

PASSED

IN THE BOARD OF COUNTY COMMISSIONERS OF Lane County, OREGON

ORDER NO.

05-3-9-9

)IN THE MATTER OF DELEGATING AUTHORITY
)TO THE COUNTY ADMINISTRATOR TO EXECUTE
)INTERGOVERNMENTAL AGREEMENT BETWEEN
)EUGENE WATER AND ELECTRIC BOARD AND
)LANE COUNTY TO ESTABLISH A PUBLIC
)MICROWAVE RADIO NETWORK

THIS MATTER having come before the Board of County Commissioners for approval of Intergovernmental Agreement between Eugene Water and Electric Board (EWEB) and Lane County to establish a public microwave radio network for telecommunications purposes, where such Network will be used by both parties to communicate amongst common service territories and with each other.

WHEREAS, ORS 190.010 provides that units of government may enter into agreements for the performance of any or all functions and activities that a party to the agreement, its officers or agents, have the authority to perform.

WHEREAS, EWEB and Lane County desire to share common microwave radio transmission and transport facilities, and voice and data communications needs and the opportunity to pool those resources and needs will benefit both parties. This opportunity can be realized through joint action.

WHEREAS, the Intergovernmental Agreement between EWEB and Lane County will continue in effect for ten (10) years from the effective date.

IT IS HEREBY ORDERED that the Board of County Commissioners delegate authority to the County Administrator to execute Intergovernmental Agreement between Eugene Water and Electric Board and Lane County, in substantial conformity with the attached Exhibit "A".

Signed this 9th day of March, 2005



Anna Morrison, Chair
Board of Lane County Commissioners

APPROVED AS TO FORM

Date 3/11/05 lane county



OFFICE OF LEGAL COUNSEL

**INTERGOVERNMENTAL AGREEMENT
ESTABLISHING A PUBLIC MICROWAVE RADIO NETWORK**

Between and Among

Eugene Water & Electric Board (EWEB) and Lane County, by and through the Lane County Sheriff's Office (LCSO) (jointly "The Parties") both governments subject to the provisions of Oregon law.

RECITALS

WHEREAS, ORS 190.010 provides that units of government may enter into agreements for the performance of any or all functions and activities that a party to the agreements, its officers or agents, have authority to perform;

WHEREAS the Parties to this Agreement desire to share common microwave radio transmission and transport facilities and voice and data communications needs and the opportunity to pool those resources and needs will inure to the benefit of both Parties, and agree that this opportunity can be best realized through joint action;

WHEREAS the purpose of this Agreement is to establish a Microwave Radio Network ("the Network") for telecommunications purposes, where such a Network will be used by both Parties to communicate amongst common service territories and with each other. The Network will manage components, including microwave and other electronic and non-electronic equipment necessary for transportation of information signals, optical fiber and other network equipment, and the technical and administrative functions necessary to maintain and operate the Network; and

WHEREAS the Network envisioned by this Agreement is intended to be a flexible system serving the purpose of improving communications by using the technological components that will, at any given time, best accomplish the purpose of improved communications. The Parties to this agreement expect that over time the particular components of the Network may change as needs and capacities of the technology and the users change.

NOW THEREFORE, the Parties to this Agreement agree to the terms and conditions provided herein, including the need to have one Party serve as the Executive Authority, and further agree that EWEB is the Party most suited to assume the responsibilities of the initial Executive Authority. This Agreement serves as an agreement by each Party to allow EWEB to serve as the Executive Authority and to provide such services and perform such responsibilities as herein set forth, and an agreement by EWEB to undertake such activities.

A. Term

This Agreement shall be effective upon the date of execution (Effective Date), and shall continue in effect for 10 years from the Effective Date. This Agreement may be renewed, with or without modifications, for additional terms if: (a) requested by EWEB or LCSO at least 30 days prior to the expiration of the preceding term of the Agreement, and; (b) mutually agreed to by the Parties. In the event that the Agreement is not renewed, all liabilities incurred hereunder are hereby preserved until satisfied.

B. The Network

1. The Network shall consist of: (1) microwave and necessary network equipment and services to and between: the LCSO office, Buck Mountain, Bear Mountain and Mount Hagen; and (2) a fiber optic cable connecting transmission equipment between LSCO and EWEB offices. The Network is defined as the system composed of the transport media and transmission equipment, consisting of, but not limited to, microwave radios, microwave dishes, fiber optic cables, multiplexing devices, interface cards, etc. designated for use by both Parties to carry traffic. The Network does not include equipment attached to either end of any Network link such as radio consoles, voice and data radios, etc.

2. The Network will be developed through joint capital contributions and Homeland Security Grant funding. Costs of Network development and operation shall be borne by each Party on a 50/50 basis. Each Party agrees to maintain reserves equal to but not less than 5% of the system cost (total system reserves equal to at least 10%.) Network bandwidth will be allocated equally between the Parties. It is a principle of the Network that excess capacity will be made available to Third Party public agencies. Revenues from third Party use will be allocated to offset Network operation and maintenance costs.

C. Membership

1. **Obligations of Membership.** In addition to the specific rights and obligations discussed elsewhere in this Agreement, each Party shall:
 - a. designate a representative to the Network. In case of a vacancy, the Party shall designate a replacement representative within thirty (30) days of the vacancy occurring. A Party may designate one or more persons as alternates, to represent the Party in the absence of the regular designated representative. All such designations shall be communicated in writing to the Executive Authority of the Network.
 - b. Pay any invoice and meet other obligations related to payment for services received as a result of membership, to the extent permitted by law.

- c. Observe the established provisioning schedules for any equipment or facilities connected to the Network.
 - d. Provide access to each others' sites as necessary for operation of the Network.
 2. **Privileges of Membership.** In addition to the specific rights and privileges discussed elsewhere in this Agreement, each Party may use the Network for any lawful communication purposes consistent with the design and operation of the Network.
 3. **Termination of Membership.**
 - a. Either Party may terminate its participation in the Network upon 180 days written notice of withdrawal to the other Party. Upon withdrawal, the withdrawing Party shall no longer be responsible for any costs that might thereafter be incurred by or for the remaining Party. The withdrawing Party shall remain responsible for any costs previously incurred to the extent permitted by law.
 - b. Failure to abide by the terms and conditions of this agreement may result in termination of membership as provided in the default clause.

D. Governance

1. The Parties shall develop appropriate documents which shall describe with particularity the configuration of the network, including services to support the operation of the Network; and set forth the formula for the calculation of rates for services;
2. Operational management and provisioning of the network will be coordinated and supervised jointly by the Parties. The Parties shall approve policy and operating agreements for adoption by the Executive Authority.
3. The operational responsibility of the Parties includes, but is not limited to: provisioning the Network; development of necessary documents; development of work plans; establishment of subscriber rates and other fees and charges and the allocation of expenditures and revenues among the Parties as appropriate; and all other activities necessary or convenient to the efficient operation of the Network.

E. Executive Authority's responsibilities

1. In addition to its responsibilities and privileges as a Party to this agreement, EWEB agrees to serve as the Executive Authority and fiscal agent for the Network.
2. The Executive Authority for the Network, shall

- a. Adopt the annual budget approved by the Parties and include the Network budget as a part of the annual budget of the Executive Authority, subject to the discretion of the board of the Executive Authority. Any change by the board of the Executive Authority must be approved by the County before the County is bound;
 - b. Take necessary steps in accordance with this Agreement to continue the operations of the Network and require it to remain self supporting;
 - c. Act in accordance with policy recommendations or statements of the Parties;
 - d. If appropriate, enter into contracts for services to facilitate the operation of the Network and to assure fulfillment of its duties;
 - e. For purposes of ensuring continued operation of the Network, EWEB will have primary responsibility to provide Operations and Maintenance services and LCSO agrees to provide backup resources, as required.
3. As fiscal agent for the Network, the Executive Authority shall:
 - a. Collect and disburse funds as indicated in the Network Budget and credit the Network accounts with monies received and expended;
 - b. Provide both Parties with at least annual reports on the financial status of the Network accounts.
 4. The Executive Authority may resign as Executive Authority by providing the Network with written notification of intent to resign at least 180 days in advance. In this event, the Parties shall choose a new Executive Authority.

F. Provisioning

1. The essential component of the Network is a uniform communications system, allowing the participants to share a system, providing for secure communication when necessary and shared access to information as appropriate. General operational and provisioning decisions for the Network shall be made by the Parties; provided, however, that individual Members shall be responsible for provisioning beyond Network Demarcation Points.
2. The Network requires a single system of data transmission. The Parties will adopt, in writing, and may from time to time modify, a uniform system for provisioning the Network, including technical standards for

equipment , security provisions, access provisions and the system's design (Network Provisioning Plan).

3. The Parties shall develop and maintain as a part of the Network Provisioning Plan a written description of the network including at least the following:
 - a. A written and/or graphic depiction of the Network, including location of major equipment and microwave paths ;
 - b. A written and/or graphic depiction of the Network's demarcation points, clearly describing the Network's boundaries;
 - c. A description of each non-Network attachment to the Network;
 - d. A description of ownership, maintenance agreements, lease agreements, contact information and other information necessary for maintenance, repair and security for each segment of the Network;
 - e. A technical description of capacity and usage by agency on each segment of the Network;
 - f. An indication of any priority traffic or routes, as well as redundant routes, to allow for priority repair and/or special security and service considerations;
 - g. Any other information deemed necessary and useful to the Parties.
4. The Network Provisioning Plan shall include descriptions and the anticipated timing of additions to the Network and changes in use of the Network. Modifications to the Network shall only be made after approval by the Parties and in compliance with the Network Provisioning Plan then in effect. Inclusion of a specific modification in the approved Network Provisioning Plan shall constitute approval for the identified modification to be made in the manner and at the time specified in the Network Provisioning Plan.
5. For purposes of this Agreement, the Network Demarcation Points shall be defined as those points where traffic from one Party, is transferred to physical facilities which are available to transport traffic of both Parties. Except as otherwise designated in the Network Provisioning Plan, Network Demarcation points will be located within Network equipment.

G. Resource Acquisition

1. Except as otherwise approved in advance by the Parties, the Executive Authority will act in procuring/providing any necessary resources to develop and operate the Network.
2. The Parties shall set standards for network reliability and maintenance of Network facilities. Such standards shall be in writing and may be modified from time to time by the Parties.

H. Operations and Maintenance

1. The Executive Authority will operate and maintain the Network under the guidance and general direction of the Parties.
2. The Parties shall establish written service level standards including, but not limited to, the following:
 - a. Reliability standards;
 - b. Repair and service reestablishment priorities;
 - c. Any necessary site access and equipment housing agreements and standards;
 - d. Network security including, data security, physical security standards for equipment;
 - e. Disaster plans and agreements.
3. The Executive Authority will act for the Parties in procuring and/or providing necessary maintenance services for the Network.

I. Rate Setting and Billing

The Parties agree to share development and on-going operations and maintenance costs equally, but may adopt, and from time to time, modify, a written rate-setting methodology designed to fully recover costs of operations and capital investment resulting from third-party usage of the Network. Rates will be derived to recapture the fully amortized value of the capital assets and service costs allocated to the Network.

1. The Executive Authority will provide the necessary billing services on behalf of the Parties to operate the Network. This service shall be a part of the administrative costs for which the Executive Authority is entitled to compensation.

J. Default

1. **Events of Default** If either Party is in breach or default (Defaulting Party), under this Agreement, the other Party (Non-Defaulting Party) may notify in writing to the Defaulting Party that it is in breach or default, such notice to be effective upon its receipt by the Defaulting Party. The following events shall constitute breach or default under this Agreement:
 - a. failure to make any payment when due hereunder;
 - b. failure to perform in any material respect any obligations required to be observed or performed hereunder;
 - c. willful and material interference by one Party to another Party's operations.

2 Remedies

- a. **Defaulting Party's Right to Cure.** The Defaulting Party shall have the right to cure any breach or default under this Agreement within thirty (30) calendar days after the receipt by the Defaulting Party of notification of such breach or default. In the event that any breach or default is of a nature such that it may not reasonably be cured within thirty (30) calendar days, the Defaulting Party shall have the right to provide the Non-Defaulting Party with a reasonable plan for the appropriate actions to cure such breach or default. Within the thirty (30) calendar day period, the Defaulting Party must commence diligently pursuing appropriate action under the plan to cure the breach or default, in which event the Defaulting Party shall have a longer period of time to cure the breach or default so long as the Defaulting Party shall continue to be diligently pursuing appropriate action during such period; provided, however, that in no event shall such time period exceed 120 days from the date of receipt of notification of the breach or default.
- b. **Non-Defaulting Party's Remedies.** After the time allowed the Defaulting Party to cure any breach or default has expired, then the Non-Defaulting Party shall have the right to terminate the Defaulting Party's Membership. The Non-Defaulting Party may elect to cure any breach or default of the Defaulting Party to preserve the Non-Defaulting Party's rights that may be prejudiced as a result of such breach or default; and exercise and pursue all other rights and remedies available to it under applicable law.
- c. Except as otherwise provided in this Agreement, any right or remedy afforded to either Party under any provision of this Agreement on account of breach or default by another is in addition to, and not in lieu of, all rights or remedies afforded any Party under any other provision of this Agreement, by law or otherwise on account of the breach or default.

K. Indemnity

Each Party agrees to defend, indemnify and save the other harmless from any claim, liability or damage, including attorney fees, resulting from any error, omission or act of negligence on the part of the indemnifying party, its officers or employees, affiliates, agents, contractors, licensees, invitees and vendors in the performance of its responsibilities under this agreement. The members' indemnity and hold harmless obligations are subject to the limitations of the Oregon Tort Claims Act and the Oregon Constitution, as applicable.

Each Party expressly recognizes and agrees that its obligation to indemnify, defend, protect and save another harmless is not a material obligation to the continuing performance of its other obligations, if any, hereunder. In the event that a Party shall fail for any reason to so indemnify, defend, protect and save the other harmless, the injured Party hereby expressly recognizes that its sole remedy in such event shall be the right to bring legal proceedings against the other Party for its damages as a result of the other Party's said failure to indemnify, defend, protect and save harmless. These obligations shall survive the expiration or termination of this Agreement.

In providing the services specified in this agreement (and any associated services) both Parties are public bodies and maintain their public body status as specified in ORS 30.260. The Parties understand and acknowledge that both Parties retain all immunities and privileges granted them by the Oregon Tort Claims Act (ORS 30.260 through 30.295) and any and all other statutory rights granted as a result of their status as local public bodies.

L. Force Majeure

No Party shall be considered in default in performance of any obligation hereunder (other than for payment of monies due) due to causes beyond its reasonable control including but not limited to acts of God, acts of the other Party, fires, strikes, labor disturbances, floods, epidemics, quarantine restrictions, war, insurrection or riot, acts of a civil or military authority, compliance with priority orders or preference ratings issued by the federal Government, acts of Government authorities with respect to revocation of export or re-export permits/licenses, wrecks or delays by carriers or unusually severe weather.

M. Limitation of Liability

Notwithstanding any provision of this Agreement to the contrary, no Party shall be liable to any other Party for any special, incidental, indirect, punitive or consequential damages, or damages for lost revenue or lost profits, whether foreseeable or not, arising out of, or in connection with such Party's failure to perform its respective obligations hereunder, including, but not limited to, loss of profits or revenue (whether arising out of transmission or transport interruptions or problems, any interruption or degradation of service or otherwise), or claims of customers, whether occasioned by any construction,

reconstruction, relocation, repair or maintenance performed by, or failed to be performed by, the other Party or any other cause whatsoever, including breach of contract, breach of warranty, negligence, or strict liability, all claims for which damages are hereby specifically waived. Except for the limitations on actions contained in the applicable provisions of the Oregon Tort Claims Act, nothing contained herein shall operate as a limitation on the right of a Party hereto to bring an action for damages against any third Party, including claims for indirect, special or consequential damages, based on any acts or omissions of such third Party.

N. Dispute Resolution

The Parties agree to resolve disputes in a cooperative and reasonable manner. If an impasse is reached, the Parties agree to determine an appropriate means of alternative dispute resolution through mediation or arbitration.

O. Assignment

Neither Party may assign or transfer any of its interest in this agreement to a third party without the prior written mutual consent of both Parties

P. No Third Party Beneficiaries

EWEB and LCSO are the only Parties to this agreement and are the only Parties entitled to enforce its terms. Nothing in this agreement gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons.

Q. Successors in Interest

The provisions of this agreement shall be binding upon and inure to the benefit of the Parties and their successors and approved assigns, if any.

R. Additional Agreements

This Agreement constitutes the sole and complete agreement among the members.

S. Notice

Except where specified otherwise, the terms 'written communications', 'written notification' and 'notice' shall include notification by electronic mail.

T. Amendment Process

This Agreement may be amended only by written agreement by both Parties. Any amendment shall be executed by a person authorized to bind the Party to the commitments represented in the amendment.

U. Partial Invalidity

If any term or provision of this Agreement or the application to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

V. Waivers

No waiver of any breach of any covenant or provision contained here shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision here contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

IN WITNESS WHEREOF the Parties have signed this agreement as of the date first above written.

LANE COUNTY

William A. Van Vactor
County Administrator

Date

Russel E. Burger
Sheriff

Date