

# CONTRACT LANGUAGE A-Z: DEMYSTIFYING THE BASICS

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- Intergovernmental agreements
- Employment agreements
- Construction agreements
- Personal services agreements
- Purchase orders
- Utility accounts
- Real estate purchase agreements
- Lease agreements
- Easements and access agreements
- Settlement agreements

## TYPICAL TYPES OF CONTRACTS

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- ▶ **Heading (Title)**
- ▶ **Parties**
- ▶ **Legal authority, if appropriate**
- ▶ **Purpose statement**
- ▶ **Recitals (helpful history or context)**
- ▶ **Project description/scope of work**
- ▶ **Effective date (when do obligations start?)**
- ▶ **Expiration date or duration (when do they end?)**
- ▶ **What must each party do?**
- ▶ **Who pays whom, and how much?**
- ▶ **When is payment due?**
- ▶ **What happens if somebody doesn't do what they're supposed to do (default)?**
- ▶ **Signatures**
- ▶ **Date of signatures**
- ▶ **Notary signature if recording documents**

## SECTIONS COMMON TO ALL AGREEMENTS

Every contract tells a story.

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## INTERGOVERNMENTAL AGREEMENT

### Public Safety Radio System Project Bond Funding **(A)**

THIS AGREEMENT (Agreement) is made and entered into pursuant to, by and between XXXXXXXX, an Oregon special district formed and authorized by ORS chapter XXX, and XXXXXXXXX, a political subdivision of the State of Oregon **(B)**. This agreement is entered into pursuant to the authority of ORS 190.010 **(C)**.

This Agreement shall be effective upon signing by both parties **(D)** and shall continue through the life of the Public Safety Radio System General Obligation bond or the life of any refunding of same, whichever is later **(E)**.

- (A) Heading (Title)**
- (B) Parties**
- (C) Legal Authority**
- (D) Effective Date**
- (E) Termination Date/Duration**

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**RECITALS (F)**

**WHEREAS**, XXXXXX owns and operates the public safety 800 MHz trunked radio system (Radio System) serving emergency responders of XXXXXX; and

**WHEREAS**, XXXXXX has determined that the Radio System needs to be replaced and expanded; and

**WHEREAS**, XXXXXX has developed a plan and budget for the Public Safety Radio System Replacement Project (Project), and needed to obtain a source of funding for the Project; and

**WHEREAS**, the parties desire to establish responsibilities for and appropriate uses of the bond proceeds;

**(F) Recitals (helpful history or context)**

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**Project Description (G):** Once completed, the Project will replace and enhance the current two-way 800MHz radio system. The Project will generally include refurbishing existing and adding new radio sites, communication towers, communications buildings, conventional and emergency power systems, infrastructure radio equipment or base station radios and controllers, dispatch console systems, antenna systems, microwave communication links between sites, and associated or required accessories and related equipment. The Project also includes an allowance for helping agencies purchase subscriber radio equipment, such as portable, mobile, and/or control station radios as needed by the personnel of the individual agencies comprising XXXXXX to utilize the system.

**(G) Project description/scope of work**

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### Project Timeline and Cost. **(H)**

Construction is anticipated to be completed with the radio system in service by June 20XX. The cost of the Project shall not exceed \$XXX,XXX,000, including financing-related costs, as outlined on Exhibit A as it may be modified from time to time.

**Time of Essence.** Time and strict performance are of the essence of this Agreement.

**(H) Referenced documents should be clearly labeled and attached. They become part of the contract.**

**“Time is of the essence” means that doing the job in the timeframe provided is a key requirement, and failing do to so is a breach of contract.**

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**Roles and Responsibilities. [I]** [Party A’s] role is to provide overall oversight and fiscal administration of the bonds. [Party B’s] role is to provide responsible project management of the public safety radio system upgrade and radio replacement elements through its Board and assigned staff representatives.

[Party A’s] Responsibilities:

- \*
- \*

[Party B’s] Responsibilities:

- \*
- \*

**[I] Describe what each party is expected to do. Provide enough detail to know whether it’s been done or not.**

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**Payment Process. [J]** Requests for reimbursement of Project expenses that are within the agreed upon scope, cost, and timeline of the Project require joint approval by XXXX and XXXX. [Party A] will disburse bond funds when the following requirements are met:

- [Party B] has demonstrated timely delivery, receipt, or provision of approved goods or services to [Party A's] satisfaction.
- [Party B] submits a Reimbursement Request using a completed Reimbursement Request Form accompanied by a brief narrative about the expenditures, invoice(s), receiving document(s), and proof of payment.
- Reimbursement requests must be submitted by mail or email no more than once monthly, but not less than quarterly. Requests are due no later than fifteen (15) days after the month or quarter ending.

Additional documentation maybe requested. Once a request is approved, the [Party A's] finance department will process the disbursement through their normal accounts payable process.

**[J] How will payments be made?  
What conditions are required  
before payment will be made?**

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**Compliance with Laws; Required Public Contracting Provisions. [K]** In the performance of its obligations under this Agreement, [Party B] shall comply with all federal, state, and local laws; permitting procedures; regulations; executive orders; and District rules and regulations applicable to this Agreement, including but not limited to the following:

- (a) Pursuant to ORS 279B.220, (1) Make payment promptly, as due, to all persons supplying labor or material for the performance of the work provided for in the Agreement; (2) pay all contributions or amounts due the Industrial Accident Fund from WCRA any subcontractor of WCRA incurred in the performance of the contract; (3) not permit any lien or claim to be filed or prosecuted against District on account of any labor or material furnished; and (4) pay to the Department of Revenue all sums withheld from employees under ORS 316.167.
- (b) Pursuant to ORS 279B.230(1), promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of WCRA, of all sums that WCRA agrees to pay for the services and all moneys and sums that WCRA collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.
- (c) Pursuant to ORS 279B.230(2), comply with ORS 656.017 regarding payment of worker's compensation.
- (d) Pursuant to ORS 279B.235, any employee providing services under this Agreement shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals who are excluded under ORS 653.010 to 653.261 from receiving overtime. All persons employed under this Agreement shall receive at least time and a half pay for work performed on the legal holidays specified in ORS 279B.020 (1)(b)(B) to (G) and for all time worked in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater.

**[K] The public contracting code  
(ORS chapters 279A, 279B, and  
279C require certain types of  
contracts to include certain  
clauses.**

**Particularly important with public  
improvements.**

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**Ownership of Work Product.** [L] All work products of [Party B] arising or resulting from this Agreement are the property of the [Party A]. This Agreement, and any and all records or other documents pertaining to this Agreement, including [Party B's] work products, are public records and may be subject to public disclosure according to state or federal law.

[L] Who will own the work product – the party who created it, or the party who paid for it?

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**Remedies for Breach.** [M] If a conflict arises between the parties in the implementation of this Agreement, the parties agree to work in good faith toward a cooperative resolution. If, despite good-faith efforts to work cooperatively, either party fails or refuses to complete its obligations under this Agreement, the party not in breach shall have all remedies available at law to compel compliance by the other party and to recover monetary damages necessary to make the non-breaching party whole. In addition to any other remedy available at law or equity, failure of [Party B] to meet the obligations set forth herein shall allow the [Party A] to require the disgorgement, return or repayment of funds received under this Agreement promptly, but in any case no later than sixty (60) days.

[M] What happens if one party doesn't do what it agreed to? Are there any limitations on either party with respect to available remedies?

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**Hold Harmless.** [N] Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act (ORS 30.260 to 30.330), each party shall hold harmless and indemnify the other, its officers, elected officials, employees, and agents against any and all claims, damages, losses and expenses, arising out of, or reomissions, resulting from the indemnifying party's own acts or omissions.

**[N] The parties agree to be responsible for their own mistakes.**

**Note the OTCA language.**

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**Indemnification.** [O] Subject to the limitations of the Oregon Tort Claims act and the Oregon Constitution, each party agrees to indemnify, defend and save harmless the other party, its officers, agents, and representatives, from and against any and all suits, actions, legal or administrative proceedings, claims, debts, demands, damages, losses, penalties, liabilities, interest, attorneys' fees, costs and expenses (any of the foregoing are referred to herein as "Loss" and collectively as "Losses"), arising from or related to the Services and attributable to either a breach by that party of its obligations hereunder or any negligent act, error, or omission, or willful misconduct of WCRA or of its partners, officers, directors, members, managers, agents, employees, representatives and/or anyone acting under the breaching party's direction or control or any of that party's contractors or subcontractors; or arising from or related to any breach or inaccuracy of any representation or warranty of that party made in this Agreement.

**[O] Each party agrees to defend the other party from claims by third parties resulting from the defending party's negligence.**

**Note the OTCA language.**

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**Insurance.** [P] [Party B] will carry both General Liability insurance and Commercial Auto Liability insurance in coverage amounts of at least \$XXX million per occurrence for the duration of this Agreement. The District shall be named as an additional insured on each policy. Certificates of insurance shall be provided to the District prior to commencement of work under this Agreement.

[P] The party responsible for the job should have adequate insurance to cover any claims if there is a lawsuit relating to the work.

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**No Third-Party Beneficiaries.** [Q] This Agreement shall be solely between [Party A] and [Party B]. No benefits are intended for, nor shall any benefits accrue to, any third party as a result of this Agreement.

[Q] Only the named parties to the contract are bound by it, and may enforce it.

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**Governing Law/Jurisdiction/Venue.** [R] This Agreement and the rights and obligations of the parties under it are governed by and interpreted in accordance with the laws of the State of Oregon (without regard to principles of conflicts of law).

If suit or action is authorized herein to resolve any dispute or claim arising out of or related to this Agreement or the interpretation or breach hereof, jurisdiction shall be exclusively in the State of Oregon with venue in XXXXX County Circuit Court.

[R] If there's a disagreement, where will it be resolved? By which court? Located where?

Particularly important if parties are from different states or counties.

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**No Assignment.** [S] Neither this Agreement nor any of the rights, interests or obligations provided in this Agreement may be assigned, subcontracted or otherwise transferred by one party without the prior written consent of the other party. Failure of one party to obtain such prior written consent of the other party shall render the attempted assignment, subcontract, or other transfer null and void. In the event the other party approves an assignment, subcontract, or other transfer, such assignment, subcontract or other transfer will contain terms and protections for that party substantially similar to those in this Agreement and shall name that party as an intended beneficiary of such assignment, subcontract, or transfer.

[S] Can the duties and obligations be assigned to someone else to carry out?

What happens if one of the parties goes out of business, goes bankrupt, or is bought out by another company?

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**V. Successors and Assigns.** [T] This Agreement will be binding on and inure to the benefit of the parties and their respective successors, and to the extent otherwise assignable or transferrable pursuant to the terms of this Agreement, permitted assigns and transferees.

[T] If the agreement is transferred to another party, the same terms and conditions will apply to that party.

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**Attorney Fees and Costs.** [U] In the event that a suit, action, arbitration, or other proceeding of any nature whatsoever is instituted to interpret or enforce the provisions of this Agreement, including, without limitation, any proceeding under the U.S. Bankruptcy Code and involving issues peculiar to federal bankruptcy law or any action, suit, arbitration, or proceeding seeking a declaration of rights or rescission, the prevailing party shall be entitled to recover, from the losing party, its reasonable attorney fees, paralegal fees, expert fees, and all other fees, costs, and expenses actually incurred and reasonably necessary in connection with the preparation, prosecution or defense of such suit, action, arbitration or other proceeding, as determined by the judge or arbitrator at trial, arbitration, or other proceeding, or on any appeal or review, in addition to all other amounts provided by law.

[U] Oregon law (ORS 20.096) says that the prevailing party in a contract action can recover their legal costs and fees from the losing party, if the contract provides for it.

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**Amendment. [V]** This Agreement may be amended by mutual agreement of the parties. To be effective, all amendments shall be in writing and signed by authorized representatives of each party.

**[V] Can the agreement be amended? How?**

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**Severability. [W]** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain the particular term or provision held to be invalid.

**[W] If a court finds part of the contract unenforceable, the rest of it is still valid.**

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## MISCELLANEOUS [X], [Y], [Z]

- ▶ **Entire Agreement.** This agreement (including the documents and instruments referred to in this agreement) constitutes the entire agreement and understanding of the parties with respect to the subject matter of this agreement. There are no provisions, terms, conditions or obligations other than those contained herein. This agreement supersedes all prior understandings, agreements, communications and/or representations, whether written or oral, among the parties with respect to such subject matter.
- ▶ **Ambiguity.** Any ambiguity shall be deemed to be the result of drafting by all parties and shall not be construed against the drafter.
- ▶ **Representation and Warranty as to Authorization.** By signing below, each party to this Agreement represents and warrants that it has full right and authority to enter into this Agreement under applicable law.

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## [X], [Y], [Z] MISCELLANEOUS

Often seen as “boilerplate” language. Doesn’t mean it isn’t important.

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Questions?

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**Thank you!**

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