



Elizabeth Comfort
Finance Director

Department of Finance

Public Services Building
2051 Kaen Road, Suite 490 | Oregon City, OR 97045

Nov. 12, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Amendment to an Intergovernmental Agreement between
Clackamas County and Clackamas 800 Radio Group for
Clackamas County Public Safety Radio System Replacement Project (C800) Bond Funding

Purpose/Outcome	Extending and Amending 2016 IGA for C800 Replacement Project Bond Funding
Dollar Amount and Fiscal Impact	Provides reimbursement to the County for costs incurred in administration of the bond.
Funding Source	C800 tax assessment and bonds
Duration	In effect until the bonds are repaid.
Previous Board Action	Dec. 19, 2016 H.1
Strategic Plan Alignment	1. Ensures safe, healthy and secure communities by continuing to support C800 in obtaining bonds to expand and maintain the County's Public Safety Radio System.
County Counsel Review	Approved November 2, 2020
Procurement Review	Was the item processed through Procurement? No, this is an IGA amendment and is not required to go through Procurement.
Contact Person	Christa Bosserman Wolfe, 503-742-5407
Contract No.	NA

Background:

In December of 2016 the Commissioners authorized an Intergovernmental Agreement with Clackamas 800 Radio Group (C800) to execute and manage the radio system project. The original agreement did not provide the County or C800 with an agreed upon mechanism to reimburse the County for the administrative costs associated with both bond issuance and bond compliance. This amendment addresses those issues, as well as potential future tax liabilities that are associated with bond compliance and arbitrage rebate.

RECOMMENDATION:

Staff respectfully recommends the Board approve the attached IGA amendment for Clackamas County Public Safety Radio System Replacement Project (C800) Bond Funding. Thank you.

Sincerely,

Elizabeth Comfort
Finance Director

**FIRST AMENDMENT TO THE
INTERGOVERNMENTAL AGREEMENT**

Clackamas County Public Safety Radio System Replacement Project Bond Funding

THIS AGREEMENT ("Agreement") is entered into by and between Clackamas County ("County"), a political subdivision of the State of Oregon, and Clackamas 800 Radio Group (C800), an intergovernmental entity formed and authorized by ORS chapter 190, collectively referred to as the "Parties" and each a "Party."

RECITALS

Oregon Revised Statutes Chapter 190.010 confers authority upon local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform.

The Parties entered into an intergovernmental agreement effective December 19, 2016 for "Clackamas County Public Safety Radio System Replacement Project Bond Funding" ("2016 IGA") and desire to amend the 2016 IGA as provided herein.

In consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

TERMS

1. **Term.** This Agreement shall be effective upon signing by both Parties and shall expire upon the completion of each and every obligation of the Parties set forth in the 2016 IGA and as set forth herein.
2. **Costs.** C800 agrees to pay County the total of \$0.20 for each \$1,000.00 of bonded indebtedness for all costs incurred by County through the effective date of this Agreement. After the effective date of this Agreement C800 agrees to pay County for all reasonable and necessary documented costs incurred by County for oversight and fiscal administration of the issued bonds, including but not limited to: professional fees incurred to analyze any bond arbitrage rebate; bond counsel's fees; attorney's fees; County employee time (salaries/wages, payroll taxes & fringe benefits); and any other costs reasonably incurred as a result of County's responsibilities under the 2016 IGA and this Agreement.
3. **Losses.** C800 agrees to pay County for all losses incurred by County arising out of or resulting from C800's management of the Clackamas County Public Safety Radio System Replacement Project Plan ("Plan"), including but not limited to all tax liabilities, audits, claims, damages and expenses.
4. **Payment.** Unless otherwise specified, County shall submit quarterly invoices for all costs or losses incurred and shall include the total amount billed to date by the County prior to the current invoice. Invoices shall itemize and explain all amounts for which reimbursement is claimed or payment is requested. Payments shall be made to County within ninety (90) days of receipt unless C800 disputes in good faith any part of the invoiced charges, in which case the time for payment may be extended while the Parties work to resolve the dispute.

5. **Indemnification.**

- A. C800 shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of C800, its subcontractors, agents, or employees. C800 agrees to indemnify, hold harmless and defend Clackamas County, its officers, elected officials, agents and employees from and against all claims and actions, and for all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of C800 or its employees, subcontractors, or agents.
- B. However, neither C800 nor any attorney engaged by C800 shall defend the claim in the name of County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for County, nor shall C800 settle any claim on behalf of County without the approval of the Clackamas County Counsel's Office. County may, at its election and expense, assume its own defense and settlement.

6. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

- A. Gary Schmidt, County Administrator, or their designee will act as liaison for the County.

Contact Information:

Gary Schmidt
County Administrator
2051 Kaen Rd.
Oregon City, OR 97045
(503) 655-8581
gschmidt@clackamas.us

- B. John Hartsock, Manager, or their designee will act as liaison for C800.

Contact Information:

John Hartsock
Manager C800
11300 SE Fuller Rd.
Milwaukie, OR 97222
(503) 780-4806

John.hartsock@frontier.com

7. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.
8. **Effect on Prior Agreement.** This Agreement is expressly intended to amend the 2016 IGA as provided herein. To the extent the terms of this Agreement contradict or are inconsistent with the terms and conditions of the 2016 IGA, this Agreement shall control. All terms and conditions of the 2016 IGA not contradicted or modified by, or inconsistent with, this Agreement are hereby affirmed.

IN WITNESS HEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

Clackamas County

Clackamas 800 Radio Group

Jim Bernard, Chair
Board of County Commissioners



Sue Scobert, Chair
Clackamas 800 Radio Group

Date

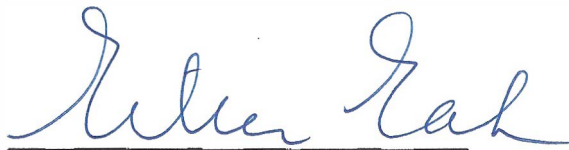
10/29/2020

Date

Approved as to form:



Jeffrey D. Munns
Assistant County Counsel



Eileen Eakins
C800 Attorney