

**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS
CONSENT AGENDA REQUEST**

TO: Board of County Commissioners

FROM: Mark McCauley, County Administrator

DATE: November 21, 2022

RE: ARPA Grant Agreement: KPTZ Radio Tower Project: Morgan Hill

STATEMENT OF ISSUE:

KPTZ approached Jefferson County in August, 2022 seeking funding to place a radio tower and related auxiliary equipment on Morgan Hill.

ANALYSIS:

The rationale for the funding coming from the county was that we are the emergency planners for the county and that having a radio tower on Morgan Hill would dramatically improve KPTZ's ability to share information with the community during a disaster/emergency.

They had originally asked the county for \$50,000 to cover the cost of the tower and related auxiliary equipment. They had also asked that the county assume project management responsibilities for the tower as well. Because the county declined the opportunity to manage the project due to limited bandwidth KPTZ has increased the ask to \$65,000 to cover the cost of the tower, related auxiliary equipment and project management through a contractor.

Staff agrees that the tower will provide enhanced information sharing before, during and after an emergency and supports funding the project.

KPTZ staff briefed the Board on the project and the Board directed staff to prepare a grant agreement in support of the project, which is attached.

FISCAL IMPACT:

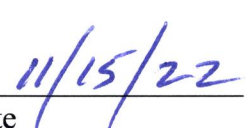
Funding for the \$65,000 will come from revenue sharing ARPA.

RECOMMENDATION:

That the Board of County Commissioners approve the attached grant agreement.

REVIEWED BY:


Mark McCauley, County Administrator


Date

GRANTEE AGREEMENT WITH KPTZ, FM 91.9

This Grantee Agreement ("Agreement") is by and between Jefferson County, a Washington political subdivision ("County") and KPTZ, FM 91.9, ("Grantee").

WHEREAS, on March 11, 2021, President Biden signed the American Rescue Plan Act (ARPA) into law; and

WHEREAS, the ARPA has allocated funds to revenue sharing counties, of which Jefferson County is one; and

WHEREAS, revenue sharing ARPA funds may be used for any governmental purpose; and

WHEREAS, Grantee operates a local radio station that is authorized by Jefferson County to inform the public during emergencies and natural disasters: and

WHEREAS, The Grantee wishes to install a radio tower and related auxiliary equipment on Morgan Hill inside the city limits of Port Townsend to significantly improve their ability to broadcast information useful to our citizens during an emergency or natural disaster: and

WHEREAS, Jefferson County agrees that the new radio tower will improve the resiliency and the emergency and disaster preparedness of the County: and

WHEREAS, Grantee has requested that the County contribute \$65,000 in support of this effort:

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, and the terms and conditions set forth below, the parties agree as follows:

Grant Amount and Grantee's Use of Grant Funds. The Grant amount is \$65,000. The Grant is to be used to erect a radio tower and related auxiliary equipment on Morgan Hill in Port Townsend, per Exhibit A.

Reporting Requirements. Grantee will submit a report to the County following the completion of the radio tower project. The report will include information regarding the usage of the \$65,000 grant amount and the completed project.

Effective Date and Term. This Agreement shall commence on the date when last executed by the parties and remain in effect until the Grant is exhausted.

Termination. The County may terminate this Agreement, for convenience or otherwise and for no consideration or damages, upon prior notice to the Grantee.

Independent Grantee. Each party under this Agreement shall be for all purposes an independent Grantee. Nothing contained herein will be deemed to create an association, a partnership, a joint venture, or a relationship of principal and agent, or employer and employee between the parties. The Grantee shall not be, or be deemed to be, or act or purport to act, as an employee, agent, or representative of the County for any purpose.

Indemnification. The Grantee agrees to defend, indemnify and hold the County, its officers, officials, employees, agents and volunteers harmless from and against any and all claims, injuries, damages, losses or expenses including without limitation personal injury, bodily injury, sickness, disease, or death, or damage to or destruction of property, which are alleged or proven to be caused in whole or in part by an act or omission of the Grantee, its officers, directors, employees, and/or agents relating to the Grantees' performance or failure to perform under this Agreement. The section shall survive the expiration or termination of this Agreement.

Insurance. Prior to commencing work, the Grantee shall obtain at its own cost and expense the following insurance coverage specified below and shall keep such coverage in force during the terms of the Agreement.

Commercial Automobile Liability Insurance providing bodily injury and property damage liability coverage for all owned and non-owned vehicles assigned to or used in the performance of the work for a combined single limit of not less than \$500,000 each occurrence with the County named as an additional insured in connection with the Consultant's performance of his Agreement. This insurance shall indicate on the certificate of insurance the following coverage: (a) Owned automobiles; (b) Hired automobiles; and, (3) Non-owned automobiles.

Commercial General Liability. Insurance in an amount not less than a single limit of \$1,000,000 per occurrence and an aggregate of not less than two (2) times the occurrence amount (\$2,000,000.00 minimum) for bodily injury, including death and property damage, unless a greater amount is specified in the contract specifications.

The commercial general liability insurance coverage shall contain no limitations on the scope of the protection provided and include the following minimum coverage:

Broad Form Property Damage, with no employee exclusion;

- b. Personal Injury Liability, including extended bodily injury;
- c. Broad Form Contractual/Commercial Liability – including coverage for products and completed operations;
- d. Premises – Operations Liability (M&C);
- e. Blanket Contractual Liability.

The County shall be named as an "additional named insured" under all insurance policies required by this Agreement, except Professional Liability Insurance when not allowed by the insurer, and shall include a provision prohibiting cancellation of said policy except upon thirty (30) days prior written notice to the County.

Such insurance coverage shall be evidenced by one of the following methods: (a) Certificate of Insurance; or, (b) Self-insurance through an irrevocable Letter of Credit from a qualified financial institution.

The Grantee shall furnish the County with properly executed certificates of insurance that, at a minimum, shall include: (a) The limits of overage; (b) The project name to which it applies; (c) The certificate holder as Jefferson County, Washington and its elected officials, officers, and

employees with the address of Jefferson County Risk Management, P.O. Box 1220, Port Townsend, WA 98368, and, (d) A statement that the insurance policy shall not be canceled or allowed to expire except on thirty (30) days prior written notice to the County. If the proof of insurance or certificate indicating the County is an "additional insured" to a policy obtained by the Consultant refers to an endorsement (by number or name) but does not provide the full text of that endorsement, then it shall be the obligation of the Consultant to obtain the full text of that endorsement and forward that full text to the County. Certificates of coverage as required by this section shall be delivered to the County within fifteen (15) days of execution of this Agreement.

Failure of the Grantee to take out or maintain any required insurance shall not relieve the Grantee from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations concerning indemnification of the County.

The Grantee's insurers shall have no right of recovery or subrogation against the County (including its employees and other agents and agencies), it being the intention of the parties that the insurance policies, with the exception of Professional Liability Insurance, so affected shall protect all the parties and shall be primary coverage for all losses covered by the above described insurance.

Insurance companies issuing the Grantee's insurance policy or policies shall have no recourse against the County (including its employees and other agents and agencies) for payment of any premiums or for assessments under any form of insurance policy.

All deductibles in the Grantee's insurance policies shall be assumed by and be at the sole risk of the Grantee.

Any deductibles or self-insured retention shall be declared to and approved by the County prior to the approval of this Agreement by the County. At the option of the County, the insurer shall reduce or eliminate deductibles or self-insured retention, or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Any judgments for which the County may be liable, in excess of insured amounts required by this Agreement, or any portion thereof, may be withheld from payment due, or to become due, to the Grantee until the Grantee shall furnish additional security covering such judgment as may be determined by the County.

Any coverage for third party liability claims provided to the County by a "Risk Pool" created pursuant to Ch. 48.62 RCW shall be non-contributory with respect to any insurance policy the Grantee shall provide to comply with this Agreement.

The County may, upon the Grantee's failure to comply with all provisions of this Agreement relating to insurance, withhold payment or compensation that would otherwise be due to the Grantee.

The Grantee shall provide a copy of all insurance policies specified in this Agreement.

Written notice of cancellation or change in the Grantee's insurance required by this Agreement shall reference the project name and agreement number and shall be mailed to the County at the

following address: Jefferson County Risk Management, P.O. Box 1220, Port Townsend, WA 98368.

The Grantee's liability insurance provisions shall be primary and noncontributory with respect to any insurance or self-insurance programs covering the County, its elected and appointed officers, officials, employees, and agents.

Any failure to comply with reporting provisions of the insurance policies shall not affect coverage provided to the County, its officers, officials, employees, or agents.

The Grantee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

The Grantee shall include all Sub-Grantees as insured under its insurance policies or shall furnish separate certificates and endorsements for each Sub-Grantee. All insurance coverage for Sub-Grantees shall be subject to all the requirements stated in this Agreement.

The insurance limits mandated for any insurance coverage required by this Agreement are not intended to be an indication of exposure nor are they limitations on indemnification.

The Grantee shall maintain all required insurance policies in force from the time services commence until services are completed. Certificates, insurance policies, and endorsements expiring before completion of services shall be promptly replaced. All the insurance policies required by this Agreement shall provide that thirty (30) days prior to cancellation, suspension, reduction or material change in the policy, notice of same shall be given to the County Risk Manager by registered mail, return receipt requested.

The Grantee shall place insurance with insurers licensed to do business in the State of Washington and having A.M. Best Company ratings of no less than A-, with the exception that excess and umbrella coverage used to meet the requirements for limits of liability or gaps in coverage need not be placed with insurers or re-insurers licensed in the State of Washington.

The County reserves the right to request additional insurance on an individual basis for extra hazardous contracts and specific service agreements.

Worker's Compensation (Industrial Insurance).

If and only if the Consultant employs any person(s) in the status of employee or employees separate from or in addition to any equity owners, sole proprietor, partners, owners or shareholders of the Consultant, the Grantee shall maintain workers' compensation insurance at its own expense, as required by Title 51 RCW, for the term of this Agreement and shall provide evidence of coverage to Jefferson County Risk Management, upon request.

Worker's compensation insurance covering all employees with limits meeting all applicable state and federal laws. This coverage shall include Employer's Liability with limits meeting all applicable state and federal laws.

This coverage shall extend to any Sub-Grantee that does not have their own worker's compensation and employer's liability insurance.

The Grantee expressly waives by mutual negotiation all immunity and limitations on liability, with respect to the County, under any industrial insurance act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim.

If the County incurs any costs to enforce the provisions of this subsection, all cost and fees shall be recoverable from the Grantee.

Compliance with Laws, Guidelines. The Grantee shall comply with all federal, state, and local laws and all requirements (including certifications and audits), to the extent applicable, when seeking Reimbursement.

Maintenance and Audit of Records. The Grantee shall maintain records, books, documents, and other materials relevant to its performance under this Agreement. These records shall be subject to inspection, review and audit by the County or its designee, the Washington State Auditor's Office. If it is determined during the course of the audit that the Grantee was reimbursed for unallowable costs under this Agreement or any, the Grantee agrees to promptly reimburse the County for such payments upon request.

Notices. Any notice desired or required to be given hereunder shall be in writing, and shall be deemed received five (5) days after deposit with the U.S. Postal Service, postage fully prepaid, certified mail, return receipt requested, and addressed to the party to which it is intended at its last known address, or to such other person or address as either party shall designate to the other from time to time in writing forwarded in like manner:

Grantee

Kate Ingram
General Manager
P.O. Box 2091
Port Townsend, WA 98368

Jefferson County

Mark McCauley
County Administrator
Jefferson County Courthouse
1820 Jefferson Street
Port Townsend, WA 98368

Improper Influence. Each party warrants that it did not and will not employ, retain, or contract with any person or entity on a contingent compensation basis for the purpose of seeking, obtaining, maintaining, or extending this Agreement. Each party agrees, warrants, and represents that no gratuity whatsoever has been or will offered or conferred with a view towards obtaining, maintaining, or extending this Agreement.

Conflict of Interest. The elected and appointed officials and employees of the parties shall not have any personal interest, direct or indirect, which gives rise to a conflict of interest.

Time. Time is of the essence in this Agreement.

Survival. The provisions of this Agreement that by their sense and purpose should survive expiration or termination of this Agreement shall so survive. Those provisions include without limitation Indemnification and Maintenance and Audit of Records.

Amendment. No amendment or modification to this Agreement will be effective without the prior written consent of the authorized representatives of the parties.

Governing Law; Venue. This Agreement will be governed in all respects by the laws of Washington state, both as to interpretation and performance, without regard to conflicts of law or choice of law provisions. Any action arising out of or in connection with this Agreement may be instituted and maintained only in a court of competent jurisdiction in Jefferson County, Washington or as provided by RCW 36.01.050.

Non-Waiver. No failure on the part of the County to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by the County of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedy available to the County at law or in equity.

Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors.

Assignment. Neither party shall assign or transfer any of its interests in or obligations under this Agreement without the prior written consent of the other party.

Entire Agreement. This Agreement constitutes the entire agreement between the County and the Grantee for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the parties with respect to this Agreement.

No Third Party Beneficiaries. Nothing herein shall or be deemed to create or confer any right, action, or benefit in, to, or on the part of any person or entity that is not a party to this Agreement. This provision shall not limit any obligation which either party has to the Washington State Department of Commerce of these grant funds, including the obligation to provide access to records and cooperate with audits as provided in this Agreement.

Severability. In the event that one or more provisions of this Agreement shall be determined to be invalid by any court of competent jurisdiction or agency having jurisdiction thereof, the remainder of this Agreement shall remain in full force and effect and the invalid provisions shall be deemed deleted.

Counterparts. This Agreement may be executed in counterparts, any of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Authorization. Each party warrants to the other party, that the person executing this Agreement on its behalf has the full power and authority to do so.

Public Records Act. Notwithstanding any provisions of this Agreement to the contrary, to the extent any record, including any electronic, audio, paper or other media, is required to be kept or indexed as a public record in accordance with the Washington Public Records Act, Chapter 42.56 RCW (as may be amended), the Grantee agrees to maintain all records constituting public records

and to produce or assist the County in producing such records, within the time frames and parameters set forth in state law. The Grantee also agrees that upon receipt of any written public record request, Grantee shall, within two business days, notify the County by providing a copy of the request per the notice provisions of this Agreement.

(SIGNATURES APPEAR ON THE NEXT PAGE)

IN WITNESS WHEREOF, this Agreement is executed and shall become effective as of the last date signed below.

**JEFFERSON COUNTY BOARD OF
COMMISSIONERS**

KPTZ, 91.9 FM

By: _____
Heidi Eisenhour, Chair DATE

By: _____
Name: _____ DATE

SEAL:

ATTEST:

Carolyn Gallaway DATE
Clerk of the Board

Approved as to form only:

 _____
November 3, 2022

Philip C. Hunsucker DATE
Chief Civil Deputy Prosecuting Attorney

EXHIBIT A

PROPOSAL TO FUND MORGAN HILL EMERGENCY TRANSMISSION SITE

PROJECT SUMMARY

KPTZ and KROH are regional area providers of broadcast information, with a special role in the event of a local emergency. KPTZ together with KROH now request that Jefferson County construct a small communications transmitter facility and tower at the Morgan Hill reservoir in Port Townsend to support the public information broadcast network in the event of a disaster. While every effort has been made to enhance the physical-plant resiliency and information collection systems of both broadcast outlets, a facility is needed to support information exchange and distribution communications between the Jefferson County Emergency Operations Center (EOC) and authorized broadcasters at both stations, in any circumstance in which landline telephone and wireless cellular services are disrupted by a major disaster and/or subsequent lengthy power failure.

While some modalities of two-way radio communication (VHF Low-band, Amateur and GMRS) do exist between these points, the proposed new transmitter facility and tower will provide a robust auxiliary microwave/radio relay site connecting JeffCo EOC, KPTZ, and KROH via a full- duplex voice system.

The approximate cost of the project is estimated to be \$106,000. We are requesting \$65,000 in Jefferson County government support. A draft budget is attached.

OVERVIEW

For over a decade, FM stations KPTZ and KROH have partnered with Jefferson County government to be prepared to provide broadcast emergency information to area residents. The ability to continue that partnership at the highest level possible depends upon establishing the new facility at Morgan Hill in Port Townsend, a site optimal for local signal transmission due to its proximity and elevation. This project effort would replace the County's current and unused small container shelter and tower stub at the site with a 60-foot tower and transmission technology to be housed at that location.

To be useful for this purpose, the Morgan Hill Reservoir site must be upgraded. As a consequence of the FCC's reassignment of the frequencies previously used for this network, the facility would reestablish the previous microwave network on new frequencies and also provide an auxiliary FM transmitter location for backup use, should either KPTZ's or KROH's main transmitter become damaged or unserviceable in an emergency.

All equipment at the site would be provided and owned by the radio stations. A majority of the equipment needed for Morgan Hill currently supports KPTZ's operations. With the exception of the new tower, much of the technical infrastructure has been purchased or is on hand and can be repurposed for this project.

PROJECT IMPORTANCE TO LOCAL EMERGENCY PREPARATION

The City Council of Port Townsend, in recognition of its responsibility to participate in preparation for a major disaster, in April 2021, passed a resolution to allow construction at the Morgan Hill site and granted use to KPTZ for the provision of emergency information services. At a nominal \$0.40 monthly use rate for the 1,000 square feet of land on Morgan Hill, the City's financial commitment equates to \$54,000 over 10 years.

For over a decade, both KPTZ and KROH have provided facilities, personnel, equipment and services to establish and enable this response network. That effort has enhanced the County's emergency preparedness and raised public awareness of the potential threats and resources available. A dedicated team of KPTZ volunteer staffers who have taken FEMA training qualifying them to embed in the EOC whenever it is activated for an emergency, remain on call every day and night throughout the year.

The Morgan Hill relay site project represents the continuation of over 10 years' investment by both stations' directors, staff, and volunteer broadcasters working in tandem with the Jefferson County Department of Emergency Services.

All of this effort has one purpose — protecting the health and safety of the people of Jefferson County. For the entire community and for all of its many stakeholders, this project is of the utmost importance and requires prompt action.