster plans and agreements.
 3. The Executive Authority will act for the Committee in procuring and/or providing necessary maintenance services for the System in accordance with 1 and 2 above.
- I. Budgeting, Rate Setting and Billing:
1. Budgeting. The Executive Authority will annually prepare and adopt a budget for system operations for the next fiscal year. A draft budget shall be prepared and distributed to the Committee by December 31st for consideration at the Committee's January meeting. Each Member shall be responsible to conduct its budget process to allow the full Committee to know whether all necessary Member appropriations have been made. Any proposed expenditure not included in the budget requires Member approval; those included in the budget need no further Member approval.
 2. Rate Setting and Revenue Collection.

- a. Annually, according to the budget process, the Executive Authority will estimate the costs of operation and maintenance, repair and replacement and other costs associated with the mountain top locations identified on Exhibit 1. Costs will be included in the cost estimate and proposed rates for Master Switch use described in Para. (c) below, and costs shall be recovered from Master Switch user fees.
- b. Microwave. The Microwave System will be maintained and operated by the Oregon Wireless Interoperability Network (OWIN) at OWIN's cost and expense, except for the Linn Spur located in Linn County, where all costs of operation, maintenance, repair, and replacement shall be borne by Linn County, and the Benton Spur, located in Benton County, where all costs of operation, maintenance, repair, and replacement shall be borne by Benton County. The Executive Authority shall execute intergovernmental agreements with the OWIN, Linn County, and Benton County as approved by the Committee.
- c. Master Switch. The Executive Authority will estimate the operation and maintenance, repair and replacement costs of the Master Switch and VCALL system, which will be included in the annual budget for the upcoming fiscal year. The approved budget for the Master Switch and VCALL system will be funded by a subscriber rate system dependent upon customer class and the number of radio units within each class. The number of units shall be determined as of December 1st and June 1st of each year. The budget and rates shall be adopted by the Committee following presentation of a proposed budget and rates by those Members who are Master Switch Users. Under all circumstances, the rate fee shall be sufficient to pay for the annual budget for the switch and VCALL system. Member rates shall be the lowest rate available:
 - (1) Non Member Subscribers. Upon execution of a subscriber agreement, a non-Member may use the system and will be charged a Subscriber rate on the number of units placed on the system at such per-unit rate determined by the Committee annually. Such rate determination shall be concurrent with the budget process so that the per unit cost for the non Member is effective as of July 1st of each year and incorporated into the Subscriber Agreement.
 - (2) Member Subscribers. Member Subscribers shall be charged a preferred rate based on the number of units they place on the System at such per unit rate as the Committee determines. Each Member shall notify the Executive Authority as to the number of units and the identity of those agencies within the Member's jurisdiction who will obtain the Member subscriber rate.

- (3) Payment. The Executive Authority will invoice all Subscribers using the Master Switch System semi-annually as of December 1st and June 1st of each year according to the number of units in the System attributed to that party, and such payment will be due within 30 days of invoice. Failure to pay will constitute a default under this Agreement and in addition to any other remedies provided hereunder, service may be terminated if there is failure to pay within 30 days following demand for payment.

At the conclusion of the fourth quarter of the fiscal year, if actual costs are more than budgeted and collected amounts, the Subscribers will be surcharged for such amount according to the formula for that fiscal year and such surcharge will be paid to the Executive Authority within 30 days of invoice. Any excess amount paid by a user at the end of the fiscal year will be carried over as a credit to that user's account for the next fiscal year.

J. Default

1. Events of Default. If any Party is in breach or default (Defaulting Party), under this Agreement, any other Party (Nondefaulting Party) may notify in writing to the Defaulting Party that it is in breach or default, such notice to be effective upon its receipt by the Defaulting Party. Copies of the notice shall be sent to all Members at the same time. The following events shall constitute breach or default under this Agreement:
- a. failure to make any payment when due hereunder;
 - b. failure to perform in any material respect any obligations required to be observed or performed hereunder;
 - c. willful and material interference by one Party to another Party's operations.

2 Remedies

- a. Defaulting Party's Right to Cure. The Defaulting Party shall have the right to cure any breach or default under this Agreement within thirty (30) calendar days after the receipt by the Defaulting Party of notification of such breach or default. In the event that any breach or default is of a nature such that it may not reasonably be cured within thirty (30) calendar days, the Defaulting Party shall have the right to provide the Nondefaulting Party with a plan for the appropriate actions to cure such breach or default. Within the thirty (30) calendar day period, the Defaulting Party must commence diligently pursuing appropriate action under the plan to cure the breach or default, in which event the Defaulting Party shall have a longer period of time to cure the breach or default so long as the

Defaulting Party shall continue to be diligently pursuing appropriate action during such period; provided, however, that in no event shall such time period exceed 120 days from the date of receipt of notification of the breach or default.

- b. Non defaulting Party's Remedies. After the time allowed the Defaulting Party to cure any breach or default has expired, and subject to the dispute resolution process of Section M, the Committee shall have the right to (1) terminate the Defaulting Party's Membership (without vote by the defaulting party); or (2) place the defaulting party in a nonvoting status until paid and deny access to the System. The Committee or any Nondefaulting Party may elect to cure any breach or default of the Defaulting Party to preserve the Nondefaulting Party's rights that may be prejudiced as a result of such breach or default; and exercise and pursue all other rights and remedies available to it under applicable law.
- c. Except as otherwise provided in this Agreement, any right or remedy afforded to any Party under any provision of this Agreement on account of breach or default by another is in addition to, and not in lieu of; all rights or remedies afforded any party under any other provision of this Agreement, by law or otherwise on account of the breach or default.

K. Indemnity

- 1. Each of the members agrees to defend, indemnify and save the others harmless from any claim, liability or damage, including attorney fees, resulting from any error, omission or act of negligence on the part of the indemnifying party, its Commissioners, its officers or employees, and agents in the performance of its responsibilities under this agreement, and in the performance of its separate responsibilities under any other agreements executed by the Executive Authority or the parties in furtherance of this Agreement. The Members' indemnity and hold harmless obligations are subject to the limitations of the Oregon Tort Claims Act and the Oregon Constitution, as applicable.
- 2. Each of the Members shall require contractors, licensees, invitees, and vendors performing responsibilities in accordance with Agreement to have insurance coverage they would typically require for the same performance, with each Member, and its governing Board members, officers, employees, and agents covered as additional insured for general and any liability coverage. Each Member shall also require in any contracts for performance of these responsibilities with any contractors, licensees, invitees, and vendors that such parties agree to indemnify each of the Members of this Agreement in accordance with the terms in Subsection K.1 above, subject to any legal limitations which apply to such parties.

3. Each party each expressly recognizes and agrees that its obligation to indemnify, defend, protect and save another harmless is not a material obligation to the continuing performance of its other obligations, if any, hereunder. In the event that a party shall fail for any reason to indemnify, defend, protect and save the other harmless, the injured party hereby expressly recognizes that its sole remedy in such event shall be the right to bring legal proceedings against the other party for its damages as a result of the other party's said failure to indemnify, defend, protect and save harmless. These obligations shall survive the expiration or termination of this Agreement.
4. In providing the services specified in this agreement (and any associated services) all the Members are public bodies and maintain their public body status as specified in ORS 30.260. All the Members understand and acknowledge that all Members retain all immunities and privileges granted them by the Oregon Tort Claims Act (ORS 30.260 through 30.295) and any and all other statutory rights granted as a result of their status as local public bodies.
5. Each of the Members agrees to indemnify and save the other Members, their officers, employees and agents harmless for its proportional share of liability from any claim, liability or damage, including attorney fees, resulting from any action or decision by the Committee or by the Executive Authority, and subject to the limitations of the Oregon Tort Claims Act and Oregon Constitution as applicable.
6. It is understood that state and federal funding has been obtained for the activities conducted by the Executive Authority under this Agreement. Notwithstanding the assumption of liability in Section C. and indemnity provisions in Section K., 5., as between the Members and Executive Authority: 1) The Executive Authority is responsible for complying with applicable law, including ORS Chapters 279A, 279B, and 279C, as may be applicable to the purchase, and 2) The Executive Authority is responsible for claims of misexpenditure of funds in its possession and for failing to pay sums owed third party contractors only to the extent it is the cause of such misexpenditure or failures, and subject to the limitations of the Oregon Tort Claims Act and Oregon Constitution, Article XI, Section 10.

L. Limitation of Liability

Notwithstanding any provision of this Agreement to the contrary, no party shall be liable to any other party for any special, incidental, indirect, punitive or consequential damages, or damages for lost revenue or lost profits, whether foreseeable or not, arising out of, or in connection with such party's failure to perform its respective obligations hereunder, including, but not limited to, loss of profits or revenue (whether arising out of transmission or transport interruptions or problems, any interruption or degradation of service or otherwise), or claims of customers, whether occasioned by any construction, reconstruction, relocation, repair or maintenance performed by, or failed to be performed by, the other party or any other cause whatsoever, including breach of contract, breach of warranty, negligence, or strict liability, all claims for which

damages are hereby specifically waived. Except for the limitations on actions contained in the applicable provisions of the Oregon Tort Claims Act, nothing contained herein shall operate as a limitation on the right of a party hereto to bring an action for damages against any third party, including claims for indirect, special or consequential damages, based on any acts or omissions of such third party.

M. Dispute Resolution

In the event any Member to this Agreement disagrees and/or disputes any application of a term or provision herein, or any term, obligation or responsibility as set forth in a Project Statement, Project Agreement or this Agreement, any such dispute or disagreement shall be addressed as provided herein:

1. The disputing Member shall set forth the dispute issue in a written statement and shall present it to the Committee. The written statement shall at a minimum set forth: (1) the applicable term, provision or condition of this Agreement which is in dispute; (2) the basis of the dispute; (3) any impacted Members and the extent of impact if possible; and (4) a proposed resolution. The disputing Member shall present the written statement to the Committee as soon as reasonably practicable after the dispute arises, but no later than 30 days from the event.
2. The Committee shall appoint a representative(s) to meet and confer with the disputing Member, and any Member(s) directly impacted by the dispute. The appointment of the Committee representative(s) shall be at the sole discretion of the Committee, and the Committee shall appoint a representative(s) not directly impacted by the dispute. The Committee may hire a third party mediator or other dispute resolution provider. Representative(s) may negotiate the dispute to resolution, and if resolution requires further action of the Committee, the representative(s) may present a recommendation for such action to the Committee.
3. The Committee shall hire a third party mediator or other dispute resolution provider if the dispute involves all Members.
4. In the event the dispute is not resolved in accordance to Section M2, the dispute shall be presented to a mediator mutually acceptable to the Committee and disputing Member. The Committee and the disputing Member shall have twenty (20) calendar days to agree on a mutually acceptable mediator. Should they fail to do so in such time, the vote of two thirds of the Members shall be sufficient to appoint a mediator. The Membership shall bear the cost of the mediator.
5. In the event the dispute is not resolved at mediation, the matter may be submitted to binding arbitration in accordance with the Uniform Arbitration Act (ORS 36.600 to 36.740). The Membership and disputing Member

shall share equally in the cost of the arbitrator. Otherwise, disputes shall be resolved in State Circuit Court.

All participants in a dispute resolution process provided above shall be responsible for their own attorneys' fees, costs and expenses. The Oregon Rules of Civil Procedure relating to discovery and the Oregon Evidence Code shall apply.

N. Confidentiality

1. Maintenance of Confidentiality. Members may disclose confidential information to each other, and each Member is subject to Oregon Public Records Law. Confidential Information is that information which meets an exemption under Oregon Public Records Law, including but not limited to information which the disclosing and receiving Members reasonably believe should be considered confidential under that Law and which they agree to keep confidential under this Agreement,. It includes information the receiving Member may have received, had access to, learned, heard or observed. The information disclosed will primarily be for law enforcement purposes covered by an exemption to Oregon Public Law. Also, in addition to any other written or verbal agreements or understandings at the time of disclosure, this Agreement serves as an agreement by a receiving Member to maintain confidentiality of that disclosing Member's Confidential Information to the extent permitted and subject to the Oregon Public Records Law and as provided in N. 2. A receiving Member may use, or have access to Confidential Information only for the receiving Member's benefit and in furtherance of this Agreement. Each Member shall (1) limit disclosure of the Confidential Information to those Commissioners directors, officers, employees and agents of the Member who need to know the Confidential Information, (2) exercise reasonable care with respect to the Confidential Information, at least to the same degree of care as Member employs with respect to protecting its own proprietary and confidential information, and (3) return immediately to the Member who provided the information, upon its request, all materials containing Confidential Information, in whatever form, that are in Member's possession or custody or under its control. A Member is expressly restricted from and shall not use Confidential intellectual property of the providing Member without that Member's prior written consent.
2. Each Member will maintain the confidentiality of another Member's Confidential Information and not disclose it to a third party, subject to the limitations and within the discretion permitted by Oregon Public Records Law, or as authorized by the disclosing Member in writing or as ordered by a court of competent jurisdiction, or unless the information has been made public.

The disclosing Member shall at all times remain the owner of their Confidential Information. If the receiving Member receives a request for disclosure or subpoena related to Confidential Information, the receiving Member will provide notice to the owner before a response is due, and it shall be the owner's responsibility to establish that such information is exempt from disclosure. The owner shall defend, indemnify, and hold receiving Member harmless from any claim or administrative appeal, including costs and expenses related to the request to disclose, subject to applicable legal limitations.

3. The Members acknowledge that unauthorized disclosure of Confidential Information will result in irreparable harm to the providing Member. In the event of a breach or threatened breach of this Agreement, the Member may obtain equitable relief prohibiting the breach, in addition to any other appropriate legal or equitable relief.

O. Public Meetings

The meetings of the Committee shall be conducted in accordance of the Oregon Public Meetings Law, ORS 192.610 to 192.710. The Members recognize that the large majority of meetings may be conducted as executive session as the Committee will be considering public safety, security, system vulnerability and other exempt public records.

P. Notice

Except where specified otherwise, the terms 'written communications', 'written notification' and 'notice' shall include notification by electronic mail. Each Member designates a person to receive and send notices set forth on Exhibit 5, which may be amended by the Committee upon receipt of notice of change from a Member. Each Member is responsible for providing advance notice to each of the other parties of any changes in this contact information.

Q. Additional Agreements

This Agreement, including its exhibits and amendments, constitutes the sole and complete agreement among the Members.

R. Amendment Process

This Agreement may be amended only by written agreement among all Members. Any amendment shall be executed by a person authorized to bind the Party to the commitments represented in the amendment. Exhibits _through _ relating to system descriptions, contract information for notices, operational protocols or rate making criteria or methodology are ministerial in nature and may be amended by the Committee to reflect current system status, protocols or calculations of rates and charges.

S. Partial Invalidity

If any term or provision of this Agreement or the application to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

T. Waivers

No waiver of any breach of any covenant or provision contained here shall be deemed a waiver of any preceding or succeeding breach thereof or of any other covenant or provision here contained. No extension of time for performance of any obligation or act shall be deemed an extension of the, time for performance of any other obligation or act.

U. No Third Party Beneficiaries

The Member counties, and any other Members approved under Section B.3. are the only parties to this Agreement and all of its subsequent amendments. Such Member counties and future approved Members are the only parties entitled to enforce the terms of this Agreement. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to any other third party.

V. Ratification and Effective Date

This Agreement has been duly authorized and executed on behalf of each Member making it a valid and binding obligation of that Member. It may be executed in counterparts, all of which taken together shall constitute one instrument. This Agreement is effective September 20, 2006 (date the last party signed the initial IGA. This Agreement shall become effective for additional Members upon the date of their execution of the Agreement.

W. Remedies

The remedies provided in this Agreement are cumulative, and may be exercised concurrently or separately. The exercise of any one remedy shall not constitute an election of one remedy to the exclusion of any other.

X. Survival

All obligations relating to confidentiality; indemnification; publicity; representations and warranties; proprietary rights; perpetual licenses, including licensing obligations as stated in this Agreement shall survive the termination or expiration of this Agreement.

Y. Interpretation

The terms and conditions of this Agreement shall be liberally construed in accordance with the general purposes of this Agreement and according to Oregon law.

Z. Debt Limitation

This Agreement is expressly subject to the debt limitation upon any of the Members, as provided for in the Oregon Constitution and the Oregon Revised Statutes, and is contingent upon funds being appropriated. Any provisions herein, which conflict with applicable law, are deemed inoperative to that extent.

IN WITNESS WHEREOF the parties have signed this agreement as of the date first above written.

FOR BENTON COUNTY:

Jay Dixon, Chair Benton County Board of Commissioners	Date
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APPROVED AS TO FORM:

County Counsel	Date
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FOR COOS COUNTY:

Kevin Stufflehean, Chair Board of County Commissioners	Date
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APPROVED AS TO FORM:

County Counsel	Date
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FOR CURRY COUNTY:

Bill Waddle, Chair Board of County Commissioners	Date
---	------

APPROVED AS TO FORM:

County Counsel

Date

FOR JOSEPHINE COUNTY

Dwight F. Ellis, Chair
Board of County Commissioners

Date

APPROVED AS TO FORM:

County Counsel

Date

FOR LANE COUNTY:

County Administrator

Date

Russel Burger, Lane County Sheriff

Date

APPROVED AS TO FORM:

County Counsel

Date

FOR LINN COUNTY:

Roger Nyquist, Chair
Board of County Commissioners

Date

APPROVED AS TO FORM:

County Counsel

Date

EXHIBIT 2

REGIONAL INTEROPERABLE RADIO SYSTEM Operating Agreement #1 Re: MOTOROLA EQUIPMENT/SOFTWARE AT COUNTIES' SITES Ordering, Installing, Testing, and Warranty Services

The following duties and responsibilities shall be assumed by each Member County of the Regional Interoperable Radio System. These duties and responsibilities are required in order to meet Motorola's terms to provide, test, and warrant the interoperable system. This operating agreement is also intended to provide clarification for each County as to County-specific requirements and Executive Authority duties and requirements.

Status: Benton, Coos, Curry, Josephine, Lane and Linn counties agreed through an IGA to have an interoperable radio system with Lane County currently serving as Executive Authority. Federal funding was obtained to establish the System. Sites have been identified in each of the seven counties. Motorola equipment, including software has been purchased. Motorola has begun and will continue to install this equipment at sites throughout the counties. The equipment will be tested before it can be used. After successful testing, Motorola will provide maintenance services through the ninety day warranty period.

Duties and Responsibilities of Each County

Each county shall:

1. Designate a project manager to be a point of contact for Motorola for purposes of accessing sites to install, test, and maintain equipment, including software through the warranty period.
2. During the absence of a county project manager, that county will designate another county representative to act as project manager, and provide contact information to Motorola and the Executive Authority in advance.
3. Prepare selected sites in each county for receiving the Motorola equipment – including reasonably adequate physical space, air conditioning, electrical power outlets, other environmental conditions, telephone or other communication lines, and electrical grounding system.
4. Provide Motorola access to each of the sites in order to install, test and maintain equipment. Each county should arrange for any necessary permits, zoning variances, licenses or other approvals necessary for Motorola to install, test and maintain equipment.

5. Provide Motorola with any applicable safety and security rules and policies related to the site, including but not limited to those of the county and the Sheriff's Office.
6. Prior to installation, confirm receipt of the proper equipment and software with the Executive Authority, and not allow installation of equipment software which does not belong at the site.
7. There is an agreed upon performance schedule with Motorola. Each county has responsibility to work with Motorola within that performance schedule to timely provide acceptable and accessible sites.
8. Promptly notify the Executive Authority of any potential need to reschedule any installation or testing activity, providing reasons for such delay.
9. Upon request, provide assistance to the Executive Authority related to identification of equipment, software, incidental hardware and materials for purposes of ordering, installing and timely meeting the performance schedules of Motorola.
10. Partner counties agree not to request or agree to any changes to the work, equipment, software, costs, or contract rights or obligations with Motorola without prior agreement from the Executive Authority.
11. Upon request of Motorola or the Executive Authority, perform the work necessary to test the equipment, including software after installed and promptly notify the Executive Authority of the details of any failures or inadequacies in performance and of successful completion of those tests. Each county agrees not to begin operating or using any equipment until after the Executive Authority notifies it that it may begin use.
12. Follow the warranty service procedures supplied to the County by the Executive Authority (attached) for making warranty claims during the applicable warranty period. Any freight costs to ship equipment to the repair depot will be paid by the county who possesses the equipment, and reimbursed by the Executive Authority. If Motorola fails to correct any covered defects or replace the equipment or software with the same or a functionally and technically equivalent product, that county will notify the Executive Authority.
13. Advise the Executive Authority of any dispute with Motorola. After coordination with the Executive Authority, attempt to settle or assist the Executive Authority in attempting to settle any dispute with respect to equipment, software, materials or services at the project manager level and in the spirit of mutual cooperation. Notify the Executive Authority if any dispute is resolved. If the dispute is unresolved at the project manager level, notify the Executive Authority and assist and cooperate with the Executive Authority in resolving the dispute.

14. Cooperate with the Executive Authority in the event of litigation with Motorola regarding equipment, software, materials or services provided within that respective county.

EXHIBIT 3
NOTICES

Benton County	
Chair Board of County Commissioners Benton County, Oregon Benton Plaza Building 408 SW Monroe Ave. Suite 111, Mezz. Level Corvallis, Oregon 97333	Sheriff Benton County Sheriff's Office 408 SW Monroe Avenue Suite 111, Mezzanine Level Corvallis, Oregon 97333
Coos County	
Chair Board of County Commissioners Coos County, Oregon 250 N. Baxter Coquille, OR 97423	Sheriff Coos County Sheriff's Office 250 N. Baxter Coquille, OR 97423
Curry County	
Chair Board of County Commissioners Curry County, Oregon Curry County Courthouse Post Office Box 746 Gold Beach, Oregon 97444	Sheriff Curry County Sheriff's Office 29832 Ellensburg Avenue Gold Beach, OR 97444
Josephine County	
Chair Board of County Commissioners Josephine County, Oregon Josephine County Courthouse 500 NW 6th Street Dept. 6 Grants Pass, OR 97526	Sheriff Josephine County Sheriff's Office 601 NW 5th St. Grants Pass, OR 97526
Lane County	
Chair Board of County Commissioners Lane County, Oregon 125 East 8th Avenue Eugene, OR 97401	Sheriff Lane County Sheriff's Office 125 E. 8th Avenue Eugene, OR 97401
Linn County	
Chair Board of County Commissioners Linn County, Oregon 300 SW 4TH AVE PO BOX 100 Albany, OR 97321	Sheriff Linn County Sheriff's Office 1115 Jackson St SE Albany, OR 97322