

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

TO: Board of County Commissioners

FROM: Mark McCauley, County Administrator

DATE: December 11, 2023

RE: ARPA Grant Request From KPTZ, FM 91.9: requesting funds be redirected from the Morgan Hill radio tower site to the Rainshadow Road radio tower site

STATEMENT OF ISSUE:

In 2022 KPTZ was awarded \$65,000 in ARPA funding to help with the installation of a radio tower on Morgan Hill. The radio tower was to enhance communications during disasters and to provide a degree of redundancy to KPTZ's broadcasting network. The Morgan Hill site has proven to be problematic with permitting delays and the untimely departure of the project manager.

KPTZ has decided to abandon the Morgan Hill project for now and proceed with another tower project it has on Rainshadow Road. The Rainshadow Road tower is now a vital interest of KPTZ – they say it's "existential."

They are asking that the Morgan Hill tower funding be redirected to the Rainshadow Road tower project. They already have the funds in hand and are simply requesting that the County Commissioners approve the use of those funds for the Rainshadow radio tower site.

ANALYSIS:

The Rainshadow Road tower site yields the same benefits to the county as the Morgan Hill tower site. Staff therefore recommends the Board approve the attached ARPA grant agreement which supersedes the Morgan Hill grant agreement.

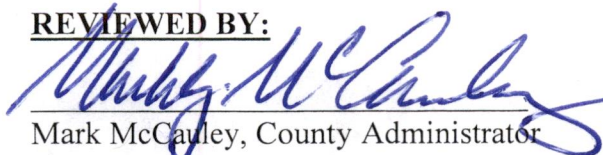
FISCAL IMPACT:

Funds have already been provided to KPTZ so this request has no fiscal impact.

RECOMMENDATION:

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

REVIEWED BY:


Mark McCauley, County Administrator

Date

12/7/23

CONTRACT REVIEW FORM
(INSTRUCTIONS ARE ON THE NEXT PAGE)

Clear Form

CONTRACT WITH: KPTZ, FM 91.9

Contract No: KPTZ ARPA-2

Contract For: Rainshadow Road Radio Tower

Term: Until funds are exhausted

COUNTY DEPARTMENT: County Administrator

Contact Person: Mark McCauley

Contact Phone: 360-385-9130

Contact email: mmccauley@co.jefferson.wa.us

AMOUNT: None - funds already advanced

Revenue: N/A

Expenditure: N/A

Matching Funds Required: N/A

Sources(s) of Matching Funds: N/A

Fund #: N/A

Munis Org/Obj: N/A

PROCESS:

- | | |
|-------------------------------------|-------------------------|
| ☐ | Exempt from Bid Process |
| ☐ | Cooperative Purchase |
| ☐ | Competitive Sealed Bid |
| ☐ | Small Works Roster |
| ☐ | Vendor List Bid |
| ☒ | RFP or RFQ |
| ☐ | Other: _____ |

APPROVAL STEPS:

STEP 1: DEPARTMENT CERTIFIES COMPLIANCE WITH ICC 3.55.080 AND CHAPTER 42.23 RCW.

CERTIFIED: ☒ N/A: ☐

Signature

Date

STEP 2: DEPARTMENT CERTIFIES THE PERSON PROPOSED FOR CONTRACTING WITH THE COUNTY (CONTRACTOR) HAS NOT BEEN DEBARRED BY ANY FEDERAL, STATE, OR LOCAL AGENCY.

CERTIFIED: ☒ N/A: ☐

Signature

Date

STEP 3: RISK MANAGEMENT REVIEW (will be added electronically through Laserfiche):

Electronically approved by Risk Management on 12/7/2023.

STEP 4: PROSECUTING ATTORNEY REVIEW (will be added electronically through Laserfiche):

Electronically approved as to form by PAO on 12/7/2023.
County standard ARPA grant form.

STEP 5: DEPARTMENT MAKES REVISIONS & RESUBMITS TO RISK MANAGEMENT AND PROSECUTING ATTORNEY(IF REQUIRED).

STEP 6: CONTRACTOR SIGNS

STEP 7: SUBMIT TO BOCC FOR APPROVAL

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, a Washington municipal corporation, ("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, a previous ARPA grant agreement provided \$65,000 for a radio tower installation on Morgan Hill which is now no longer feasible; and

WHEREAS, The Grantee now wishes to install a radio tower and related auxiliary equipment on land leased long-term on Rainshadow Road which will also 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 redirect the \$65,000 originally approved for the radio tower on Morgan Hill 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 Rainshadow Road, 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:

- a. 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: _____
Greg Brotherton, Chair DATE

By: _____

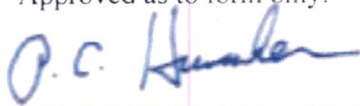
Name: _____ DATE

SEAL:

ATTEST:

Carolyn Gallaway, CMC DATE
Clerk of the Board

Approved as to form only:



December 7, 2023

Philip C. Hunsucker DATE
Chief Civil Deputy Prosecuting Attorney



PROPOSAL

REDIRECTING MORGAN HILL FUNDING TO RAINSHADOW ROAD EMERGENCY TRANSMISSION SITE

PROJECT SUMMARY

KPTZ is a full-service community radio station that performs an essential role as a trusted emergency information provider. Jefferson County recognized our crucial emergency service role by supporting KPTZ's project to construct a small back-up broadcast facility at Morgan Hill. For reasons explained below, that project has been suspended. We are requesting that the \$65,000 granted to KPTZ for the Morgan Hill project be redirected to help develop the same capability at a different site, a new transmitter and tower location on Rainshadow Road.

WHAT IS THE RAINSHADOW ROAD PROJECT?

The landowner of the property where KPTZ's tower and transmitter sit has declined to sell the property or renew its lease. Therefore KPTZ was compelled to find a new location within a very narrow area compliant with FCC regulations. We found a new site on Rainshadow Road, negotiated a long-term lease with a supportive landowner, and received an FCC construction permit to move our transmitter there.

KPTZ will construct a new transmission tower and a small building to both house KPTZ's transmitter and serve as an emergency back-up studio. The site will have a generator and supplies to allow volunteer emergency broadcasters to stay on the air indefinitely.

WHAT HAPPENED TO THE MORGAN HILL PROJECT?

The Morgan Hill tower and transmission facility plan fell victim to permitting delays and manpower issues. The plan was to construct a small microwave communications and back-up transmitter facility and tower at the Morgan Hill Reservoir in Port Townsend. In summer of 2022 KPTZ was on track to implement both the Morgan Hill and the Rainshadow Road efforts. At that time KPTZ Board President Dom Svornich was project managing the Rainshadow Road project and board member Ray Serebrin was coordinating the Morgan Hill effort. It became clear that the City permitting process was going to take longer than expected, and at the end of 2022, Dom left the board with the Rainshadow project still in the permitting process.

KPTZ realized it did not have capacity to pull off both the Rainshadow and Morgan Hill projects to meet FCC deadlines, particularly because massive effort still is focussed on moving to our new studios at Fort Worden. Establishing a new transmitter site at Rainshadow Road is existential for KPTZ. The FCC permit for this move expires on April 8, 2024, so time is short. If the station does not complete the move to Rainshadow Road, KPTZ could go off the air, having drastic implications for overall service to the

community and for emergency services in the county. As a result Ray's efforts were diverted to the Rainshadow Road project.

OUR REQUEST

The Rainshadow Road project requires a significant capital outlay, over \$200,000. The tower and antenna will cost upwards of \$40,000, and an emergency studio and transmitter facility will cost in the range of \$25,000-\$30,000. The previously allocated \$65,000 from Jefferson County remains unspent in KPTZ's account at First Federal Bank. We request that it be repurposed, so it may be used on *capital expenditures* for the Rainshadow Road project. (We are happy to provide a detailed budget if appropriate.)

RAINSHADOW ROAD PROJECT UPDATE AS OF NOVEMBER 29, 2023

KPTZ executed a long-term lease with the new site landowner (Mark Magee), DCD granted a construction permit, and site preparation began. The permit was disputed, however, and a suit was filed by a couple who own property on Rainshadow Road. A hearing to settle the matter is scheduled in Superior Court on February 21, 2024. Until then the project is suspended, and the FCC project deadline is deferred until the issue is resolved. Nonetheless, planning goes on as we await resolution of the matter.