

Operating Agreement for Western Region Radio System

This Operating Agreement of the Western Region Radio System is organized pursuant to the Texas Statewide Interoperability Channel Plan (TSICP) plus applicable state law (Tex. Gov Code Ch 791 and Tex. Gov. Code Chapter 421.096) to provide a governmental function or service that each party to the contract is authorized to perform individually; and is entered into and shall become effective as of the Effective Date by and amongst the Western Region Radio System participants. The participants include the Texas Department of Transportation (TxDOT), Blanco, Burnet and Llano Counties and the City of Marble Falls executing this Agreement as Members. It is the express intention of the Members to replace the previous agreement signed into effect on October 1, 2013 titled "Operating Agreement for Western Counties VHF Trunked Radio System". All provisions of this document shall be construed consistent with the described intent of the Members, to manage a Project 25 compliant trunked radio system that is interfaced to the Greater Austin/Travis Regional Radio System per the "Master Site Communications System Interlocal Cooperation Agreement be in accordance with the City of Austin GATRRS Agreement, and be within the design specifications of the Engineering Specifications of the system manufacturer. Accordingly, in consideration of the conditions contained herein, the Members agree as follows:

Definitions in this Agreement

Agreement Name – Western Region Radio System (WRRS)

Auditor – Auditor of Burnet County.

Chief Executive Member - Burnet County unless and until modified by the Executive Committee

Executive Committee – The County Judges of Blanco, Burnet, Llano, the Mayor of the City of Marble Falls and the Emergency Management Coordinator for the Texas Department of Transportation or their designee.

Local Members – The Counties of Blanco, Burnet, Llano, and the City of Marble Falls

Operational Committee – The WRRS Manager and one appointed representative from Blanco County, Burnet County, Llano County, the City of Marble Falls, and the Texas Department of Transportation. The operational committee appointees are responsible to maintain access to and control of the towers for their respective local members.

Project 25 (P25) - A public safety oriented digital Land Mobile Radio standard defined by Telecommunications Industry Association standard TIA-102

TXDOT- The Texas Department of Transportation

Western Regional Radio System (WRRS) – A Project 25 compliant trunked radio system that is interfaced to the Greater Austin/Travis Regional Radio System per the "Master Site Communications System Interlocal Cooperation Agreement Between City of Austin and Burnet County", effective May 23, 2013.

WRSS Manager – Hired by Burnet County by recommendation of the Executive Committee. This person carries out the duties of this agreement and the duties of the Burnet County WRRS Job Description. This person is subject to Burnet County policies.

Article I

Organization

1.1 Formation

The Members establish this operating agreement outlining the guidelines for the management of assets, expenditures, and revenue to support the **WRRS**. The purpose of this action is to maintain and sustain a sound organization to efficiently operate the **WRRS**.

1.2 Office and Agent

The location for communication and billing is the Burnet County Auditor at the Burnet County Courthouse Annex on the Square at 133 E Jackson St., Burnet, TX 78611. Accounting records shall be maintained at this location.

1.3 Tower Ownership

The County and City Members own the respective towers and equipment within their respective geographic boundaries, and share the cost of maintenance and capital improvements to ensure the tower system operation and interoperability.

Article II

Capital Contribution and Expenses

2.1 Method of Finance

For financial accounting, net Expenses and the Annual Budget shall be determined on an annual basis and shall be allocated to the Members in proportion to each Member's radio subscriber count in the **WRRS**. The percentage for the budget purposes will be determined annually for each member during the budget meeting of the Executive Committee by the number of subscribers to the **WRRS** for each member.

2.2 Contribution of Revenue

Revenue available to **WRRS** by each local member is based on the number of units subscribing to the use of the towers. The members may bill subscribers or use alternatives sources of revenue to support the **WRRS**. TxDOT will pay costs and maintain the software upgrade agreements on all towers in the **WRRS**.

2.3 Expenses

For financial accounting, net EXPENSES shall be determined on an annual basis and shall be allocated to the Members in proportion to each Member's relative capital interest in the WESTERN COUNTIES VHF TRUNKED RADIO SYSTEM.

2.4 Payment

Each bill or invoice to members by the Burnet County Auditor is required to be paid within 30 days of receipt.

Article III

Management

3.1 Management of the **WRRS**

(a) Management - The Executive Committee manages the **WRRS**. The Executive Committee appoints one Chief Executive Member. The Chief Executive Member is currently the Burnet County Judge who will serve until replaced by the Executive Committee by majority vote of the Members.

(b) Operations - Day to day operations shall be conducted by the **WRRS** Manager, who will have the authority to request purchase orders, verify expenses and initiate contract procurements for goods and materials needed for operations or **WRRS**. The Burnet County Auditor will evaluate purchasing, procurement and manage processes for payment. The Burnet County Auditor is responsible to certify if any expenditure is within the budget.

(c) Systems Management – Each Member is responsible to maintain reasonable access to radio tower sites it owns and/or leases that are a part of the **WRRS**.

(d) Personnel or Contractor – If the Executive Committee authorizes and budgets a full-time equivalent position as WRRS Manager, the position will be filled by an employee of Burnet County unless otherwise designated by the Committee. The Executive Committee will conduct interviews and recommend one or more candidates from which Burnet County may select. The authority to hire from the recommended list and/or terminate the WRRS Manager will reside solely with Burnet County. The Executive Committee may also choose to contract the management of the WRRS.

3.2 Members

The liability of the Members shall be limited as provided pursuant to state law and this Operating Agreement. Members may take part in the control, management, direction, or operation of the **WRRS**'s affairs and shall have powers to bind the **WRRS** only if approved by a majority vote of the Executive Committee. Any agreements must be signed by the Chief Executive Member or all Members either in person or by a delegated representative chosen by the Members. At any time, it is found the **WRRS** is not within the budget the Executive Committee is to be notified in writing within three working days.

3.3 Voting

Each member votes on all matters. and will receive a single vote with a simple majority carrying the matter voted upon unless the matter calls for a unanimous vote.

- (a)** Any decision that involves a transfer of an asset, property or the acquisition of another asset must have the unanimous consent of all members.

3.4 Matters on Which to Vote:

- (a)** The sale, lease or other disposition of the **WRRS**'s assets.
- (b)** The purchase or other acquisition of other assets of all kinds.
- (c)** The management of all or any part of the **WRRS**'s assets.
- (d)** The selection of firms or corporations for the operation and management of the **WRRS**'s business.

In the exercise of their management powers, the Members are authorized to execute and deliver:

- (e)** All contracts, conveyances, assignments, leases, sub-leases, franchise agreements, licensing agreements, management contracts and maintenance contracts covering or affecting the **WRRS**'s assets.
- (f)** All checks, drafts and other orders for the payment of the **WRRS**'s funds.
- (g)** Any other agreements required or authorized by state law.

In addition, Executive Members may delegate a representative from within the member's agency in place to vote and perform duties as the member under the following:

- (h)** A written Authorization of Representation is provided to the members on an agency letterhead.
- (i)** The representation period does not exceed 2 years per authorization.

Each member is responsible to maintain reasonable access to radio tower sites it owns and/or leases that are a part of the **WRRS**.

3.5 Western Region Radio System Information

Upon request, the Chief Executive Member shall supply to any member information regarding the **WRRS** or its activities. Each Member or his authorized representative shall have access to and may inspect and copy all books, records and materials in the Chief Executive Member's possession regarding the **WRRS** or its activities.

3.6 Records

The Members shall cause the **WRRS** to keep at its principal place of business or at another location agreeable by the Members, the following:

- (a) A current list of the members including the full name of the contact person and the current mailing and street address of each Member;
- (b) A copy of the Interlocal Agreement for **WRRS** and all amendments;
- (c) Copies of the **WRRS** reports, decisions or other documents by the Executive Committee for the three most recent years (if any);
- (d) Copies of any financial statements of the **WRRS** for the three most recent years.
- (e) separate capital accounts for each member.

3.7 Individual Member Records

- (a) Members shall maintain their own capital and revenue accounting records. Members accounts can be affected by additional capital contribution made by each member or by any additional funds required to cover actual costs of operating the **WRRS**. Capital account shall be determined and maintained in the manner set forth by the Executive Committee. The accounts can be affected by any additional capital contribution made by each member or by any additional funds required to cover actual cost of operating the **WRRS**.

3.8 Exculpation And Limitation Of Liability

To the extent permitted by Texas law, including but not limited to Texas Government Code Chapter 791 and the Texas Tort Claims Act, no Member, nor any officer, director, employee, or authorized representative of a Member acting within the scope of their authority on behalf of the **WRRS**, shall be liable to the **WRRS** or to any other Member for any loss, damage, or liability arising from any act or omission undertaken in the performance of their duties under this Agreement, provided that such act or omission:

- (a) Was taken in good faith with the reasonable belief that it was in, or not opposed to, the best interests of the **WRRS**;
- (b) Did not constitute gross negligence, willful misconduct, fraud, intentional wrongdoing, or a violation of criminal law;
- (c) Did not breach a specific fiduciary duty or express obligation set forth in this Agreement; and
- (d) Was within the scope of authority granted under this Agreement and applicable law.

This exculpation shall not:

- Limit any Member's statutory duties or obligations under Texas law;
- Waive any governmental immunity to which a Member is entitled;
- Supersede the indemnification provisions contained in Section 3.9 of this Agreement; or
- Affect any party's liability to third parties except as otherwise provided by law.

3.9 Indemnification

Subject to the availability of funds and to the extent permitted by Texas Government Code Chapter 791, the Texas Tort Claims Act, and other applicable law:

- (a) **Mandatory Indemnification:** The **WRRS** shall indemnify and hold harmless any Member, Manager, officer, employee, or agent (each, an "Indemnified Person") who was, is, or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the **WRRS**), by reason of the fact that such person

is or was acting in their official capacity on behalf of the WRRS, against expenses (including reasonable attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred in connection with such action, suit, or proceeding, if:

- (i) The Indemnified Person acted in good faith;
 - (ii) The Indemnified Person reasonably believed their conduct was in, or not opposed to, the best interests of the WRRS;
 - (iii) With respect to any criminal proceeding, the Indemnified Person had no reasonable cause to believe their conduct was unlawful; and
 - (iv) The conduct did not constitute gross negligence, willful misconduct, fraud, or intentional wrongdoing.
- (b) **Determination of Eligibility:** Any determination as to whether an Indemnified Person has met the applicable standard of conduct shall be made by:
- (i) A majority vote of Members who are not parties to the action, suit, or proceeding;
 - (ii) Independent legal counsel selected by the Members not parties to the proceeding; or
 - (iii) A court of competent jurisdiction.
- (c) **No Presumption:** The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not, in itself, create a presumption that the Indemnified Person did or did not meet the applicable standard of conduct.
- (d) **Insurance Requirement:** Indemnification under this Section shall be provided only to the extent that:
- (i) Insurance coverage is maintained and available for such purpose; or
 - (ii) Funds have been specifically appropriated and are legally available for such indemnification.
- (e) **Advancement of Expenses:** The WRRS may, upon approval by the Members, advance expenses incurred in defending any proceeding to an Indemnified Person, provided that the Indemnified Person agrees in writing to repay such amounts if it is ultimately determined that they are not entitled to indemnification.
- (f) **Non-Exclusive Rights:** The indemnification and advancement of expenses provided by this Section shall not be deemed exclusive of any other rights to which an Indemnified Person may be entitled under applicable law, other provisions of this Agreement, insurance policies, or otherwise.
- (g) **Governmental Immunity Preserved:** Nothing in this Section shall be construed to waive any governmental or sovereign immunity to which any Member or the WRRS is entitled under Texas law.
- (h) **Third-Party Claims:** This indemnification applies only to claims by third parties and does not create any right of indemnification for claims between or among the Members or the WRRS except as specifically provided elsewhere in this Agreement.

Article IV

Compensation

4.1 Management Fee

No Member rendering services to the **WRRS** shall be entitled to any compensation for such service.

4.2 Reimbursement

The WRRS shall reimburse the Members for all direct out-of-pocket expenses incurred by them in managing and operating the **WRRS**.

Article V

Transfers

5.1 Assignment

If at any time a Member proposes to assign or otherwise dispose of all or any part of its interest in the WRRS, said Member shall comply with the following procedures:

- (a) Make an offer to assign such interest to the other Member(s) in writing. At this point the exiting Member may not make this intention publicly known.
- (b) If a Member elects to assign its interest in the WRRS, the other current Member(s) have right to accept the exiting Member's interest in the same ratio or percentage as the current ratio for the Project 25 Trunked System ONLY.

Acceptance of Members

The undersigned hereby agree, acknowledge and certify to adopt this Operating Agreement for Western Region Radio System.

Bryan Wilson	Date
Burnet County Judge	

Brett Bray	Date
Blanco County Judge	

Ron Cunningham	Date
Llano County Judge	

John Packer	Date
Mayor City of Marble Falls	