

SITE LAND USE AND COMMUNICATION SITE USE AGREEMENT

A COOPERATIVE AGREEMENT BETWEEN

YELLOWSTONE COUNTY AND THE CITY OF BILLINGS

1) PURPOSE

- a) The purpose of this memorandum is to define the criteria for joint utilization of the Northeast Billings Site, also known as the Fox site, located at 1310 W Wicks Lane in Billings Montana. The Fox site is one of three radio tower sites that provide public safety and city-wide 800 MHz communications for the City of Billings.

2) INTRODUCTION

- a) The Interoperability Montana Project (IM) is a collaborative effort of local, tribal, state and federal public safety providers to improve interoperable communication among local, state and federal stakeholders throughout Montana.
- b) The Northeast Billings site was selected as an important site for Yellowstone County and the City of Billings and was part of Investment Justification #1 of the Public Safety Interoperable Communication (PSIC) grant. This site provides important VHF radio coverage and provides a viable connection between the Coburn and Pompey's Pillar sites. Interoperability Montana initiated the development of the site with the City of Billings.
- c) In June 2011 the Interoperability Montana Board of Project Directors officially disbanded, transferring state-wide coordination to a new Executive Committee and transferred grants to selected counties willing to take responsibility for them. The original PSIC funding was moved to other needs of the statewide project by the Executive Committee and they have allocated Homeland Security FY2010 grant funding to be used for the NE Billings project.
- d) The City of Billings owns the property selected for the Northeast Billings (Fox) site and has determined that local zoning regulations have been met and that no variance is required to construct an additional tower at the Fox site.
- e) Yellowstone County has been awarded \$45,932.00 of Interoperable Emergency Communications FY2010 (IECGP) grant funds to complete the planning phase of the project. There is \$ 623,805.00 of Homeland Security FY 2010 grant funds being

committed to develop the infrastructure and microwave connectivity at Northeast Billings. This funding is 100% Federal.

- f) The original intent of the PSIC application and statewide radio project is to maximize cooperation among agencies to mutual benefit of all public safety responders.
- g) An important part of this process is sharing resources and functionality to improve interoperable land-mobile radio communications. In order to complete this network, new radio sites and equipment will be identified, procured and accessed by local, tribal, and state agencies. This memorandum outlines specific rights and requirements to allow site participation and use by all parties.
- h) The development of the Northeast Billings site, including the installation of the new tower, updates to the facility, proper grounding, emergency power, microwave equipment, grounding and other communication equipment were provided by joint local, state and federal grant funding through the Interoperability Montana Project, with the intent of joint use.

3) TERMS OF COOPERATION

- a) The City of Billings will continue to own the property upon which the Northeast Billings site infrastructure is located. The City of Billings will lease the site to Yellowstone County for one (1) dollar and other considerations. Yellowstone County will be awarded the title to the new shelter, tower, generator, microwave equipment and other associated equipment, according to guidelines established by the Homeland Security grant.
- b) Yellowstone County will allow the City of Billings to install, co-locate and operate public safety communication equipment in and on the Northeast Billings infrastructure for the sum of one (1) dollar per year
- c) Yellowstone County and the City of Billings will share operational costs associated with operations at the Northeast Billings site, to include utilities, propane and generator maintenance, in proportion to facility use. Any other agency which may be approved to use the site will be responsible for their share of the operational costs.
- d) The new Statewide Communication System Executive Committee will be responsible for monitoring (including system mapping and management) and general microwave equipment maintenance. In exchange, the statewide radio system will utilize the microwave system awarded to Yellowstone County to provide connectivity between radio sites and connect the Billings region to the second Trunking Zone Controller in Sydney, and to provide multi-agency interoperable communications.
- e) The Yellowstone County Sheriff's Department will have the responsibility for facility management and cooperation among all parties.
- f) Yellowstone County may provide access to other public safety communication users as long as such use does not interfere with any public safety communication by any party of this agreement.
- g) Changes to this agreement may only be made by the mutual written consent of Yellowstone County and the City of Billings. Both parties will coordinate all changes with the state-wide radio project.
- h) By entering into this agreement, all parties will have the responsibility of complying with Federal, State of Montana, and Yellowstone County regulations, and will abide by the terms of the specific site user agreement.

4) MUTUAL AGREEMENT

- a) The length of this agreement shall be in place for twenty (20) years or until such time as an official modification is signed by the City of Billings and Yellowstone County or their successors
- b) This agreement will become valid upon obtaining all required signatures.
- c) This agreement may be modified through mutual written agreement.
- d) Execution of the agreement neither creates a waiver of immunity for either party, nor any rights of action, public or private, in either party or any other entity.

5) PRINCIPLE CONTACTS

- a) Yellowstone County Site Manager: Mike Linder
- b) City of Billings: Anne Kindness, Communication Center Manager

6) INDEMNIFICATION

Yellowstone County agrees to indemnify, defend and save the City of Billings, its officers, agents and employees harmless from any and all losses, damage and liability occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act or omission on the part of Yellowstone County or its agents or employees during the performance of its duties and responsibilities in this MOU.

Similarly, the City of Billings agrees to indemnify, defend and save Yellowstone County, its officers, agents and employees harmless from any and all losses, damage and liability occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act or omission on the part of Yellowstone County or its agents or employees during the performance of its duties and responsibilities in this MOU.

The parties agree that where concurrent negligence results in liability and damages assessed against both entities, the negligence of the parties will be apportioned and the percent of negligence attributable to each will determine the amount of damages or other financial responsibility each party will pay.

7) SIGNATURES

- a) By signature hereon, the undersigned agencies agree to support and participate in the activities of the joint communication site.

Yellowstone County Commission

Date

City of Billings

Date