

ORDINANCE NO. 1123

AN ORDINANCE AUTHORIZING THE CITY OF CANBY TO JOIN INTO THE FORMATION OF THE CLACKAMAS 800 RADIO GROUP AND DIRECTING THE MAYOR TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT FOR THAT PURPOSE; AND DECLARING AN EMERGENCY.

WHEREAS, the cities of Canby, Lake Oswego, Oregon City, Sandy, West Linn, Molalla, Boring Fire District, Canby Fire District, Clackamas County Fire District Number 1, Estacada Fire District and Clackamas County desire to enter into an Intergovernmental Agreement pursuant to ORS 190.010, to share a two way radio communication system for providing emergency services to their various jurisdictions, and

WHEREAS, the member jurisdictions wish to establish this cooperative group and entitle it the **Clackamas 800 Radio Group**. Its purpose is to provide cooperative and coordinated effort among local governmental entities relating to an 800 MHZ radio communication system; now therefore

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. The Mayor is hereby authorized and directed to execute on behalf of the City of Canby, an intergovernmental agreement, as provided by ORS 190.003 through 190.085, in support of the formation of the **Clackamas 800 Radio Group**. The Intergovernmental Agreement, attached hereto as Exhibit "A" and incorporated herein by reference, shall become effective on the effective date of the last ordinance enacted by the parties to this Agreement.

Section 2. In as much as it is in the best interest of the citizens of Canby to implement this ordinance in order to be able to provide 800 MHZ radio service for it's police and fire department as soon as possible, an emergency is hereby declared to exist and this ordinance shall therefore take effect immediately upon its enactment after final reading.

SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, July 2, 2003, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular meeting thereof on Wednesday, July 16, 2003, commencing at the hour of 7:30 P.M. in the Council Meeting Chambers at Canby City Hall in Canby, Oregon.

Chaunee Seifried
Chaunee Seifried
City Recorder - Pro Tem

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 16th day of July, 2003, by the following vote:

YEAS 4

NAYS 0

Melody Thompson
Melody Thompson, Mayor

ATTEST:

Chaunee Seifried
Chaunee Seifried, City Recorder - Pro Tem

INTERGOVERNMENTAL AGREEMENT

Clackamas 800 Radio Group

THIS AGREEMENT is made and entered into, pursuant to ORS 190.010, and by and among the City of Canby, City of Lake Oswego, City of Oregon City, City of Sandy, City of West Linn; City of Molalla; Boring Fire District, Canby Fire District, Clackamas County Fire District Number 1, Estacada Fire District, Sandy Fire District; and Clackamas County (herein "Initial Partners").

WHEREAS, the sharing of two way radio communications system resources results in benefits to the Partners and to the public; and

WHEREAS, the Partners have determined a need to construct, implement, and operate Phase 1 of an 800 MHz trunked radio system (Radio System) to serve the Partners' jurisdictions; and

WHEREAS, the participating jurisdictions desire to establish **Clackamas 800 Radio Group** (herein "Agency") for the purposes described herein; and

WHEREAS, the Agency is to provide cooperative and coordinated effort among the Partners in the development and operation of two way radio systems; and

NOW THEREFORE, IN CONSIDERATION of the mutual promises and covenants contained herein, it is agreed as follows:

1. CREATION:

The Partners hereby create an intergovernmental entity as provided by ORS 190.003 through 190.085; and it shall be known as **Clackamas 800 Radio Group** (Agency).

2. DEFINITIONS:

The following is a definition of terms used herein:

- A. "Members" shall mean political jurisdictions or entities that are not providing public safety services that utilize the Radio System and have not been accepted as Partners.
- B. "Minor Equipment Replacement" shall mean new or used equipment convenient or necessary to maintain the operation of the Radio System as provided in the Agency annual budget, provided however that the Equipment shall not exceed an acquisition, repair, or replacement cost of \$25,000.
- C. "Partners" shall mean those political jurisdictions or entities providing public safety services and signature to this agreement. Further it shall include those political jurisdictions providing public safety services that are added to this agreement in the manner defined herein.

- D. "Public safety" or "public safety services" shall mean providing Law Enforcement and/or Fire/EMS services by a Partner, regardless of whether provided through a department of the Partner or by the Partner generally.
- E. "Public service" shall mean those services provided by political jurisdictions or entities to the general public such as schools, public works, vector control, water, sewer, etc.
- F. "Radio Units" shall mean radio units whether portable / mobile / control station / data radios enabled or programmed on the Radio System.
- G. "Users" shall mean entities that utilize the radio system and are either Partners or Members as defined above.

3. POWERS:

The Agency is vested with all powers, rights, duties, including expenditure of appropriate funds and retaining of personnel necessary for performing those functions in the coordinated delivery of the following services. Those functions include, but are not limited to:

- A. Adopt goals and objectives by which to own and operate the Radio System as well as long-range plans (five year time frame) for continued operations.
- B. Implementation of the goals and objectives and long range plans to the extent funds are appropriated for that purpose by the Partners.
- C. Adoption of an annual budget and approval of budget modifications as required.
- D. Review and evaluate efforts for effectiveness and conformance with established objectives short and long term.
- E. Approve new Partners. (New Partners participation rights and liabilities for capital and operating cost sharing shall be as set forth in this Agreement.)
- F. Approve Members who will utilize the radio system and determine a fee schedule for this use.
- G. Approve future phases of the Radio System build out including funding strategies for capital and operating costs, recognizing that this power of the Agency does not obligate the Partners to participate in the funding or management of future phases assets.
- H. Select personnel as deemed appropriate or required for the Agency.
- I. Resolve operating problems of the Radio System as brought before the Agency.

4. GOVERNING BODY:

There is hereby established a governing body and it shall have the duties as provided below.

- A. The Agency shall be governed by a Board of Directors (herein "Board") consisting of one representative from each Partner.

- B. Partners, through the Board of Directors, govern the development, management, and operation of the Radio System. (Members are not responsible for the management of the Radio System and shall not be part of the governance of its operation.) Each Partner shall appoint, at its pleasure, one primary representative, and one alternate representative who may attend all Board meetings. The primary and alternate representatives may participate in all discussions of the Board; provided however that the vote of the Partner shall be cast only by the primary representative, unless the primary representative is absent, in which event the alternate representative may cast the Partner's vote,
- C. Each Partner, through a power of attorney or similar designation, may allow for another Partner to represent it on the Board, in which event the vote of the Partner may be cast by the representing Partner's representative, as provided in subsection (b) above.
- D. The Board shall be responsible for the adoption of Agency's annual operating budget and revisions thereto.
- E. The Board shall meet at a minimum of once a year or more frequently as determined by the Chair or as requested by any Partner.
- F. All meetings of the Board shall be held in accordance with Oregon Public Meeting Laws, ORS 192.610 et seq.
- G. A quorum of the Board shall be a majority representation of the Partners for the purposes of deliberation and decision of the Board.
- H. All decisions of the Board, unless otherwise provided herein, shall require a majority vote of the Partners in attendance.
- I. The Board shall adopt bylaws governing its procedures and including, at a minimum, 1) time and place of regular meetings; 2) method and manner of calling special meetings; 3) method, term, and manner of election of Board officers; 4) procedures for executing documents on behalf of Agency; and 5) development of personnel and purchasing policies.
- J. The Board shall elect a chair, first vice-chair, and second vice-chair. The chair, or in the chair's absence, the first vice-chair, or in their combined absence, the second vice chair, shall preside over all Board meetings.
- K. The Board shall appoint a clerk of the Board to be responsible for providing notices of meetings and keeping of minutes as required by Oregon Public Meetings Laws.
- L. The Board shall adopt goals and objectives both short term (operations) and long term.
- M. The Board shall consider and adopt policies relating to ownership and maintenance responsibilities for equipment necessary for the operation of the Agency.
- N. The Board shall perform or have performed annually an evaluation of the effectiveness of the organization to establish its ongoing goals and objectives.
- O. The Board, upon unanimous approval of all Partners, shall approve development and expansion of the system including future phases, which may include funding

strategies for capital, and operating costs and funding formulas. If unanimous approval cannot be obtained for a future phase, then the governance, funding, and development of the future phases shall be by separate agreement but this agreement shall continue with respect to Phase 1 of the Radio System. This subsection shall not be amended except upon unanimous approval of all Partners.

- P. The Board shall approve contract employment terms and conditions for employees (if any)
- Q. The Board shall provide oversight and direction to all Agency operations,
- R. The Board shall adopt implementing policies and strategies for Agency service levels,
- S. The Board shall provide for an annual audit of the Agency's finances,
- T. The Board shall approve all contracts in compliance with the Agency's purchasing policies,
- U. The Board shall approve new Partners.
- V. The Board shall approve Members who will utilize the Radio System and determine a fee schedule for Member's use.

5. TECHNICAL OPERATING COMMITTEE:

The Board may establish additional technical operating committees as required. These groups shall include appropriate technical staff from each Partner as may be appointed by the Board.

6. CAPITAL COST DETERMINATION AND INITIAL PARTNER LIABILITY:

- A. Definitions
 - a) Annual Allocated Capital Cost: shall mean the respective Initial Partner's Allocated Capital Cost Amount divided by the number of years or fraction thereof for repayment of the debt issued by Clackamas County.
 - b) Annual Allocated Capital Cost Debt Service Charge: shall mean the expenses, over and above the principal and interest of the debt, charged to the Agency for the County's maintenance of the debt for the construction of the Radio System, together with the interest accruing on the unpaid principal balance of the debt.
 - c) Capital Cost: shall mean the total construction cost of the Radio System, together with consultant fees and expenses incurred for the construction and formation of the Radio System, and any Clackamas County charges for oversight of the construction of the Radio System. The Capital Cost is a fixed amount, determined at completion of construction of the Radio System.
 - d) Capital Cost Financing Charge: shall mean the expenses incurred by the County in issuance of bonds for the construction of the Radio System.

B. Financing of Initial Construction Costs.

- a. The initial capital costs for construction of the Radio System infrastructure shall be financed by Clackamas County and reimbursed by the Agency. A Memorandum of Understanding between the Agency and Clackamas County shall be entered into outlining the terms of this financing.
- b. Attachment "A" attached hereto-dated January 23, 2003 is an estimated breakdown of Partner costs of the initial capital and operating cost.
- c. Clackamas County may enter into agreements with particular Initial Partners to establish a maximum Initial Partner Allocated Capital Cost Amount for the particular Initial Partner based on what the construction cost of facilities that could be constructed by the particular Initial Partner would cost, less adjustments to the particular Initial Partner's projected income that would be realized if the facilities were constructed by the Initial Partner instead of by the Agency.

C. Initial Partner Liability

The Initial Partners, as named at the beginning of this Agreement, are hereby obligated to the Agency for payment, at the Initial Partner's election, of either:

- a) Lump Sum Payment of Capital Cost. Upon 30 days demand by the Agency, payment in full of the respective Initial Partner's Allocated Capital Cost; or
- b) Semi Annual Payment of Allocated Capital Cost Charges. If Lump Sum Payment of Capital Cost is not elected, the Initial Partner shall be liable, and shall pay to the Agency within 30 days of demand and thereafter semi annually until the Initial Partner's Capital Cost obligations have been paid in full, the Initial Partner's Annual Allocated Capital Cost, Annual Capital Cost Financing Charge, and the Annual Allocated Capital Cost Debt Service Charge.

D. Determination of the Allocated Capital Cost Amount

- a) Upon completion of construction, the Agency shall determine the total Capital Cost incurred in construction of the Radio System.
- b) Each Initial Partner shall notify the Agency, within 15 days of demand, the number, and type of radio units that the Initial Partner wishes to have enabled or programmed on the system. The Agency shall then determine the Initial Partner's adjusted number of radio units by adding, for each Partner, the number of public safety radios and one-half of the number of non-public safety radio units the Initial Partner has indicated that will be enabled or programmed on the Radio System.
- c) The Capital Cost (subsection a above) shall be divided by the adjusted number of radio units (subsection b above), to produce the Per Radio Capital Cost Amount.
- d) To produce the respective Initial Partner's Allocated Capital Cost Amount:
 - i. The Per Radio Capital Cost Amount shall be multiplied by the adjusted number of radio units for each respective Initial Partner, to produce the tentative Initial Partner's Allocated Capital Cost Amount.

- ii. If the respective Initial Partner's tentative Initial Partner's Allocated Capital Cost Amount exceeds any respective Initial Partner's Maximum Capital Cost (see Section 6.B.c), then the County shall assume the amount that exceeds the respective Initial Partner's Maximum Capital Cost and such cost shall become a part of the County's cost.
- e) The method of allocating the capital costs shall not be amended without unanimous approval of all Initial Partners because following determination of the Initial Partner's Allocated Capital Cost Amount, the allocation of capital costs need not be recalculated during the life of the debt service for the construction of the Radio System.
- f) In the event additional equipment is purchased by the Agency, other than minor equipment replacement, which requires additional debt service beyond the construction cost of the Radio System, the then Partners shall address the manner of acquisition and financing.

7. AGENCY OPERATION FUNDING:

The Agency is to be self sufficient in its operation and obtain funding from Users of the Radio System.

A. Partners

Operating Costs shall be allocated among the Partners as follows:

- a) The Net Operating Cost shall be the budgeted amount required for the operation and minor equipment replacement for the upcoming year, plus any carry forward operating deficit from the prior fiscal year, after deducting the budgeted income to be received from Members and any other sources and any carry forward operating balance from the prior fiscal year.
- b) Each March 1, for the fiscal year beginning July 1 and ending the following June 30, the Agency shall:
 - i. Determine the total number of Partner radio units enabled or programmed on the Radio System, or requested to be enabled or programmed on the Radio System commencing July 1.
 - ii. Divide the Net Operating Cost by the total number of Partner radio units, to produce the Per Radio Unit Operating Cost Amount.
 - iii. Multiply the Per Radio Unit Net Operating Cost Amount by the number of radio units for each Partner.

B. Members

Members shall pay a fee for use of the system as follows:

- a) Member annual cost shall be determined by the Member radio unit fee as determined by the Board multiplied by the number of units enabled or programmed on the system.
- b) Members are not subject to the Partner capital cost or operating cost allocation.

8. NEW PARTNERS OR ADDITIONAL RADIOS ADDED BY PARTNERS:

A. Capital Cost Recovery

- a. New Partners or Initial Partners who wish to increase their number of enabled or programmed radio units shall pay to the Agency the Per Radio Capital Cost Amount (see Section 6.D.c) plus the respective Annual Capital Cost Financing Charge, and the respective Annual Allocated Capital Cost Debt Service Charge for each year from the date the original payment was due by the Initial Partners (see Section 6.C.b) and thereafter until the Capital Cost is paid in full. ("Capital Cost Recover Amount")
- b. The Capital Cost Recovery Amount paid shall be credited to the Initial Partners in proportion of their respective Initial Partner's Allocated Capital Cost Amount

B. Operating Cost Recovery

If a Partner wishes to increase the number of radio units activated or authorized for activation on the Radio System after March 1, the Partner shall pay the Per Radio Unit Operating Cost Amount for each fiscal year that the radio unit was not included in the Partner's radio unit number used for determining the Partner's Net Operating Cost Amount liability. (No credit shall be given for partial year.)

Example: if a radio unit was enabled effective April 1 and it had not been included in the Partner's number of radio unit's calculation in Section 7, the Partner would pay the current fiscal year's and the next fiscal year's Per Radio Unit Operating Cost Amount.

C. Restricted Use of Monies.

The monies received by this section shall be placed in the General Fund, to reduce future Net Operating Cost payments by the Partners. These monies shall be for the sole and exclusive use of the Agency operation and administration, subject only to review during adoption of Agency's annual budget.

9. OPERATION OF THE AGENCY:

The Agency will provide, through its own employees or by contracted personal services, fiscal operational services, such as finance, legal, personnel, required for the operation of the Agency.

10. STAFFING:

The Board, when authorized by the budget, shall hire such staff as necessary to provide expected service levels. Such staff shall perform in accordance with policies and procedures to be established by the Board

If a Partner provides a loaned employee to the Agency, the loaned employee shall be under the exclusive control and direction of the Board, or such other employees as the Board may designate, while performing assigned duties for the Agency.

11. INCREASING PARTNERSHIP / MEMBERSHIP:

The Board shall develop a process for allowing new Partners or Members of the Radio System.

- A. The Radio System is primarily a public safety related system, Phase I serves a portion of Clackamas County (as determined by the coverage area of the Radio System). Partnership privileges will only be afforded to political jurisdictions within Clackamas County located within the coverage area of the Radio System with public safety departments or functions. Note: Political jurisdictions that have public safety departments or perform public safety services (Law Enforcement and/or Fire/EMS) must join as Partners and may not join as Members)
- B. Other political jurisdictions or entities may utilize the system in a Membership status with priority afforded to those jurisdictions or entities located in Clackamas County and providing services directly within the coverage area of the Radio System.
- C. The initial system design and intent is to encourage Membership from other political jurisdictions or entities in Clackamas County providing ancillary services such as utilities, public works, or schools and their Membership shall not be unreasonably denied.
- D. Membership shall be limited to political jurisdictions or entities responsible for providing public services such as utilities, public works, or schools.
- E. To be eligible for Membership entities shall be required to be bound by the terms and provisions of the Membership Agreement to be developed by the Board.
- F. New Partnership entities shall be required to be bound by the terms and provisions of this Intergovernmental Agreement.

12. EQUIPMENT:

The Board shall develop proposed policies relating to ownership, replacement, and maintenance responsibilities for equipment necessary for the operation of the Agency.

13. DURATION, WITHDRAWAL AND TERMINATION:

This Agreement is perpetual and the Agency shall continue from year-to-year provided, however,

- A. Any Partner may withdraw from the Agency upon providing written notice to the Chair of the Board not later than June 30 of any year for withdrawal effective July 1 of the following calendar year; and
- B. If an Initial Partner withdraws from the Agency prior to the satisfaction of their portion of the Initial Partner's Allocated Capital Cost Amount they will be responsible for that portion of the capital cost until satisfied; payment shall be made on the same terms and basis.
- C. The Agency may be dissolved upon mutual agreement of all Partners anytime after the conditions of the Memorandum of Understanding between the Agency and Clackamas County are met.
- D. No modification may be made to the capital funding structure without the unanimous approval of all Partners because once the Initial Partner's Allocated Capital Cost

Amount has been determined, that figure has been fixed for purposes of repayment of the Capital Cost.

- E. No amendment may be made of this section lengthening the time required for notice of intent to withdraw except upon unanimous approval of the Partners.

14. ASSIGNMENT OF PARTNERSHIP (AND RADIOS):

- A. Upon a change in a partner's jurisdictional public safety function boundaries, a Partner may assign part or all of a partner's rights, obligations and liabilities under this Agreement to the succeeding political jurisdiction providing public safety functions within the area formerly provided by the Assignor Partner. The Assignor Partner shall notify the Agency of the transfer in jurisdictional responsibility for providing public safety functions, and the number of radio units assigned to the Assignee Partner.
- B. An Assignee Partner shall not be deemed to be a New Partner for purposes of Section 8 (New Partners or Additional Number of Radios to be Added to Radio System by Partners) above for both capital cost recovery and operating cost recovery liabilities for the radio units assigned to the Assigned Partner by the Assignor Partner, provided the Assignee Partner agrees to assume a portion of the Assignor Partner's outstanding liabilities and obligations, in proportion to the number of the Assignor's assigned radio units and the Assignor Partner's total number of radio units.
- C. Assignment of Partnership shall not be deemed to be a withdrawal or termination of the Assignor Partner for purposes of Section 13 above, as the Assignee Partner shall be deemed to be the successor in interest of the Assignor Partner's rights, obligations and liabilities, whether in whole or in part, under this Agreement and in the operation of the Agency.

15 ATTORNEY FEES :

In the event any party files litigation to enforce this Agreement, or any portion thereof, the prevailing party shall be entitled to reasonable attorney fees and costs, including any fees and costs incurred in an appeal, and as determined by the appropriate court.

16. DIVISION OF AGENCY PROPERTY:

- A. Partners terminating their participation in this Agreement waive all right to Agency - owned personal property if the Agency continues to function as a multi-jurisdictional entity for at least 5 years from the date of their withdrawal.
- B. When termination of the Agency occurs, all withdrawing agencies that withdrew within the prior 5 years or are part of the termination of the Agency shall share in the disposition of all property owned by Agency at the time of its termination.
- C. For agencies that withdrew within the prior 5 years, their distribution amount shall be reduced based on the Portland Metropolitan Area CPI during that 5-year period (the value of time) from the date of their withdrawal until the date of termination of the Agency.

- D. All property acquired by Agency after withdrawal of the party will not be considered for distribution to the withdrawing party even though the funds for purchase (forfeiture, grant, or otherwise) were acquired prior to withdrawal.
- E. Notwithstanding any other provision of this Agreement, upon recommendation of the Board, during its annual budget deliberations, may make a disbursement of funds not needed for continuing operation of the Agency to the Partners.
- F. This section may not be amended prior to July 1, 2020 without unanimous approval of all Partners.

17. EFFECT OF PARTNERS ACTIONS:

The Partners agree that no Partner will unilaterally make decisions or take actions that will effect the operating relationships or availability of resources to the other Partners.

18. AMENDMENTS:

Except as a section or subsection may otherwise specifically provide, limit, or prohibit, this Agreement may only be changed, modified, or amended upon three-fourths (3/4) or more vote of all Partners.

19. EFFECTIVE DATE:

This Agreement shall be effective on November 1, 2000, or the earliest date thereafter that the governing bodies of the Partners have properly authorized it.

20. SEVERABILITY:

The terms of this Agreement are severable and a determination by an appropriate body having jurisdiction over the subject matter of this Agreement that results in the invalidity of any part, shall not affect the remainder of this Agreement.

21. INTERPRETATION:

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

22. DEBT LIMITATION:

This AGREEMENT is expressly subject to the debt limitation upon the County, Cities and Districts as outlined in the Oregon Constitution and /or ORS, and is contingent upon funds being appropriated therefore. Any provisions herein, which would conflict with law, are deemed inoperative to that extent.

If a Partner does not appropriate the funds to meet the obligations as outlined herein that Partner shall be precluded from obtaining like services from other entities without fulfilling the obligations as outlined in Article 13.B above. Further that Partner will not be allowed access and/or use of the Radio System.

23. PAYMENT:

- A. Thirty days prior to the date each payment is due for Capital Cost, or Operating Cost Agency will send Partner an invoice covering the cost for the next payment period.
- B. All other charges or fees incurred by the Agency on behalf of the Partner will be invoiced to the Partner monthly, and the Partner shall pay the amount of each invoice within thirty (30) days of its date to the Agency.
- C. Agency may terminate the Partners accessibility and use of the Radio System by giving Partner ten (10) days written notice by certified mail if Partner defaults in its payment to Agency. Upon receipt of such notice Partner shall have thirty days within which to make such payment to Agency and if not paid Agency may then terminate the accessibility and use of the Radio System.

City of Canby, 

City of Lake Oswego,

City of Oregon City,

City of Sandy,

City of West Linn,

City of Molalla,

Boring Fire District,

Canby Fire District,

Clackamas County Fire District # 1,

Estacada Fire District,

Sandy Fire District,

Clackamas County,