

**SERVICE AGREEMENT
800 MHz SIMULCAST AND TRUNKING RADIO SERVICE**

THIS AGREEMENT is made and entered into this 1st day of September, 2016 by and between Benton County Emergency Services, a Joint Interlocal Government Agency (hereinafter referred to as "BCES"), and City of West Richland (hereinafter referred to as "User").

WITNESSETH:

I. RECITALS

WHEREAS, Benton County Emergency Services (BCES) is a joint interlocal government agency comprised of the County of Benton, the cities of Kennewick, Richland, West Richland, Prosser and Benton City, and Benton County Fire Protection District Nos. 1, 2, 3, 4, 5 and 6, and was duly formed under the laws of the State of Washington as provided in RCW 38.52 and RCW 39.34; and

WHEREAS, the purpose of BCES is to prepare for and facilitate coordination of resources for county-wide disaster emergency response, and to provide emergency and non-emergency communications to emergency service providers; and

WHEREAS, BCES maintains and operates the BCES 800 MHz radio system; and

WHEREAS, User, under the terms and conditions set forth below, desires to avail itself of the 800 MHz radio system owned and operated by BCES.

NOW, THEREFORE, in consideration of the covenants and agreements contained herein and the terms and conditions hereof, the parties hereby agree as follows:

II. AGREEMENT

1. Scope of Services.

1.1 Access. BCES shall provide User with access to the BCES 800 MHz radio system for the use of the User's portable, mobile and control station radio units. All radios and control stations that will be used on the system will be pre-approved and programmed by designated agents of BCES prior to gaining system access. The 800 MHz System Manager (hereinafter "System Manager") shall be responsible for granting system access once pre-approval and programming is complete. All radios that will operate on the system shall be subject to the terms and conditions of this Agreement.

1.1.1 Only Project 25 (P25) compliant radios will be purchased and added to the 800MHz system. P25 is defined in Attachment B, attached and incorporated herein.

1.1.2 The System Manager will approve the programming of all radios on the trunked system. Upon initial and future radio template programming and reprogramming of mobile radios, the User must provide the necessary hardware to program and test the template. This includes single/dual control

head(s), portables, and desktop ancillary equipment.

1.1.3 Patches/Talk Group Usage and Aliases. Requests for Talk group name/alias changes must be approved by the System Manager. BCES is not responsible for User-provided patches or operational control of User talk groups on the 800 MHz system. All User patches must have prior approval of the System Manager and the BCES Director before installation, and any system degradation that results from the patch may result in the patch being removed. Patches that are funded and/or maintained by individual Users on the system shall be controlled by those Users. These patches are typically patches to existing VHF conventional radio systems. In the event of a patch failure that may be caused by the User's faulty base station or a leased telephone line, the 800 MHz System Manager reserves the right to disable the patch until it is fully operational. BCES is not responsible for patches or talk groups that are dropped from the 800 MHz system. These patches are funded by individual Users on the system. Talk groups will be assigned only after a valid contract has been signed with the User.

1.2 BCES Requirements. BCES shall maintain and repair its 800 MHz radio system consistent with standards for this type of system. BCES, within its powers, will make the required efforts to ensure timely repairs are effected. BCES shall provide all authorized radio agents the initial programming and subsequent programming information required to maintain identification number/unit affiliation.

1.3 Reports to User. Upon request, but no more frequently than quarterly, the System Manager will provide the User agency a report of:

- Total system access time for each radio;
- Busy outs for each radio;
- Emergency calls placed by each radio;
- Additional information sought by each User may be negotiated with the System Manager and added as an addendum to this Agreement.

Detailed revenue, expense and balance sheet reports will be prepared as a part of the regular budget reporting process for BCES. BCES has established a separate fund specifically for the 800 MHz system. A copy of the approved report will be provided to each User upon request.

1.4 User Requirements: Programming requires radio template(s) for each model of Motorola P25 Radios.

1.4.1 Bi-directional Amplifiers (BDA): All BDA's must be approved by the System Manager before installation, after installation, and during operation by the System Manager. In the event that radio frequency interference should result from this installation, the User shall be responsible for immediately ceasing operation, disconnecting and eliminating the interference to the satisfaction of the System Manager before resuming operation. The System Manager may order corrective measures to be taken immediately and interference eliminated within five (5) days from written receipt of notice. In the event operation of equipment or of actions by the User that renders BCES's

equipment unusable, the User, upon notification by the System Manager, shall immediately cease such operations or actions. The User will be responsible and assume the cost of the corrective measures needed to eliminate the interference or modify it to the satisfaction of the System Manager.

1.4.2 Talk group Security: Talk group security relates to portable, mobile radio units and control stations programmed with the BCES System Talk groups. Assigned talk groups may not be loaned, issued or assigned to any radios, on a permanent or temporary basis, to any outside organizations. The temporary loan of talk groups will require a written request from the User for which the talk group is assigned and must also be approved by the System Manager. The System Manager will provide written programming authorization to the authorized programming service center selected by the User. Radio programming security will necessitate that no radio service software (RSS) modifications will be made to the portable, mobile radio units and control stations or communication consoles without the written approval of the System Manager. These modifications include the system ID number, radio number, control channels, connect tones, call alert parameters, secure parameters, emergency options, radio-wide options, trunking-wide options, preferred site tables, conventional channels, or any present or future options in future RSS software releases. The User will be responsible and will assume the cost of the corrective measures needed to eliminate system problems due to any unauthorized radio software modifications. Radio software is considered confidential information. System Key information, talk group decimal/hexadecimal ID's and template information provided to the User for the template design process is considered confidential information. If the User makes a disclosure to unauthorized users of programming or template information, BCES may terminate this Agreement upon giving ten (10) days written notice of its intent to terminate. The User will be responsible for the costs associated with reprogramming and restoring the entire system's confidentiality to its original operating state prior to the unauthorized release of information by the User or found to be the fault of the User. The User will be provided the initial parameters of the system and the User's radios. Notification of changes will be provided in writing on a periodic basis.

1.4.3 Tuning and Calibration: User Subscriber Equipment (portables, mobiles, control stations) will be optimized and tuned to ensure total system integrity once every two (2) years. The System Manager will request documentation to support that each agency's subscribers have been properly tuned and calibrated. The cost of this maintenance is the sole responsibility of the User.

1.5 System Manager: Changes can be made at any time by the System Manager. Best efforts will be made by the System Manager to coordinate with the User's selected point of contact prior to the change, although contact is not required before changes are made. The User should notify the System Manager immediately of any problems that are experienced as a result of changes to the system programming.

1.5.1 The System Manager reserves the right to disable access to any special features of the system that in the System Manager's opinion are interfering with normal operations or causing excessive busy outs of the system. The

System Manager also reserves the right to control all parameters of the system to include limiting the connect and hold and hang times of any or all radios on the system in order to increase the efficiency of the system for all Users.

2. Migration Plans of User.

- 2.1. All Users will submit a migration plan to 800 MHz, in accordance with current Federal Communications Commissions (FCC) requirements, to the System Manager for approval prior to acceptance of this contract by the BCES Executive Board or designee. All user plans will be used to maintain 800 MHz system licenses. Note: BCES maintains FCC licenses for the public safety agencies.
- 2.2. User's migration plans will include:
 - 2.2.1 Projected date on which the User expects to operate on 800 MHz exclusively.
 - 2.2.2 Fielding plan for radios with planned installation dates and number of radios.
 - 2.2.3 Budget information to show how much will be requested in the User's budget for each budget period within the entire period of the plan that is submitted.
 - 2.2.4 Budget contingency statements to show that the User plans are contingent upon receiving requested funding.
 - 2.2.5 Other information as requested.

3. System Expansion Modification Policy.

- 3.1 The BCES Executive Board or its designee shall approve the expansion or modification of the system, to include new sites and/or additional repeaters at existing sites.

4. Compensation.

- 4.1 As compensation for annual radio system use provided by BCES, the User shall pay BCES the compensation set out in the attached Fee Schedule, Attachment A, which is hereby incorporated into this Agreement by reference. The fees paid by User shall secure access to BCES's 800 MHz radio system for each portable radio unit, mobile radio unit, and control station for which BCES provides access. This annual fee will be assessed for each radio that is programmed for access, whether or not the radio is actually used on the system by the User.
- 4.2 Compensation paid by the User shall be used for cost of operations, maintenance, and/or replacement of the various components of the 800 MHz radio system infrastructure. Annual fees do not include programming, installation, maintenance or replacement of field equipment, such as mobile or portable radios or control stations.
- 4.3 Should the User request a cancellation in service, all radios with the BCES template programming must, within 10 days of termination of service, be reprogrammed and erased of all talk groups and ASTRO25 System parameters at the User's sole expense.

- 4.4. Any fees for services to amend license to add a User control or fixed station to the FCC system license must be paid for solely by the User. This includes any engineering services or FCC license fees that might be necessary. All fees for programming are separate from this contract and are the responsibility of the User.
- 4.5. Template programming costs will be charged by the authorized programming service facility selected by the User. Established or future contracts with these facilities can be used to obtain reduced programming services. A list of authorized programming service facilities will be provided by the System Manager.
- 4.6. BCES reserves the right, at any time, to increase or decrease access fees set forth in Attachment A of this Agreement as necessary to cover all costs associated with the 800 MHz radio network's operations, maintenance, or replacement costs/reserves.
- 4.7. Upon addition of each device accessing the 800 MHz system, access charges shall be prorated on a monthly basis to the end of the quarter, and billed quarterly thereafter pursuant to Section 5 of this Agreement.

5. Billing and Payment Procedure.

- 5.1. Users will be billed quarterly. Quarterly billings will reflect radios added to the system during that time, prorated from the month of activation. Fourth-quarter billing will occur on December 15 of each year.
- 5.2. Charges will accrue upon signed receipt by BCES of programmed portable and mobile radio units and control stations (desk top radios).
- 5.3. If payment is not received forty-five (45) days after invoice date, a late fee of 1.5% per month will be added. Unless specifically exempted in writing by the BCES Executive Board or designee, Users in default after ninety (90) days will be denied access to the system without notice. Failure to pay will result in the termination of this Agreement without notice.
- 5.4. All invoices shall be billed to the User Agency as provided below:
City of West Richland
c/o West Richland Police Department
3805 W. Van Giesen
West Richland, WA 99353

6. Limitations of Service.

- 6.1. BCES makes no guarantee of 100% reliability or coverage from the 800 MHz radio system. BCES will assume no liability for disruption in service, outages, or coverage problems. Each User is responsible for ensuring that the system will provide coverage to satisfy the User's individual needs. BCES is not responsible for limitations caused by User's selected radio features, such as SCAN, non-standard template design, or any other similar feature that causes limitations when used in conjunction with BCES's 800 MHz system.

- 6.2 User is hereby put on notice that the use of the SCAN feature could cause the non-receipt of information on channels other than the currently selected SCAN channel. User will use the "scan" feature at its own risk.
- 6.3 Where system outage problems are not corrected within a reasonable period of time, as determined by the BCES Executive Board, user billing shall be waived for the period of the service outage.

III. MISCELLANEOUS PROVISIONS

7. Effective and Termination Dates.

- 7.1 This Agreement shall be in effect as of the date of its execution, and shall continue in force until terminated as set forth in the remainder of this Section 7.
- 7.2 User may terminate this Agreement by giving written notice of no less than twelve (12) months (the "Termination Period") to the System Manager. The termination will be effective on December 31 following the expiration of the Termination Period.
- 7.3 BCES reserves the right to terminate this Agreement for cause with thirty (30) day's written notice to User. "For Cause" includes, but is not limited to, failure to remit payment as invoiced, or violation of any of the terms or conditions of this Agreement. BCES's waiver of one violation under this Agreement does not constitute a waiver of any future violations of the Agreement.

8. Indemnification.

- 8.1 Subject to any Washington constitutional limitations, each party to this Agreement will defend, save harmless, and indemnify the other from any liability to any third party arising solely out of the negligent acts of its own officers, employees, or agents in the performance of this Agreement.
- 8.2 In the event that a claim or lawsuit is brought against a Party or its employee(s) for actions arising out of this Agreement, such Party shall promptly notify the other Party that said claim or lawsuit has been filed or commenced.

9. Insurance Requirements.

- 9.1 User shall, at User's own expense, obtain and keep in force for the duration of this Agreement the following insurance coverage:
 - 9.1.1 Compensation Coverage: User will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable. The BCES Executive Board, City of Richland, or Employees will not be held responsible in any way for claims filed by the User or its employees for services performed under the terms of this contract.
 - 9.1.2 Commercial General Liability Coverage: The User shall at all times during the term of this contract carry and maintain general public liability insurance or

other acceptable coverage including contractual liability against claims for bodily injury, personal injury, death or property damage occurring or arising out of services provided under this contract. This insurance or other acceptable coverage shall cover such claims as may be caused by any act, omission, or negligence of the User or its officers, agents, representatives, or servants. The limits of liability insurance shall not be less than \$1,000,000.

- 9.2 All policies shall be primary over any other valid and collectable insurance. A forty-five (45) calendar-day written notice shall be given to BCES prior to termination or any material change to the policy(ies) or other coverage as it relates to this Agreement, provided that thirty (30) calendar-day written notice shall be given for surplus line insurance cancellation for non-payment of premiums. Such notice shall not be less than ten (10) calendar days prior to that date.
- 9.3 Insurance Carrier Rating: The insurance required, or other acceptable coverage identified above, shall be issued by an insurance company or other entity authorized to do business in the State of Washington. Insurance is to be placed with a carrier that has a Best's rating of A-7 or better. Any exception to the above requirement must be approved by the BCES Executive Board or designee by submitting a copy of the contract or other evidence of coverage before contract commencement.
- 9.4 Excess Coverage: The limits of all insurance required to be provided by User shall be no less than the minimum amounts specified; however, coverage in the amount of these minimum limits shall not be construed to relieve User from liability in excess of such limits.

10. Severability.

- 10.1 In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications of this Agreement which can be given effect without the invalid term, condition, or application. To this end, the terms and conditions of this contract are declared severable.

11. Dispute Resolution.

- 11.1 The parties agree to make a good faith effort to resolve any ambiguities or contract disputes that may arise out of the operation of this Agreement at the staff level prior to pursuing any formal resolution process. Unresolved disputes between the BCES System Manager and User must be addressed in writing to the BCES Director for technical review and resolution or for referral to the BCES Executive Board. The BCES Director shall perform a technical review and offer a proposed resolution to User before any unresolved dispute is forwarded to the BCES Executive Board for a ruling. The BCES Director may determine, as part of his technical review, that forwarding the matter to the BCES Board for determination is the property resolution to offer User.
- 11.2 In the event resolution cannot be reached at the staff level through good faith discussions, the parties agree to resolve their differences through non-binding mediation prior to pursuing litigation.

- 11.3 Matters which are not resolved at the staff level or through mediation may be pursued by allowing either party to the dispute to file a lawsuit in the Benton County Superior Court.
- 11.4 The good faith and mediation provisions of this Dispute Resolution clause do not apply to BCES's determination to terminate User for cause as provided under Section 7 of this Agreement.

12. Amendments.

- 12.1 This Agreement may be amended only by written agreement executed by the authorized representatives of both parties.

13. Complete Agreement.

- 13.1 This Agreement contains the entire agreement between the parties and supersedes all prior written or oral discussions and agreements.

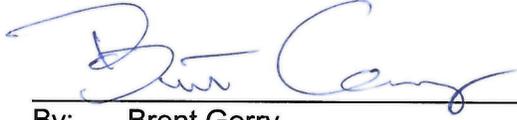
14. Construction of Agreement; Governing Law.

- 14.1 Each party has had a full and complete opportunity to review this Agreement, and has been given the opportunity to have legal counsel review it. Accordingly, the parties agree that the common law principle of construing ambiguities against the drafter shall have no application to this Agreement. Interpretation of this Agreement shall be under Washington law. If any such action is necessary to enforce the terms of this Agreement, the substantially prevailing party shall be entitled to receive reasonable attorney's fees and costs. Venue for enforcing any provision of this Agreement shall be exclusively located in Benton County, Washington. User expressly consents to personal jurisdiction in Benton County Superior Court.

[Signature Page to Follow]

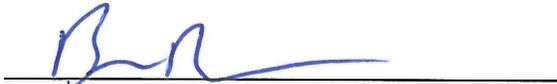
IN WITNESS WHEREOF, the parties have executed this Agreement as their free and voluntary act on the dates set forth above.

City of West Richland/West Richland Police Department



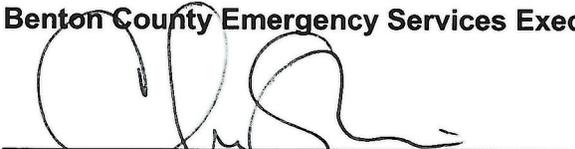
By: Brent Gerry
It's: Mayor

APPROVED AS TO FORM:



By: Bronson Brown
Attorney for City of West Richland

Benton County Emergency Services Executive Board


CYNTHIA D. JOHNSON, ICMA-CM
BCES Board Chair

FOR CINDY REENTS

APPROVED AS TO FORM:

HEATHER KINTZLEY
Attorney for BCES

ATTACHMENT A

Benton County Emergency Services Executive Board
800 MHz TRUNKED RADIO NETWORK

FEE SCHEDULE
EFFECTIVE: January 1, 2015

Annual fees shall be assessed according to the budget adopted by the BCES Board of Directors every December.

User shall receive an updated preliminary proposed fee schedule on or before September 1 of each year, detailing any potential increase or decrease in fees. Final changes in the fee schedule shall be provided to User (**Attachment A – Fee Schedule**) on or before December 1 and become effective on January 1 following the Board’s adoption of the BCES budget.

By executing this Agreement, User agrees to pay the annual fees in this Attachment A as presently existing or hereinafter amended by the BCES Board.

For the 2015 calendar year, BCES shall invoice User an annual 800 MHz Access Fee of **\$486.60 (\$40.55/month / \$121.65/quarter)** for each radio under this Agreement, computed as follows:

<u>Equipment</u>	<u>Quantity x #Months</u>	<u>Total</u>
Portables		\$
Mobiles		\$
Control Stations		\$
Total # Radios		
	Grand Total	\$

ATTACHMENT B

DEFINITIONS

800 MHz TRUNKED RADIO SYSTEM means a network of radio sites with multiple repeaters at each site that provides a User with radio service on a first come or priority basis. Access is provided to the channels on a random or programmed basis, i.e. Channel 1 could be assigned on a particular transmission by a User and Channel 3 be assigned on another transmission that takes place 10 minutes later. This trunking feature allows for maximum efficiency in the use of channels, in that, all talk groups will have access to all available voice channels.

REPEATER means a radio transmitter (Base Station) that is part of the System which is capable of receiving transmissions from subscriber units and retransmitting the signal over a wide area to other subscriber units and repeaters.

TALK GROUP means a software controlled identification system that allows a trunked radio system to provide repeater access to groups of subscriber units. A talk group is essentially equal to a single channel in a conventional radio system.

TEMPLATE PROGRAMMING means the programming of all individual radios with ID numbers, features access codes, and operating parameters for a particular talk group. Each talk group will have a baseline programming template that will assist in the duplication of that information in all other radios in that talk group. Individual IDs and a few specific features will vary from radio to radio.

NAME/ALIAS means the ID number of each radio and the associated common name of the radio unit; i.e. ID number 703011 might be associated with the alias "Sheriff," ID number 703011 might be associated with alias "BCSO Unit 1."

PROJECT 25 (P25): Project 25 (P25) is the interoperability standard for digital two-way wireless communications products and systems. The P25 standard was created for public safety and federal communications professionals to provide detailed standards for the design of communications systems so that all purchasers of P25 compatible equipment can communicate with each other to:

- Allow effective, efficient, and reliable intra-agency and inter-agency communications ... so organizations can easily implement interoperable and seamless joint communication in both routine and emergency circumstances.
- Ensure competition in system life cycle procurements ... so agencies can choose from multiple vendors and products, ultimately saving money and gaining the freedom to select from the widest range of equipment and features.
- Provide user-friendly equipment ... so users can take full advantage of their radios' lifesaving capabilities on the job - even under adverse conditions, with minimal training.
- Improve radio spectrum efficiency ... so systems will have enough capacity to handle calls and allow room for growth, even in areas where the spectrum is crowded and it is difficult for agencies to obtain licenses for additional radio frequencies.

BI-DIRECTIONAL AMPLIFIERS (BDA) means an amplifier that rebroadcasts an 800 MHz signal

inside a building or a specific area to increase the coverage or signal levels.

RADIO SERVICE SOFTWARE (RSS) means the software used to program the individual radio units or repeater site controllers.

SYSTEM KEY is the computer programming information that allows for programming of radios into a specific trunked system. Each radio network has a different system key.

SCAN is the feature that allows a user to monitor the voice transmissions of many different talk groups. The groups that are scanned may be selected by the user. The radio will monitor all talk groups scanned and let the user listen to a broadcast on the first active talk group. The problems that must be noted are: 1) If the radio is monitoring one active channel, traffic on another channel will be missed; and 2) the radio will be programmed to transmit either on a primary channel or on the active channel. Users must be aware that they may be trying to answer a broadcast on a different talk group than it was received on.

ATTACHMENT C

Application Letter:

TO:

Benton County Emergency Services

FROM:

Dear Sirs/Madams:

Our agency would like to enter into a contract with Benton County Emergency Services (BCES) for 800 MHz Trunked Radio service. Attached are the required documents:

- a. Contract signed by our agency's authorized representative.
- b. Completed fee schedule prepared by the System Manager.
- c. Migration plan to 800 MHz signed by our agency's authorized representative.

Our agency will purchase the radios in the quantities listed in the installation plan providing the funds are approved in our budget requests for those periods. This agency will request these funds in each of the periods involved.

Authorized Agency Representative