

RESOLUTION 2024-0865

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF APPROVING A FINANCING AGREEMENT WITH THE CITY OF RICHLAND ON BEHALF OF BENTON COUNTY EMERGENCY SERVICES

WHEREAS, Benton County participates in the regional emergency communications system along with the Cities of Kennewick, Pasco, Richland and West Richland and Franklin County; and

WHEREAS, the current system relies on a mixture of VHF and 800mhz radio technology. The VHF system is past the end of its useful life and the technology is being phased out; and

WHEREAS, the region needs to expand its existing 800mhz system to provide coverage in the area's that are currently covered by the VHF system; and

WHEREAS, initial cost estimates put the project cost at \$29.9 million, which is beyond the ability of any of the partner agencies to fund; and

WHEREAS, the five largest agencies (Kennewick, Pasco, Richland, Benton County and Franklin County) has determined that it is in the region's best interest to divide up the cost of the project equally between those five agencies; and

WHEREAS, the City of Richland, who is the administrative agency for the regional system, has agreed to finance the project provided that the other partners agree to repay their share of the project cost and applicable interest, **NOW, THEREFORE**,

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington hereby approves the Financing Agreement Regarding Capital Financing by the City of Richland on Behalf of Benton County Emergency Services for the 800mhz Radio Project.

Dated this 3rd day of December, 2024

Jerome Delvin Absent
Chairman of the Board

DocuSigned by:
Michael Alvarez

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Chairman Pro Tem

DocuSigned by:
Will McKay

135987D784E74CF...
Commissioner

Attest: .. 
34825A975E034CE...
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

Orig:
cc:

M. Rasmussen
L. Ivey

**FINANCING AGREEMENT
REGARDING CAPITAL FINANCING BY THE
CITY OF RICHLAND
ON BEHALF OF BENTON COUNTY EMERGENCY SERVICES (BCES)
For the 800 MHz Radio Project
Motorola Project Nos. WA-23P072 (infrastructure) and WA-24P073M (subscriber units)**

This Financing Agreement (the “Financing Agreement”) is dated for reference purposes as of this 3rd day of December, 2024, and is entered into among the Capital Financing Member identified below, and each of the Financing Participants identified below, for the purpose of financing the 800MHz Radio Project (the “Project”).

Pursuant to Revised Code of Washington (RCW) 38.52.070 and the Interlocal Agreement, the BCES Members have established a local organization for emergency management in accordance with the State Emergency Management Plan and Program. This Financing Agreement is entered into as a condition precedent to execution of the Fourth Amended and Restated Interlocal Agreement for Benton County Emergency Services (the “BCES Interlocal Agreement”) by and among the following parties: Benton County, a political subdivision of the State of Washington; Franklin County, a political subdivision of the State of Washington; City of Kennewick, a Washington municipal corporation; City of Richland, a Washington municipal corporation; City of West Richland, a Washington municipal corporation; City of Prosser, a Washington municipal corporation; City of Benton City, a Washington municipal corporation; City of Pasco, a Washington municipal corporation; and Benton County Fire Protection District Nos. 1, 2, and 4, all of which are Washington special purpose districts (collectively, the “BCES Members”).

For purposes of this Financing Agreement, the City of Richland is the “Capital Financing Member” and City of Kennewick, City of Pasco, Benton County, and Franklin County are referred to collectively as the “Financing Participants” and individually as “Financing Participant.” No other members of BCES are participating in this Financing Agreement.

Section 1. Definitions.

Capitalized terms used in this Financing Agreement shall have the meanings given such terms in the recitals hereof and as follows:

“**Executive Board**” means the governing board of BCES created pursuant to the BCES Interlocal Agreement.

“**Bonds**” mean bonds, notes or other evidences of borrowing issued by a Capital Financing Member to finance and/or refinance capital assets on behalf of BCES and its Members.

“**Budget**” means the budget prepared by the BCES Director in consultation with the Administrative Jurisdiction, and submitted to the Executive Board for its approval in accordance with Section 4.F of the BCES Interlocal Agreement, which budget shall set forth (a) an estimate of the costs of capital improvements or acquisitions required to be made to BCES Capital Facilities and Assets within the applicable year, (b) on a line item basis, all anticipated revenues and

expenses for the operation and maintenance of existing BCES Capital Facilities and Assets for the applicable year, and (c) any information required by policies adopted by the Executive Board.

“**Capital Contribution**” means, for each Financing Participant, that Financing Participant’s Capital Contribution Percentage multiplied by the Capital Project Cost, plus interest and administrative fees calculated in accordance with Section 2.1 of this Financing Agreement.

“**Capital Contribution Percentage**” means the percentage of the Capital Project Cost allocated to the Capital Financing Member and each Financing Participant, as follows:

Participant	Contribution Percentage	Role
City of Richland	20%	Capital Financing Member
City of Kennewick	20%	Financing Participant
City of Pasco	20%	Financing Participant
Benton County	20%	Financing Participant
Franklin County	20%	Financing Participant
Total	100.00%	

“**Capital Project Cost**” means the principal cost of the Project (not including interest) plus all costs of issuance, administrative expense, and similar costs incident to obtaining such financing, as described in Section 2.1 of this Financing Agreement.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Costs of Maintenance and Operation**” means all reasonable expenses incurred by BCES in causing the Project to be operated and maintained in good repair, working order and condition over the financing period.

“**Designated Representative**” means the Mayor, City Manager, or other Executive or Finance Officer, as selected by each Financing Participant to act as its authorized representative for purposes of this Financing Agreement, or the designee of such person.

“**Effective Date**” has the meaning set forth in Section 4.7 of this Financing Agreement.

“**BCES Director**” means the director selected by the Administrative Jurisdiction and confirmed by the Executive Board pursuant to Section 3.A.2 of the BCES Interlocal Agreement.

“**Project**” means the expansion and upgrade of the existing Benton County ASTRO 25 800MHz trunking radio system by adding up to eleven (11) additional radio sites across Benton and Franklin counties to provide the required coverage, functionality and interoperability needed for effective public safety response. The Project includes the purchase and commissioning of necessary subscriber radios (mobiles and portables) for all users transitioning from the VHF system to the expanded 800MHz system.

Section 2. Financing of the Project

2.1. Responsibilities of Capital Financing Member. The Capital Financing Member

agrees to obtain or provide financing for the Project, in the manner determined by it, in its sole discretion, as providing the most efficient method to finance the Project.

(a) **Capital Project Cost.** The Capital Project Cost shall be determined based on the actual Project cost, including all costs of issuance, administrative costs, reserves, or other expenses associated with such obtaining the financing.

(b) **Interest Determination and Calculation of Capital Contributions.** Each Financing Participant's Capital Contribution shall include its allocable share of the Capital Project Cost plus interest as identified in the agreement with Motorola for Project Nos. WA-23P072 (infrastructure) and WA-24P073M (subscriber units). The Capital Financing Member agrees not to charge the Financing Participants a separate administrative fee related solely to its role as Capital Financing Member. If the Capital Financing Member utilizes internal funds to provide such financing, the interest rate shall be equal to the rate earned on the Local Government Investment Pool (or other similar investment strategy utilized by the Capital Financing Member for the investment of idle funds). If the Capital Financing Member chooses, in its sole discretion, to finance the Project through the issuance of Bonds or another form of borrowing, the interest rate shall be equal to the interest rate owed on the borrowing.

2.2. Responsibilities of Financing Participants

(a) **Capital Contributions.** Each Financing Participant shall be obligated to pay an amount equal to its Capital Contribution without regard to the payment or lack thereof by any other Financing Participant. No Financing Participant shall be obligated to pay the Capital Contribution of any other Financing Participant, and each Financing Participant shall be obligated to budget for and pay its Capital Contribution. The obligation of each Financing Participant to pay its Capital Contribution shall be an irrevocable full faith and credit obligation of such Financing Participant, payable from property taxes levied within the constitutional and statutory authority provided without a vote of the electors of the Financing Participant on all of the taxable property within the Financing Participant and other sources of revenues available therefor. Each Financing Participant has or will set aside and include in its calculation of outstanding non-voted general obligation indebtedness an amount equal to the principal component of its outstanding Capital Contribution. Each Financing Participant's obligation to pay the Capital Contribution shall not be contingent on the receipt of any revenues from other sources.

Any Financing Participant may prepay its Capital Contribution. Any such prepayment of one or more Financing Participants shall not affect the Capital Contribution Percentages of the remaining Financing Participants. Any Financing Participant that elects to prepay its Capital Contribution shall be responsible for paying all costs associated with such prepayment, if any.

2.3. Reserved.

2.4. Billing of Financing Participants. Each Financing Participant shall be billed for its Capital Contribution, plus interest, based on the established repayment schedule in the contract(s) executed between Capital Financing Member and Motorola for Project Nos. WA-23P072 (infrastructure) and WA-24P073M (subscriber units), or more frequently as determined by the Executive Board, calculated as provided above, and due within 30 days of the receipt.

2.5. Tax Exempt Financing.

If the Capital Financing Member, in its sole discretion, determines to issue tax-exempt or tax-advantaged bonds, notes, or other obligations, to obtain financing or refinancing for the Project, the Financing Participants acknowledge that the Project will be subject to restrictions on private business use under Section 141 of the Internal Revenue Code of 1986, as amended, and applicable IRS thereunder. Each of the Financing Participants agrees that it will not provide to nongovernmental persons special legal entitlements to use the Project under contractual arrangements providing preferential or exclusive right to use all or part of the Project without the written consent of the Capital Financing Member.

A “nongovernmental person” means any person other than a State or local government unit, including the United States of America and any federal department or agency, an Indian tribal government not carrying out essential governmental functions, any nonprofit corporation (including any 501(c)(3) organization), any other private entity, such as a business corporation, partnership, limited liability company or association, and a natural person engaged in a trade or business activity. Another state or local government unit is *not* a nongovernmental person.

Under current IRS regulations, some use arrangements with nongovernmental persons result in “private business use” and others do not. For example, private business use would result from: a lease with a term longer than two hundred (200) days (including renewal options); a management or service contract, such as a concession contract, that does *not* meet the “safe harbor” conditions of IRS Revenue Procedure 2017-13; or a “naming rights” contract with a corporate sponsor whose value (measured by the present value of the corporate sponsor’s payments to the issuer under the contract) exceeds ten percent (10%) of the cost of the bond-financed property. Other use arrangements with nongovernmental persons would not result in private business use, such as: an arrangement that is not available to the general public at generally applicable and uniformly applied rates but whose term of use is not longer than one hundred (100) days (including renewal options); a specially negotiated, arm’s-length contract whose term of use is not longer than fifty (50) days and requires fair market value payment for use, such as contracts with special event sponsors; or a management or service contract that meets the “safe harbor” conditions of IRS Revenue Procedure 2017-13. All private business uses of bond-financed property must be aggregated to determine the total amount of private business use that must be taken into account under the federal tax law restriction that no more than ten percent (10%) of the proceeds of a tax-exempt bond issue (including the Project being refinanced with the issue) may be used for any “related” private business use, which restriction is reduced to five percent (5%) for any “unrelated” private business use.

If the Financing Participants would like to obtain the Capital Financing Member’s consent to “private business use” of the Project, they must inform the Capital Financing Member in writing (addressed by mail and email to the Mayor and Finance Director of the Capital Financing Member) as to the proposed “private business use.” The Capital Financing Member shall consult with its bond counsel as to whether such “private business use” will impact the tax-exempt status of any bonds issued to finance or refinance the Project. The Capital Financing Member shall provide written notice to the Financing Participants of the Capital Financing Member’s bond counsel’s conclusion within thirty (30) days of receiving the request. If the Capital Financing Member’s bond counsel concludes that the “private business use” will adversely impact the tax-exempt status

of such financing or refinancing, the Financing Participants shall not allow such “private business use.”

Section 3. Ownership of the Project

3.1 Ownership Interests. The 800MHz Radio System identified in this Financial Agreement shall be owned in equal shares of one-fifth (20%) by the following member agencies: Benton County, Franklin County, and the cities of Kennewick, Richland, and Pasco. Ownership is governed by the Interlocal Agreement. No non-participating members have an ownership interest.

Section 4. Miscellaneous.

4.1. Interlocal Agreement. The Capital Financing Member and the Financing Participants agree:

(a) This Financing Agreement is intended to supplement the BCES Interlocal Agreement only. It does not create any separate administrative entity within the meaning of RCW 39.34.030(3)(b) or a “joint board” within the meaning of RCW 39.34.030(4)(a).

(b) The Designated Representative of each Financing Participant is appointed as the “administrator” within the meaning of RCW 39.34.030(4)(a) responsible for administering the Financing Participant’s rights and duties set forth in this Financing Agreement; and

(c) The parties will file or post this Financing Agreement as required by RCW 39.34.040.

4.2. Governing Law. This Financing Agreement shall be governed by and construed in accordance with the laws of the State of Washington. If any dispute arises between the Financing Participants under any of the provisions of this Financing Agreement, resolution of that dispute shall be available only through the jurisdiction, venue and rules of the Benton County Superior Court, Benton County, Washington.

4.3. No Waiver of Breach. The failure of any party hereto to insist upon strict performance of any provision of this Financing Agreement or to exercise any right based upon a breach thereof or the acceptance of any performance during such breach shall not constitute a waiver of any right hereunder.

4.4. Compliance with all Laws. The Capital Financing Member and the Financing Participants shall comply with all federal, state and local laws, rules, regulations, resolutions and ordinances applicable to the performance of this Financing Agreement.

4.5. Continuation of Performance. In the event that any dispute or conflict arises among the parties hereto while this Financing Agreement is in effect, the parties hereto agree that, notwithstanding such dispute or conflict, they shall continue to make a good faith effort to cooperate and continue work toward successful completion of assigned duties and responsibilities.

4.6. Severability. If any part, paragraph, section or provision of this Financing Agreement is adjudged to be invalid by any court of competent jurisdiction such adjudication shall not affect the validity of any remaining section, part or provision of this Financing Agreement.

4.7. Effective Date; Supplemental Nature. This Financing Agreement shall become effective on the date of the last signing party, (the “Effective Date”) and shall be deemed a supplement to the BCES Interlocal Agreement.

Section 5. Execution and Amendment.

5.1. Form of Execution. This Financing Agreement shall be executed on behalf of each party hereto by its Designated Representative, or other authorized officer, and pursuant to an appropriate motion, resolution or ordinance of such party.

5.2 Amendments. This Financing Agreement may not be effectively amended, changed, modified or altered, except by an instrument in writing duly executed by the Designated Representative, or other authorized officer, of each party hereto and pursuant to an appropriate motion, resolution or ordinance of such party. Notwithstanding the foregoing, so long as any Bonds issued for the Project by the Capital Financing Member are outstanding, any such amendment shall not be permitted if, in the opinion of the Capital Financing Member and its counsel, it materially adversely affects the owners of the Bonds or affects the tax-exempt status of the interest paid on the Bonds.

5.3 Execution in Counterparts. This Financing Agreement may be executed in any number of counterparts, each of which shall be an original, but those counterparts will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Financing Agreement as of the day and year first written above.

[Signature pages to follow]

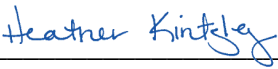
CITY OF RICHLAND, WASHINGTON
as CAPITAL FINANCING MEMBER

By 
Jon Amundson, ICMA-CM, City Manager

Attest:


Jennifer Rogers, City Clerk

Approved as to form:


Heather Kintzley, City Attorney

CITY OF KENNEWICK, WASHINGTON
as FINANCING PARTICIPANT

By _____
Erin Erdman, City Manager

Attest:

Krystal Townsend, City Clerk

Approved as to form:

Laurencio Sanguino, City Attorney

[Signatures continue below]

CITY OF RICHLAND, WASHINGTON
as CAPITAL FINANCING MEMBER

By _____
Jon Amundson, ICMA-CM, City Manager

Attest:

Jennifer Rogers, City Clerk


Approved as to form:

Heather Kintzley, City Attorney

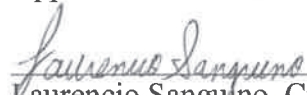
CITY OF KENNEWICK, WASHINGTON
as FINANCING PARTICIPANT

By  _____
Erin Erdman, City Manager

Attest:

 _____
Krystal Townsend, City Clerk

Approved as to form:

 _____
Laurencio Sanguino, City Attorney

[Signatures continue below]

CITY OF PASCO, WASHINGTON as
FINANCING PARTICIPANT

By _____
Adam Lincoln, City Manager

Attest:

Debby Barham, City Clerk

Approved as to form:

Eric Ferguson, City Attorney

COUNTY OF BENTON, WASHINGTON
as FINANCING PARTICIPANT

By Jerome Delvin Absent 12/3/2024
Jerome Delvin, Chair Date
Benton County Commission

Attest:

DocuSigned by:
Michael Alvarez
By _____ 12/3/2024
D6C6F57E34874E4... Date
Michael Alvarez, Pro Tem
Benton County Commission

DocuSigned by:
Amanda Pearson

34825A975E034CE...
Clerk of the Board

DocuSigned by:
Will McKay
By _____ 12/3/2024
135987D784E74CF... Date
William McKay, Commissioner

Approved as to form:

Signed by:
Jeff Aultman

D63DC9249AB64B5...
Jeff Aultman, Chief Deputy Prosecuting
Attorney, Civil

[Signatures continue below]

COUNTY OF FRANKLIN, WASHINGTON
as FINANCING PARTICIPANT

By 
Rocky Mullen, Chair Date
Franklin County Commission

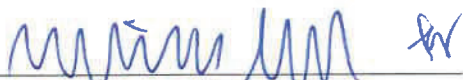
By  12-11-24
Clint Didier, Pro Tem Date
Franklin County Commission

By  12-11-24
Steve Bauman, Member Date
Franklin County Commission

Attest:


Edesa Ferrera
Clerk of the Board

Approved as to form:

 JVB
Jeff Briggs, Franklin County Chief
Civil Deputy Prosecutor



Commissioners' Agenda Action Sheet

Meeting Date: December 3, 2024
Subject: Financing Agreement with City of Richland for the 800mhz Radio Project ~ M Rasmussen
Presenter: Matt Rasmussen
Prepared By: Matt Rasmussen
Reviewed By: Jeff Aultman
PA Review: **Approved:** Yes **Denied:** No **N/A:** No
(If denied, include reasoning)

Type of Agenda Item: Scheduled Business

Summary / Background Information

Benton County participates in the regional emergency communications system along with Franklin County and the 4 largest cities. The communications system consists of a combination of VHF radio technology and 800mhz radio technology. Both systems are used in both Counties by various agencies. The VHF system is past the end of its useful life and the technology is being phased out as a whole. In order to replace the VHF system with more modern 800mhz technology, additional towers must be added to the system and portable radio units must be purchased.

The City of Richland, which is the administrative agency for the regional system, has obtained a quote from our communication provider of \$29.9 million to complete the project. The City is willing to finance the cost of the project provided that each agency agrees to repay their share along with applicable interest. The cost will be divided equally between the five largest agencies (Kennewick, Pasco, Richland, Benton County and Franklin County).

Fiscal Impact

20% of \$29.9 million, plus interest, financed for up to 10 years.

Recommendation

I recommend that the Board approve the Financing Agreement with the City of Richland for the 800mhz radio project.

Suggested Motion

I move to approve the financing agreement regarding capital financing by the City of Richland on behalf of Benton County Emergency Services for the 800mhz radio project.

Signatures Required on Agreements/Contracts

Signatures on page 8 of agreement.