



CONTRACT NO. 25-13

OPERATION AND USE AGREEMENT  
CONTRACT #13-31-01

THIS AGREEMENT made and entered into this 22nd day of January, 2013, is by and between PUBLIC UTILITY DISTRICT NO. 1 OF BENTON COUNTY, WASHINGTON, a Washington municipal corporation ("BPUD"), and the CITY OF RICHLAND, a political subdivision, organized and existing under the laws of the State of Washington; the CITY OF KENNEWICK, a political subdivision, organized and existing under the laws of the State of Washington; BENTON COUNTY FIRE PROTECTION DISTRICT NO. 1, a Washington municipal corporation; BENTON COUNTY FIRE PROTECTION DISTRICT NO. 2, a Washington municipal corporation; BENTON COUNTY FIRE PROTECTION DISTRICT NO. 4, a Washington municipal corporation; BENTON COUNTY FIRE PROTECTION DISTRICT NO. 3, a Washington municipal corporation, also known as PROSSER FIRE DISTRICT NO. 3; BENTON COUNTY FIRE PROTECTION DISTRICT NO. 5, a Washington municipal corporation; and BENTON COUNTY FIRE PROTECTION DISTRICT NO. 6, a Washington municipal corporation ("Cities and Districts").

WHEREAS, the BPUD is the licensee under the licenses identified on Schedule A attached hereto ("Licenses") issued by the Federal Communication Commission ("FCC"); and

WHEREAS, the BPUD is willing to authorize the Cities and Districts to use the Licenses in exchange for the consideration hereinafter described and under the terms and conditions of this Agreement; now, therefore, IT IS AGREED AS FOLLOWS:

1. AUTHORIZATION AND USE OF LICENSES. Subject to the terms and conditions of this agreement, the BPUD hereby authorizes the Cities and Districts to operate and utilize the Licenses for the operation of mobile radio systems on the frequencies and the locations identified on Schedule A. The Cities and Districts are authorized to allow usage of the Licenses by other emergency response entities within Benton County. The BPUD shall not be obligated to allow usage of any other asset, tangible or intangible, nor shall the BPUD be obligated to transfer or assign the Licenses to the Cities and Districts. Neither party hereto is assuming, and neither party shall be responsible for, any liabilities or obligations of the other, whether arising out of or in connection with Licenses, or the system operated pursuant thereto, except as stated in this Agreement.

2. TERM.

2.1. The term of this Agreement shall be for a period of twenty-five (25) years commencing January 22, 2013, and terminating on January 22, 2038, unless sooner terminated pursuant to Subsection 2.2. Upon termination of the Agreement, the Cities and Districts shall

discontinue use of the frequency channels upon the effective date of the termination of this Agreement,

2.2. The BPUD may terminate this agreement by providing the Cities and Districts written notice one (1) year in advance of the effective date of the termination. Any member of the Cities and Districts may terminate this agreement by providing the BPUD and the other Cities and Districts written notice one (1) year in advance of the effective date of the termination. If the notice to terminate is given by Benton County Fire Protection District No. 3, Benton County Fire Protection District No. 5, or Benton County Fire Protection District No. 6, the agreement shall continue without the participation of the terminating District. If the notice to terminate is given by the City of Kennewick, the City of Richland, Benton County Fire Protection District No. 1, Benton County Fire Protection District No. 2, or Benton County Fire Protection District No. 4, the agreement shall terminate in its entirety on the effective date.

### 3. CONSIDERATION.

3.1 The Cities and Districts shall be responsible for all liabilities associated with the operation and use of the Licenses by the Cities and Districts and those the Cities and Districts authorize to use the licensed frequencies.

3.2 The Licenses shall be utilized with other FCC licenses authorizing the use of radio frequencies to provide area fire departments with

radio communications. The BPUD, at its election, at any time during the pendency of this Agreement may request to transition into the Benton Fire agencies' VHF system, in order to access the BPUD frequencies and the frequencies under the City of Richland Fire licenses. The BPUD would join the VHF Fire Agencies User Group as an equal member, participate in the development of any additional VHF Radio Use protocols to ensure compatible and consistent use of channels in the system with the addition of the BPUD, and agree to adhere to the rules and practices established for use of the system in the most current version of the Radio Handbook.

3.3 The Cities and Districts shall take protective actions on BPUD property and equipment as appropriate during fire operations and suppress fires as operational priorities allow within their respective jurisdictions in a timely manner at the expense of the Cities and Districts.

3.4 The parties shall in good faith attempt to enter into a collocation agreement allowing the Cities and Districts to utilize an identified portion of the BPUD's buildings and tower at Jump Off Joe, Prosser Butte and Umatilla Ridge for installation of their equipment used in providing radio communication.

3.5 The parties shall cooperate annually to determine any needed training or communications among the agencies such as electrical hazards and incident command system training.

4. EXTENSION OF AGREEMENT. The Cities and Districts shall have the option to extend this Agreement for a twenty-five (25) year term. The option shall be exercised by the Cities and Districts giving written notice to the BPUD 180 days prior to the end of the initial term. The extended term shall be on the same terms and conditions as set forth herein.

5. REGULATORY RESPONSIBILITY.

5.1 The parties agree to comply with all applicable rules and regulations of the FCC governing the Licenses and specifically agree as follows:

- (i) The Cities and Districts shall not represent themselves as the owner of the Licenses;
- (ii) Neither the Cities and Districts nor the BPUD shall represent themselves as the legal representative of the other before the FCC;
- (iii) The BPUD shall retain control over the operation of the Licenses as may be required to discharge its responsibilities under the rules and regulations of the FCC. However, the Cities and Districts shall, in cooperation with the BPUD, take all actions necessary to keep the Licenses in force and shall prepare and submit to the FCC all reports, applications, renewals, filings or other documents necessary to keep the Licenses in force and in good standing, including the relicensing described in Section 3 hereinabove; and
- (iv) The Cities and Districts and the BPUD are familiar with the rules of the FCC regarding a licensee's responsibilities under the

Communications Act of 1934 as amended and applicable state regulatory law. All parties desire that this Agreement shall be in compliance with applicable federal and state regulatory law. In the event that the FCC determines that any provision of this Agreement violates any FCC policy or regulation, all parties will make good faith efforts to immediately correct the problem and bring this Agreement into compliance consistent with the intent of this Agreement.

5.2 Restrictive Covenants. During the term of this Agreement, the Cities and Districts (a) shall not permit any liens or encumbrances to attach to the Licenses and shall immediately cure and remove all such liens and encumbrances; (b) shall not take any action which would reasonably be likely to jeopardize the Licenses or the rights of the BPUD under this Agreement; and (c) shall immediately notify the BPUD of any pending or threatened action by the FCC, a court, governmental agency or third party to suspend, revoke, terminate or challenge the Licenses.

5.3 Proper Licensing. The Cities and Districts shall maintain proper FCC license for all applicable equipment on the Licensee's frequency channels at all times. The BPUD shall execute any and all necessary documents to allow the Cities and Districts to re-license said frequency channels in the BPUD's name.

6. RELATIONSHIP.

6.1 The Cities and Districts and the BPUD agree that their relationship arising from this Agreement does not constitute or create a general agency, joint venture, partnership, employment relationship or franchise between them. The Cities and Districts are not authorized to, and agree that they will not make any warranties or representations, or assume or create any other obligations, on the BPUD's behalf, except as specifically authorized in writing by the BPUD.

6.2 A joint committee will implement this agreement and meet annually to reaffirm the terms of the agreement.

7. INDEMNIFICATION AND WARRANTIES.

7.1 Indemnification. Each party hereto (the "Indemnifying Party") shall indemnify and hold the other parties (the "Indemnified Parties") harmless from any and all claims, damages, or judgments and attorney fees or other costs of litigation for loss or injuries to person or property caused in whole or in part by the Indemnifying Party or its representatives, as well as the omissions or misrepresentations of the Indemnifying Party of any services provided, regardless of the form of action. Except where caused by another party's sole negligence or willful acts, the Indemnifying Party shall defend on behalf of Indemnified Parties any suit brought against the Indemnified Parties for any such judgment, damage, expense, loss or injury, and the Indemnifying Party

shall reimburse the Indemnified Parties for all reasonable, ordinary and necessary attorney's fees and expenses incurred in connection therewith promptly upon a presentation of a statement therefor.

7.2 Continuation. The provisions of this Section 7 survive the termination of this Agreement.

8. COOPERATION. The parties will exchange any documents, authorizations and other instruments called for by this Agreement or as the parties or their legal counsel may reasonably request. The parties shall cooperate in good faith and exercise their reasonable best efforts to obtain any FCC required consent, and to execute any and all other documents or agreements necessary to effect the relicensing of the frequencies subject to the Licenses.

9. MISCELLANEOUS.

9.1 Assignments. This Agreement shall be binding upon and shall inure to the benefit of the parties and their legal representatives, assigns and successors. The Cities and Districts shall not transfer their interest hereunder without the consent of the BPUD. However, they may allow use of the radio frequencies by other entities as hereinabove provided.

9.2 Notices. Any notice, statement, or other report required or permitted by this Agreement must (i) be in writing and is deemed given when (a) delivered personally, (b) sent by facsimile, (c) 96 hours after deposit in the U.S.



mail, mailed by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) day after delivered to a public or private express mail service for overnight delivery, and (ii) addressed to the other party at the address set forth below, or at such other address as any party may designate from time-to-time in writing in accordance with this subsection.

If to the BPUD:

Benton PUD  
Steve Hunter  
2721 W. 10th Avenue  
P. O. Box 6270  
Kennewick, WA 99336

If to the City of Richland:

City of Richland  
Grant Baynes  
8656 W. Gage Blvd.  
Suite C-302  
Kennewick, WA 99336

If to the City of Kennewick:

City of Kennewick  
Neil Hines  
8656 W. Gage Blvd.  
Suite C-302  
Kennewick, WA 99336

If to the Benton County Fire  
Protection District No. 1:

Benton County Fire Protection  
District No. 1  
Grant Baynes  
8656 W. Gage Blvd.  
Suite C-302  
Kennewick, WA 99336

If to the Benton County Fire  
Protection District No. 2:

Benton County Fire Protection  
District No. 2  
Ron Duncan  
P.O. Box 719  
Benton City, WA 99320

If to the Benton County Fire  
Protection District No. 4:

Benton County Fire Protection  
District No. 4  
William Whealan  
2604 Bombing Range Rd.  
West Richland, WA 99353

If to the Benton County Fire:  
Protection District No. 3

Benton County Fire Protection  
District No. 3  
Doug Merritt  
1200 Grant Ave.  
Prosser, WA 99350

If to the Benton County Fire  
Protection District No. 5:

Benton County Fire Protection  
District No. 5  
George Moon  
P. O. Box 429  
Prosser, WA 99350

If to the Benton County Fire  
Protection District No. 6:

Benton County Fire Protection  
District No. 6  
Rolland Watt  
48001 Prior Rd.  
P. O. Box 218  
Paterson, WA 99345

9.3 Governing Law. This Agreement shall be construed in accordance with the laws of the State of Washington, without recourse to its conflict of laws. Jurisdiction and venue for any legal action associated with this Agreement shall be the Superior Court of Benton County, Washington.

9.4 Severability. If any material provision or portion of this Agreement is deemed illegal or unenforceable for any reason, there will be deemed to be made such minimum change in such portion or provision as is necessary to make it valid and enforceable and acceptable to the parties as so modified.

9.5 Entire Agreement. This Agreement sets forth the entire understanding between the parties concerning the subject matter hereof, and supersedes all prior negotiations and understandings with respect thereto. There are no covenants, promises, agreements, conditions or understandings, either written or oral, between the parties and relating to the subject matter of this Agreement other than those set forth herein. No alteration, amendment, change or addition to this Agreement shall be binding upon any party unless in writing and signed by an authorized representative of the parties hereto.

9.6 Amendments, Waivers, Remedies. This Agreement, or any of its provisions, may not be amended, or modified, and no provision may be waived, unless such amendment, modification, or waiver is in writing and signed by the party against whom enforcement is sought. The waiver of any breach or

default under this Agreement does not constitute the waiver of any other breach or default, whether or not similar, nor any subsequent breach of the same provision. The election by any party of any right or remedy contained in this Agreement is not exclusive of any other rights or remedies in law or in equity other than as may be limited in this Agreement.

9.7 Counterparts. This Agreement may be executed in two or more counterparts, each of which is an original, but all of which together shall constitute one and the same instrument. This Agreement is binding on the parties and their respective successors and permitted assigns.

9.8 Compliance with Law. During the term of this Agreement, each party must comply with all local, State and Federal laws and regulations applicable to the performance of its obligations under this Agreement.

9.9 Third Parties. The provisions of this Agreement and the rights and obligations created hereunder are intended for the sole benefit of the BPUD and the Cities and Districts, and do not create any right, claims or benefit on the part of any person not a party to this Agreement.

9.10 Attorney Fees and Costs. In the event of any legal dispute between the parties relating to the Agreement, the most prevailing party shall be entitled to all costs and legal expenses including, but not limited to, reasonable, ordinary and necessary attorney fees, accounting fees, court costs, expert witness fees and investigation expenses.

9.11 Authority to Execute. Each person executing this Agreement on behalf of another person or organization represents and warrants to each member of all other parties that he or she is fully authorized to execute and deliver this Agreement on behalf of such person or organization. Each party represents and warrants that no consent of any person or entity not a party to this Agreement is necessary in order for this Agreement to be fully and completely binding upon each party.

9.12 Captions. The captions and section numbers appearing in this Agreement are inserted only as a matter of convenience, and shall not be used to construe, define, limit or describe the scope or intent of the provisions of this Agreement.

9.13 Interpretation. It is acknowledged by the parties the terms of this Agreement have been negotiated by the parties and, therefore, no presumptions will arise favoring either party by virtue of the authorship of any of its provisions or the changes made through revisions.

9.14 No Legal Entity. It is not intended that a separate legal entity shall be established to conduct the cooperative undertaking nor is the acquiring, or holding, or disposing of real or personal property anticipated. The Director of Operations of the BPUD is designated as the Administrator of the project.

9.15 Filing. This Agreement shall be filed as provided by RCW 39.34.

**PUBLIC UTILITY DISTRICT**

**NO. 1 OF BENTON COUNTY**

By: Chad B. Bartram  
CHAD B. BARTRAM, General Manager

Date: 1/31/13

**CITY OF KENNEWICK**

Approved as to Form:

By: Marie E. Mosley  
MARIE MOSLEY, City Manager

Lisa Beaton  
LISA BEATON, City Attorney

Date: \_\_\_\_\_

**CITY OF RICHLAND**

Approved as to Form:

By: Cynthia Johnson  
CYNTHIA JOHNSON, City Manager

Thomas O. Lampson  
THOMAS O. LAMPSON, City Attorney

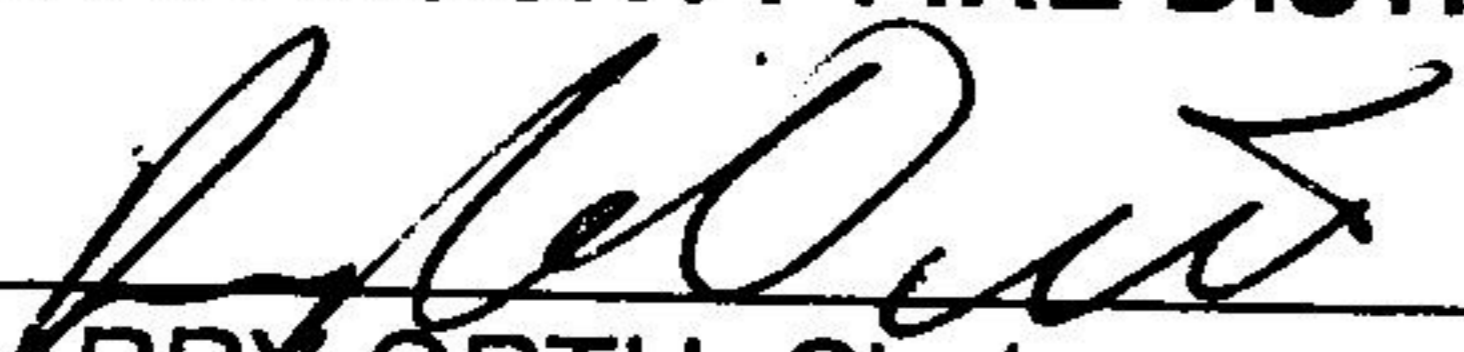
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**BENTON COUNTY FIRE DISTRICT #1**

By: Jerry Morris  
JERRY MORRIS, Chair  
Board of Fire Commissioners

Date: \_\_\_\_\_

**BENTON COUNTY FIRE DISTRICT #2**

By:   
BARRY ORTH, Chair  
Board of Fire Commissioners

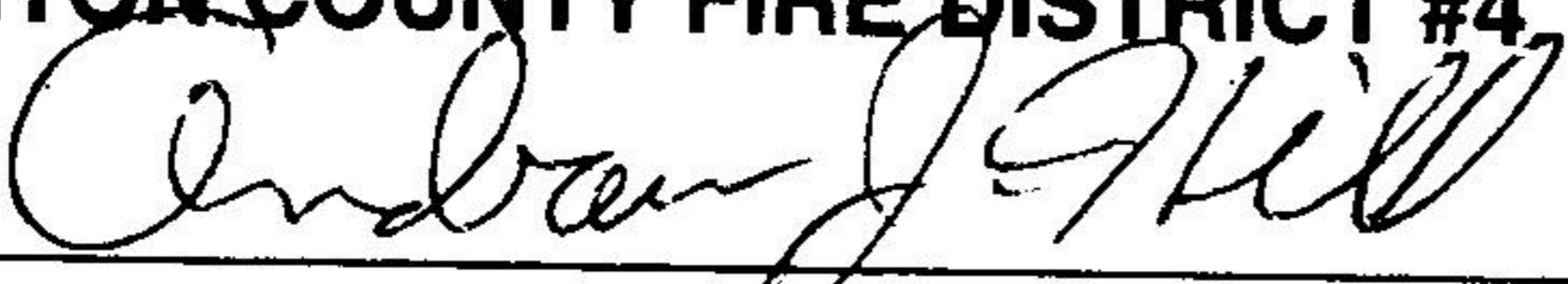
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**PROSSER FIRE DISTRICT #3**

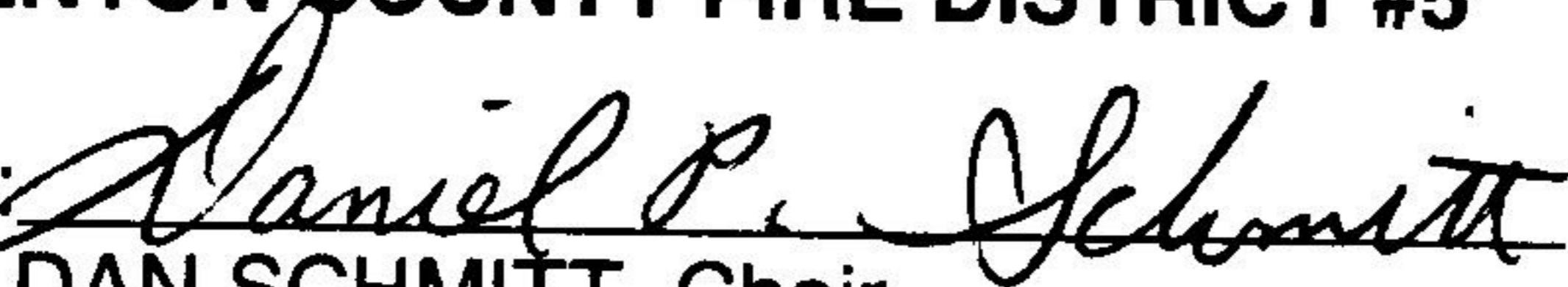
By:   
~~JASON BAINER~~, Chair RANDY FOX  
Board of Fire Commissioners

Date: \_\_\_\_\_

**BENTON COUNTY FIRE DISTRICT #4**


By:   
ANDREW HILL, Chair  
Board of Fire Commissioners

**BENTON COUNTY FIRE DISTRICT #5**

By:   
DAN SCHMITT, Chair  
Board of Fire Commissioners

Date: \_\_\_\_\_

**BENTON COUNTY FIRE DISTRICT #6**

By:   
JODY MADDOX, Chair  
Board of Fire Commissioners

Date: 4-11-13

**Schedule A**  
**VHF Frequencies**  
**Contract #13-31-01**

Call Sign	Frequency	Location	Type	Power	Emission	Band	Service
KOA350	153.47	Rattlesnake	Repeater	400W	Wide Band	VHF	LMR
	153.47	BPUD Operations	Base Station	70W	Wide Band	VHF	LMR
	153.41	35 miles around BPUD Operations	Temp Base Station	180W	Wide Band	VHF	LMR
	153.47	35 miles around BPUD Operations	Temp Base Station	180W	Wide Band	VHF	LMR
	153.41	35 miles around BPUD Operations	Mobiles	80W	Wide Band	VHF	LMR
	153.47	35 miles around BPUD Operations	Mobiles	80W	Wide Band	VHF	LMR
	153.725	35 miles around BPUD Operations	Mobiles	80W	Wide Band	VHF	LMR
WRX651	153.755	BPUD Operations	Base Station	300W	Wide Band	VHF	LMR
	153.755	All Benton County	Mobiles	110W	Wide Band	VHF	LMR
	159.000	All Benton County	Mobiles	110W	Wide Band	VHF	LMR