



## **CITY OF KIRKLAND**

**City Attorney's Office**  
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[www.kirklandwa.gov](http://www.kirklandwa.gov)

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### **MEMORANDUM**

**To:** Kurt Triplett, City Manager

**From:** Oskar Rey, Assistant City Attorney

**Date:** January 13, 2015

**Subject:** Public Safety Emergency Radio Network MOA Regarding Future Operations

### **RECOMMENDATION**

That the City Council considers and adopts the enclosed Resolution authorizing the City Manager to sign, on behalf of the City, the Memorandum of Agreement ("MOA") Regarding Future Operation of the Puget Sound Emergency Radio Network ("PSERN").

### **BACKGROUND**

The City Council adopted a resolution authorizing the City to enter into the PSERN Implementation Period Interlocal Cooperation Agreement ("PSERN Implementation ILA") at the November 18, 2014 City Council Meeting. The PSERN Implementation ILA is between the following parties: King County and the cities of Auburn, Bellevue, Federal Way, Issaquah, Kent, Kirkland, Mercer Island, Redmond, Renton, Seattle and Tukwila (the "Parties").

The PSERN Implementation ILA covers the planning, procurement, financing and implementation of the new PSERN system. Under the PSERN Implementation ILA, King County will be responsible for managing the project and overseeing the transition from the current system to the new system until "full system acceptance" of the PSERN system. Full system acceptance will occur when all users are using the new system and it has been fully installed and successfully tested.

Upon full system acceptance, operation of the PSERN will be transferred to a new entity created for that purpose. City staff previously indicated that it would bring a second interlocal agreement to Council regarding formation of a non-profit entity to operate and manage the PSERN system after full system acceptance. The consensus among the Parties is that the new entity should be a separate legal entity responsible for the entire system and not just portions of it. Under the current system there is already considerable overlap in coverage so that users often use facilities that are not part of their home jurisdiction. For example, an Eastside Public Safety Communications Agency ("EPSCA") user in Issaquah may communicate over facilities owned by one of the other three jurisdictions.

Counsel for the Parties agree that the PSERN entity should be a non-profit corporation established pursuant to the Interlocal Cooperation Act (RCW 39.34.030). However, the PSERN entity will not become responsible for operation and management of PSERN until full system acceptance, which is scheduled to occur several years from now. Accordingly, the consensus among counsel for the

Parties is that it is not desirable to enter into an interlocal agreement creating the PSERN entity ("Entity Interlocal") until the Parties are closer to full system acceptance.

Rather than forming the PSERN entity now, the Parties have negotiated the MOA by which the Parties will confirm their intention to enter into the Entity Interlocal agreement in the future. In addition, the MOA confirms essential characteristics of the PSERN entity:

- Under the Entity Interlocal, each of the current owners (King County, City of Seattle, EPSCA and Valleycom) will have one equally weighted vote on the Board of the new PSERN entity. In other words, EPSCA cities will select a single member to represent the Eastside, and that representative would be one of four members of the Board of the new PSERN entity. MOA Section 3(b).
- Agencies using the PSERN System shall pay the PSERN entity user fees as provided for in the Implementation Period ILA and based on the cost allocation model attached as Exhibit 4 to the PSERN Implementation ILA. MOA Section 3(c).

Under Section 4 of the MOA, the Parties will continue to work in good faith to negotiate and finalize the Entity Interlocal. A copy of the most recent draft of the Entity Interlocal is attached to the MOA as Exhibit 1. The draft Entity Interlocal is not finalized and will not be binding until it is signed by the Parties after authorization by the Parties' authorizing bodies. Except for the elements specified in Section 3 of the MOA, the draft Entity Interlocal is attached to the MOA for illustrative purposes only.

As negotiations proceed, it is likely that the Entity Interlocal will include additional terms regarding the incorporation and transfer of operations to the PSERN Entity, transfer of employees to the PSERN entity, insurance and liability requirements, and service levels for the PSERN System user agreements. The Parties intend to finalize the draft Entity Interlocal in a timeframe that will allow the Parties to approve it so that the PSERN Operator is fully functioning no later than full system acceptance.

RESOLUTION R-5099

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING THE CITY MANAGER TO EXECUTE A MEMORANDUM OF AGREEMENT REGARDING FUTURE OPERATION OF THE PUGET SOUND EMERGENCY RADIO NETWORK.

1 WHEREAS, the City currently receives its emergency radio  
2 services through the Eastside Public Safety Communications Agency  
3 ("EPSCA"), which was formed in 1992 through an interlocal agreement  
4 between the cities of Bellevue, Redmond, Kirkland, Mercer Island, and  
5 later Issaquah ("EPSCA Cities"); and  
6

7 WHEREAS, the EPSCA Cities comprise a portion of the current  
8 emergency radio network, known as the King County Emergency Radio  
9 Communications System (KCERCS) along with King County, the City of  
10 Seattle and the cities comprising Valley Communications Center  
11 (collectively the "Parties"); and  
12

13 WHEREAS, the Parties, under various interlocal agreements, are  
14 responsible for the ownership, operations and maintenance of various  
15 elements of KCERCS, a voice radio system that is nearly 20 years old  
16 and is increasingly unsupported by the supplier of the system's  
17 equipment, software and repairs; and  
18

19 WHEREAS, the Parties have determined that it is in the public  
20 interest that a new public safety radio system be implemented that will  
21 provide public safety agencies and other user groups in the region with  
22 improved coverage and capacity, and uniformly high-quality emergency  
23 radio communications at a cost-effective price, known as the Puget  
24 Sound Emergency Radio Network System ("PSERN System"); and  
25

26 WHEREAS, at its November 18, 2014 Council Meeting, the City  
27 Council authorized the City Manager to enter into an Interlocal  
28 Agreement to establish the terms under which the Parties will undertake  
29 the planning, financing, procurement, site acquisition and development,  
30 equipment installation, and other activities necessary to implement the  
31 PSERN System ("Agreement"); and  
32

33 WHEREAS, the Parties now seek to enter into a Memorandum of  
34 Agreement Regarding Future Operation of the Puget Sound Emergency  
35 Radio Network ("MOA") under which the Parties agree, in the future, to  
36 form a non-profit corporation pursuant to RCW 39.34.030 ("PSERN  
37 Entity"), to be responsible for the ownership, operations, maintenance,  
38 and on-going upgrading or replacing of the PSERN System during its  
39 anticipated useful life; and

40 WHEREAS, the Parties further agree that the MOA should set  
41 forth the agreement of the Parties on certain important characteristics  
42 of the PSERN Operator, such as governance, voting rights and payment  
43 of user fees; and

44  
45 WHEREAS, the Kirkland City Council finds that it is in the public  
46 interest to enter into the MOA;

47  
48 NOW, THEREFORE, be it resolved by the City Council of the City  
49 of Kirkland as follows:

50  
51 Section 1. The City Manager is authorized and directed to  
52 execute on behalf of the City of Kirkland a Memorandum of Agreement  
53 substantially similar to that attached as Exhibit "A", which is entitled  
54 "Memorandum of Agreement Regarding Future Operation of the Puget  
55 Sound Emergency Radio Network."

56  
57 Passed by majority vote of the Kirkland City Council in open  
58 meeting this \_\_\_\_ day of \_\_\_\_\_, 2015.

59  
60 Signed in authentication thereof this \_\_\_\_ day of \_\_\_\_\_,  
61 2015.

\_\_\_\_\_  
MAYOR

Attest:

\_\_\_\_\_  
City Clerk

## Memorandum of Agreement Regarding Future Operation of The Puget Sound Emergency Radio Network

This Memorandum of Agreement Regarding Future Operation of Puget Sound Emergency Radio Network (“MOA”) is entered into by and among King County and the cities of Auburn, Bellevue, Federal Way, Issaquah, Kent, Kirkland, Mercer Island, Redmond, Renton, Seattle, and Tukwila, each a political subdivision or municipal corporation of the State of Washington (individually, a "Party") and, (collectively, the "Parties").

### **Recitals**

The Parties determined that it is in the public interest that a new public safety radio system be implemented that will provide public safety agencies and other user groups in the region with improved coverage and capacity, and uniformly high-quality emergency radio communications. This new system is referred to herein as the “Puget Sound Emergency Radio Network System” or “PSERN System.”

The Parties are entering into a separate agreement titled the Puget Sound Emergency Radio Network Implementation Period Interlocal Cooperation Agreement (“Implementation Period ILA”) that designates King County to act as the lead agency for planning, procurement, financing and implementation of the PSERN System with the oversight of a joint board established by the Parties.

The Parties also wish to create a new non-profit corporation to assume the ownership and control of the PSERN System at completion of the activities under the Implementation Period ILA, and thereafter throughout the useful life of the PSERN System.

The Parties mutually desire to commit to the formation of the non-profit corporation, its governance structure, and other material terms regarding the future operation of the PSERN System while allowing the flexibility to work in good faith toward a more complete agreement for the incorporation of the non-profit and the future operation of the PSERN System.

NOW, THEREFORE, in consideration of the mutual promises, benefits and covenants contained herein and other valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree to the above Recitals and as follows:

## **1. Effective Date and Term**

This MOA shall be effective on the date it is last signed by an authorized representative of each the Parties, and shall remain in effect until the earlier of the following events: (i) the Implementation Period ILA is terminated or (ii) this MOA is superseded by the interlocal agreement described in Sections 3 and 4.

## **2. Incorporation of PSERN Operator**

The Parties hereby agree to create a non-profit corporation, as authorized under RCW 39.34.030, to be incorporated in Washington State for the purpose of owning, operating, maintaining, managing and providing ongoing upgrading and replacement of the PSERN System throughout its useful life. The future non-profit corporation to be created by the Parties is referred to herein as the “PSERN Operator”.

## **3. Interlocal Agreement; Material Terms**

The Parties agree to work in good faith and use best efforts to negotiate and enter into a future interlocal agreement that will establish the terms and conditions applicable to the future operation of PSERN and the incorporation of the PSERN Operator. The Parties commit and agree that the following terms and conditions are material to the future interlocal agreement and shall be included:

- a. The affairs of the PSERN Operator shall be governed by a board of directors (the “Board”) that shall act on behalf of all Parties and as may be in the best interests of the PSERN System.
- b. The governance and voting structure of the Board shall be as provided under Sections 4.1 through 4.3 of the Draft Puget Sound Emergency Radio Network Operator Interlocal Cooperation Agreement (“Draft Operations Period ILA”) attached as Exhibit 1 and made a part of this MOA.
- c. Agencies using the PSERN System shall pay the PSERN Operator user fees as provided for in the Implementation Period ILA and based on the cost allocation model attached as Exhibit 4 to the Implementation Period ILA.

## **4. Additional Terms and Conditions of Interlocal Agreement**

In addition to the material terms and conditions in Section 3 above, the Parties shall continue to work in good faith to supplement, negotiate, amend and finalize the Draft Operations Period ILA, resulting in a final Operations Period ILA, which shall to include additional mutually agreed upon terms regarding the incorporation and transfer of operations to the PSERN Operator, which are anticipated to include terms regarding transfer of employees to PSERN, insurance and liability requirements, and service levels for the PSERN System user agreements.

With the exception of the material terms and conditions in Section 3 above, the Draft Operations Period ILA attached as Exhibit 1 is not intended to be legally binding but is attached for illustrative purposes only. The Parties commit to working to finalize the Draft Operations Period ILA in a timeframe that will allow it to be presented to the Parties' respective authorizing bodies for approval in a time and manner that will enable the PSERN Operator to be fully functioning no later than full system acceptance as defined under the Implementation ILA.

IN WITNESS WHEREOF, authorized representatives of the Parties have signed their names in the spaces provided below.

**KING COUNTY**

**CITY OF AUBURN**

\_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

\_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

Attest:

City Clerk \_\_\_\_\_

Approved as to Form:

Approved as to Form:

\_\_\_\_\_  
Deputy Prosecuting Attorney

\_\_\_\_\_  
City Attorney

**CITY OF BELLEVUE**

**CITY OF FEDERAL WAY**

\_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

\_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

Attest:

Attest:

City Clerk \_\_\_\_\_

City Clerk \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
City Attorney

**CITY OF ISSAQUAH**

\_\_\_\_\_  
Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Attest:

City Clerk \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
City Attorney

**CITY OF KIRKLAND**

\_\_\_\_\_  
Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Attest:

City Clerk \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
City Attorney

Approved as to Form:

\_\_\_\_\_  
City Attorney

**CITY OF KENT**

\_\_\_\_\_  
Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Attest:

City Clerk \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
City Attorney

**CITY OF MERCER ISLAND**

\_\_\_\_\_  
Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Attest:

City Clerk \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
City Attorney

**CITY OF REDMOND**

\_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Attest:

City Clerk \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
City Attorney

**CITY OF SEATTLE**

\_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**CITY OF RENTON**

\_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Attest:

City Clerk \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
City Attorney

**CITY OF TUKWILA**

\_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Attest:

City Clerk \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
City Attorney

**Exhibit 1 to Memorandum of Agreement Regarding Future Operation of the  
Puget Sound Emergency Radio Network**

**DRAFT PUGET SOUND EMERGENCY RADIO NETWORK OPERATOR  
INTERLOCAL COOPERATION AGREEMENT**

This Interlocal Cooperation Agreement (ILA) is entered into pursuant to the Interlocal Cooperation Act (Chapter 39.34 RCW) by and among King County and the cities of Auburn, Bellevue, Federal Way, Issaquah, Kent, Kirkland, Mercer Island, Redmond, Renton, Seattle, and Tukwila, each a political subdivision or municipal corporation of the State of Washington (individually, a "Party") and, (collectively, the "Parties").

**RECITALS**

A. The Parties, under various interlocal agreements, have been responsible for the ownership, operation and maintenance of various elements in the current King County Emergency Radio Communications System (KCERCS), a voice radio system that is nearly twenty years old and is increasingly unsupported by the supplier of the system's equipment, software and related repairs.

B. The Parties determined that it is in the public interest that a new public safety radio system be implemented that will provide public safety agencies and other user groups in the region with improved coverage and capacity, and uniformly high-quality emergency radio communications. Said new system is referred to herein as the "Puget Sound Emergency Radio Network System" or "PSERN System."

C. The costs of implementing the PSERN System will be financed by a voter approved funding measure.

D. The Parties have negotiated a separate agreement ("Implementation Period ILA") that designates King County to act as the lead agency for planning, procurement, financing and implementation of the PSERN System with the oversight of a Joint Board established pursuant to the Implementation Period ILA.

E. The Parties will create a new non-profit entity, formed under Chapter 24.06 RCW, to assume the ownership and control of the PSERN System following Full System Acceptance. This new entity, also referred to in the Implementation Period ILA and herein as the "PSERN Operator", is to be responsible for the ownership, operations, maintenance, management and on-going upgrading/replacing of the PSERN System during its useful life.

F. The purpose of this Agreement is to establish the terms under which the Parties will form the new non-profit entity and undertake the ownership, operations, maintenance, management and on-going upgrading/replacing of the PSERN System.

NOW, THEREFORE, in consideration of the mutual promises, benefits and covenants contained herein and other valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree to the above Recitals and the following:

## **1.0 RULES OF CONSTRUCTION AND DEFINITIONS**

### **1.1 Rules of Construction**

1.1.1 Unless the context requires otherwise, the singular form of a word shall also mean and include the plural (and vice versa), and the masculine gender shall also mean and include the feminine and neutral gender (and vice versa).

1.1.2 References to statutes or regulations include all current and future statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to.

1.1.3 References to sections, exhibits, attachments or appendices to this Agreement and references to articles or sections followed by a number shall be deemed to include all subarticles, subsections, subclauses, subparagraphs and other divisions bearing the same number as a prefix.

1.1.4 The words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation".

1.1.5 The words "shall" or "will" shall be deemed to require mandatory action.

1.1.6 Words such as "herein," "hereof" and "hereunder" are not limited to the specific provision within which such words appear but shall refer to the entire Agreement taken as a whole.

1.1.7 Words such as "person" or "party" shall be deemed to include individuals, political subdivisions, governmental agencies, associations, firms, companies, corporations, partnerships, and joint ventures.

1.1.8 References to "days" shall mean calendar days unless expressly stated to be "Business Days." If the due date for a task, payment, or any other requirement falls on a Saturday, Sunday or holiday observed by the County, the due date shall be deemed to be the next Business Day.

1.1.9 Words not otherwise defined that have well-known technical industry meanings are used in accordance with such recognized meanings.

1.1.10 The headings and captions inserted into this Agreement are for convenience of reference only and in no way define, limit, or otherwise describe the scope or intent of this Agreement, or any provision hereof, or in any way affect the interpretation of this Agreement.

1.1.11 This Agreement was negotiated and prepared by the Parties and their respective attorneys. The Parties acknowledge and agree that the rule of construction that an ambiguous contract should be construed against the drafter shall not be applied in any construction or interpretation of this Agreement.

## 1.2 Definitions

Words and terms shall be given their ordinary and usual meanings except that the following terms are defined for this Agreement as follows:

"Board of Directors" or "Board" means the board formed by the Parties to govern the PSERN Operator.

"AGREEMENT " means this Interlocal Cooperation Agreement.

"BUDGET" means the budget approved by the Board of Directors to pay for the anticipated costs of operating and maintaining the PSERN System.

"CONSOLIDATED SERVICE AREA" means those geographic areas of King County, Pierce County and Snohomish County, Washington, previously served by the emergency radio networks of King County, the City of Seattle, the Eastside Public Safety Communications Agency (EPSCA) and the Valley Communications Agency (ValleyCom), and which areas are to be prospectively served by the PSERN System. The Consolidated Service Area shall also include those other geographic areas that are added to the area served by the PSERN System as expanded in accordance with action of the Board of Directors.

"COUNTY " means King County, Washington.

"EXECUTIVE DIRECTOR " means the individual selected by the Board of Directors to administer the PSERN Operator on a daily basis.

"FULL SYSTEM ACCEPTANCE" or "FSA" means the determination issued to the PSERN System Contractor upon satisfactorily completing the final system development phase milestone pursuant to Contract No. \_\_\_\_\_.

"KCERS" means the King County Emergency Radio Communication System.

“OPERATIONS PERIOD” means the period that commences with the first full month after FSA and continuing through the life of the PSERN System.

“PUGET SOUND EMERGENCY RADIO NETWORK OPERATOR ” or "PSERN Operator" means the non-profit corporation created pursuant to this Agreement and the Implementation Period ILA to be incorporated in Washington State for the purpose of owning, operating, maintaining, managing and ongoing upgrading/replacing of the PSERN System during the Operations Period.

“PUGET SOUND EMERGENCY RADIO NETWORK SYSTEM” or "PSERN System" means the land mobile radio system constructed under the Implementation Period ILA. It also means all equipment, software, and other work deployed to provide public safety communication service(s) or an addition to an existing infrastructure to provide new or additional public safety communication service(s). “System” means an infrastructure that is deployed to provide public safety communication service(s) or an addition to an existing infrastructure to provide new or additional public safety communication service(s).

“SERVICE RATE” means the rate or rates charged to User Agencies in accordance with the Rate Model appended hereto, or as it may be amended by action of the Board of Directors.

“SERVICES" means voice, data, video, or other services communication provided to User Agencies.

“USER AGENCY ” means an entity that is authorized under a User Agency Agreement to use the PSERN System.

“USER AGENCY AGREEMENT" means an agreement executed between the County or the PSERN Operator, as appropriate, and a User Agency establishing the terms under which a User Agency is allowed to access and use the PSERN System.

## **2.0 DURATION OF AGREEMENT**

### **2.1 Effective Date and Conditions**

Except as provided herein, this Agreement shall be in effect on the date it is last signed by an authorized representative of each the Parties, and shall remain in effect until terminated as provided in Section 7. However, Sections 4, 5, and 6 of this Agreement shall not be effective until the date the articles of incorporation for the PSERN Operator are filed with the Washington Secretary of State pursuant to Chapter 24.06 RCW.

## **3.0 PURPOSE OF THE AGREEMENT**

Following completion of the Implementation Period ILA and Full System Acceptance, the purpose of this Agreement is to provide communication services to public safety users and any other agencies permitted to be licensed in the 800 MHz Public Safety Radio Spectrum pursuant to 47 C.F.R. Part 90 that are within the boundaries of the Consolidated Service Area. To effectuate this purpose, the Parties authorize establishment of a non-profit entity pursuant to Chapter 24.06 RCW, which entity shall be known as the PSERN Operator, initially consisting of King County, and the cities of Auburn, Bellevue, Federal Way, Issaquah, Kent, Kirkland, Mercer Island, Redmond, Renton, Seattle and Tukwila.

#### **4.0 BOARD OF DIRECTORS**

##### **4.1 Creation of Board of Directors**

The affairs of the PSERN Operator shall be governed by a Board of Directors that is hereby created pursuant to RCW 39.34.030(4) that shall act on behalf of all Parties and as may be in the best interests of PSERN. The Board of Directors is not a separate legal or administrative entity within the meaning of RCW 39.34.030(3).

##### **4.2 Composition of the Board of Directors**

4.2.1 The Board of Directors shall be composed of four voting members: one member from King County, one member from the City of Seattle, one member representing the cities of Bellevue, Issaquah, Kirkland, Mercer Island and Redmond, and one member representing the cities of Auburn, Federal Way, Kent, Renton and Tukwila. Each such member shall be the Chief Executive Officer of the political subdivision or municipal corporation from which the representative comes, or his/her designee. The Board of Directors Chair shall be elected from among its members. The Board of Directors shall also elect a Vice Chair from among its members to serve in the absence of the Chair. Each of the Parties shall provide written notice of their initial Board of Directors member to the Chair of the Joint Board established under the Implementation Period ILA. Thereafter, notice of a change to a Party's Board of Directors member shall be effective upon delivery of written notice by the Party to the Chair of the Board of Directors.

4.2.2 The Board of Directors shall also include two nonvoting members to comment and participate in discussion but who are not entitled to vote on any matter. One nonvoting member shall be appointed by the King County Police Chiefs Association and one member selected jointly by the King County Fire Commissioners Association and the King County Fire Chiefs Association.

##### **4.3 Quorum and Meeting Procedures**

4.3.1 A quorum for a meeting of the Board of Directors shall be all of the Board members who have voting authority. Action by the Board of Directors shall require the affirmative vote of all four Board members, subject to Section 4.3.9.

4.3.2 Any Board of Directors member who has voting authority may request that a vote on a measure be deferred until the next meeting. The measure shall then be deferred for one meeting unless the other three members find either that there is an emergency requiring that the vote be taken at the originally scheduled meeting or that a delay would likely result in harm to the public, Users, or the PSERN Operator. A vote on the same measure shall not be deferred a second time without the concurrence of the majority of the Board of Directors.

4.3.3 The Board of Directors shall establish by-laws and procedures for its operations and meetings including the establishing of a regular meeting schedule and location and providing for the scheduling of special and emergency meetings.

4.3.4 The Board of Directors shall take actions by vote and each voting Board member shall be entitled to one vote. All votes shall have equal weight in the decision-making process.

4.3.5 Board members must be present at a meeting to vote and may not vote by proxy, provided that if approved by the Board, a member may participate in Board meetings and may vote on Board issues via telephone or other electronic voice communication.

4.3.6 Monthly meetings of the Board of Directors shall be scheduled provided that there shall be a minimum of two (2) meetings held each year. Other meetings may be held upon request of the Chair or any two members.

4.3.7 The Board of Directors shall comply with applicable requirements of the Washington State Open Public Meetings Act (Chapter 42.30 RCW).

4.3.8 A designee attending Board of Directors meetings on behalf of a regular member of the Board shall be entitled to exercise all rights of the member to participate in such meetings, including participating in discussion, making motions, and voting on matters coming before the Board.

4.3.9 The Board of Directors may take action by three votes when each of the following conditions is met: (1) a matter has been identified for action in the notice or proposed agenda for at least two meetings in a row, and (2) both meetings were regularly scheduled meetings in accordance with the by-laws and RCW 42.30, and (3) the same voting member failed to attend both meetings, failed to send a designee, and failed to provide written notice in advance of unavailability.

#### 4.4 Board of Directors Actions

4.4.1 The Board of Directors shall oversee the operation and maintenance of the PSERN Operator. In furtherance of that oversight, the Parties confer upon the Board of Directors the authority to:

- a. Amend this Agreement, subject to Section 11.10;
- b. Establish committees and advisory groups to perform activities related to the PSERN System;
- c. Adopt and amend budgets and approve expenditures.
- d. Adopt and amend policies and bylaws for the administration and regulation of the PSERN Operator;
- e. Approve contracts within the parameters of the established purchasing and contracting policies;
- f. Direct and supervise the activities of the Operating Board and the Executive Director;
- g. Hire, set the compensation for, and terminate the employment of the Executive Director. The Board shall evaluate the Executive Director's performance and give the Executive Director a written evaluation of his or her performance at least annually;
- h. Establish a fund or special fund or funds as authorized by RCW 39.34.030;
- i. Establish Services Rates and terms of use for User Agencies;
- j. Conduct regular and special meetings;
- k. Approve PSERN operation and maintenance standards;
- l. Determine the services the PSERN Operator shall offer and the terms under which they will be offered;
- m. Approve agreements with third parties;
- n. Incur debt in the name of the PSERN Operator to make purchases or contracts for services to implement the purposes of this Agreement;
- o. Purchase, take, receive, lease, take by gift, or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or any interest therein, in the name of the PSERN Operator;

- p. Sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all of its property and assets;
- q. Sue and be sued, complain and defend, in all court of competent jurisdiction;
- r. Hold licenses for radio frequencies;
- s. Recommend action to the legislative bodies of the Parties and User Agencies;
- t. Delegate the Board of Directors' authority under this Agreement subject to such limitations and conditions as the Board of Directors may establish.
- u. Enter into agreements with other agencies to accomplish tasks for the PSERN Operator such as agreements regarding procurement, employee benefits, and property leasing;
- v. Exercise any powers necessary to further the goals and purposes of this Agreement that are consistent with the powers of the Parties; and
- w. Add parties to this Agreement and concurrently amend the membership and voting structure of the Board of Directors.

## **5.0 OPERATING BOARD**

### Creation of Operating Board

An Operating Board of radio users will be created by the Board of Directors for the purposes of providing advice and other duties as deemed appropriate by the Board of Directors.

## **6.0 EXECUTIVE DIRECTOR**

The Executive Director shall report to the Board of Directors and shall advise it from time to time on matters related to the operation and functions of the PSERN System and the PSERN Operator, including proposed budgets, financial and liability issues, and other appropriate matters related to the PSERN System and the PSERN Operator. The Director may also request assistance from the Operating Board to address tasks calling for technical and user-related expertise.

### 6.1 Executive Director Duties

#### 6.1.1 The Executive Director shall:

- a. Schedule and manage the PSERN Operator's day-to-day activities in consistent with the policies, procedures, and standards adopted by the Board of Directors;
- b. Hire, evaluate at least annually, and terminate staff in compliance with the PSERN Operator's budget;
- c. Propose and administer Annual Budgets including its contingency;
- d. Approve expenditures and sign contracts in amounts up to \$100,000 that are included in the budget without additional approval of the Board of Directors;
- e. Track the performance of PSERN systems and services;
- f. Provide support to the Board of Directors;
- g. Recommend policies, procedures, and standards, including changes to these policies, procedures, and standards;
- h. Provide written monthly reports to the Board of Directors describing the PSERN Operator's budget status, system performance against targets, partial or full system outages, purchases equal to or greater than \$10,000, and usage statistics;
- i. Maintain and manage records in accordance with the state Public Records Act (Ch. 42.56 RCW) and other applicable state and federal laws and regulations; and
- j. Perform other duties as assigned.

## 6.2 Qualifications and Status of the Executive Director

The Executive Director shall have experience in the technical, financial and administrative fields of public safety radio and his or her appointment shall be on the basis of merit only. The Executive Director is an "at will" position that may not be modified by any PSERN Agency policy, rule, or regulation regarding discipline or termination of PSERN Agency employees, and accordingly, the Executive Director may be terminated from his or her position upon majority vote of the Board of Directors.

## 7.0 WITHDRAWAL AND REMOVAL

### 7.1 Withdrawal of a Party.

7.1.1 In the event that a Party desires to withdraw from this Agreement, it shall give written notice to the Board before January 1st of the year prior to the year the withdrawal will be effective. The Party's withdrawal shall become effective on the last day of the year following delivery and service of appropriate notice to all other Parties.

7.1.2 A Party that withdraws shall remain responsible for any obligations that arose prior to the effective date of the withdrawal and for any that are specified under Section \_\_\_\_\_ as surviving a withdrawal. A withdrawing Party shall be solely liable for any actual costs to the other Parties arising out of or resulting from the withdrawal. Any such costs or other amounts owed under this Agreement by a withdrawing Party shall be paid prior to the effective date of the withdrawal or, if such amounts are not then established, then within thirty (30) days after the amount is established.

7.1.3 If Party withdraws from this Agreement, the withdrawing Party will forfeit any and all rights it may have to PSERN System real or personal property, or any rights to participate in the PSERN Operator, unless otherwise provided by the Board of Directors.

## 7.2 Removal of a Party.

The Board of Directors may, for cause, remove a Party from this Agreement and terminate the Party's rights to participate in PSERN. Cause may include, but is not limited to, failure to act in good faith in participating in the Board of Directors and willful, arbitrary failure to approve and appropriate funds necessary to pay the Party's share of the costs under this Agreement.

## **8.0 DISSOLUTION AND TERMINATION**

Three (3) or more Parties may, at any one time, by written notice provided to all Parties, call for a complete dissolution of the PSERN Operator and termination of this Agreement. Upon an affirmative majority vote by the Board of Directors and an affirmative majority vote of the legislative bodies of each of the Parties for such dissolution and termination, the Board of Directors shall establish a task force to determine how the PSERN System assets, liabilities and properties will be divided upon dissolution. Final approval of the disposition of the PSERN System assets shall require an affirmative majority vote by the Board of Directors. Upon an affirmative majority vote by the Board of Directors and upon an affirmative majority vote of the legislative bodies of each of the Parties, the PSERN Operator shall be directed to wind up business, and a date will be set for final termination, which shall be at least one (1) year from the date of the vote to dissolve and terminate this Agreement. Upon the final termination date, this Agreement shall be fully terminated.

## **9.0 LEGAL RELATIONS**

## 9.1 Employees and No Third Party Beneficiaries

9.1.1 Nothing in this Agreement shall make any employee of one Party an employee of another party for any purpose, including, but not limited to, for withholding of taxes, payment of benefits, worker's compensation pursuant to Title 51 RCW, or any other rights or privileges accorded by virtue of their employment. No Party assumes any responsibility for the payment of any compensation, fees, wages, benefits or taxes to or on behalf of any other Party's employees. No employees or agents of one Party shall be deemed, or represent themselves to be, employees of another Party.

9.1.2 It is understood and agreed that this Agreement is solely for the benefit of the Parties and gives no right to any other person or entity.

## 9.2 Indemnification.

Each Party to this Agreement shall protect, defend, indemnify, and save harmless the other Parties and their respective officials and employees, from any and all Claims, arising out of, or in any way resulting from, the indemnifying Party's negligent acts or omissions arising out of this Agreement. No Party will be required to indemnify, defend, or save harmless the other Party if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of another Party. Where such claims, suits, or actions result from concurrent negligence of two or more Parties, the indemnity provisions provided herein shall be valid and enforceable only to the extent of each Party's own negligence. Each of the Parties agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each of the Parties, by mutual negotiation, hereby waives, with respect to each of the other Parties only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. Any loss or liability resulting from the negligent acts, errors, or omissions of the Board of Directors, Operating Board, Executive Director and/or staff, while acting within the scope of their authority under this Agreement, shall be borne by the PSERN Operator exclusively. The provisions of this Section shall survive the termination, expiration or withdrawal from of this Agreement.

## 10.0 PUBLIC RECORDS

### 10.1 Records Keeping Responsibilities.

10.1.1 The Executive Director shall keep records related to the PSERN System and PSERN Operator as required by state law and in accordance with the policies, procedures and retention schedules as may be established by the Administrative Board.

10.1.2 Each Party shall keep records related to the PSERN System and PSERN Operator as required by state law and in accordance with such the policies,

procedures and retention schedules as may be established by the Party, and each Party shall be responsible for responding to public disclosure requests addressed to it in accordance with the Washington Public Records Act, Chapter 42.56 RCW, and such procedures as may be established by the Party.

10.1.3 The Executive Director shall be responsible for responding to public disclosure requests addressed to the PSERN Operator in accordance with the Washington Public Records Act, Chapter 42.56 RCW, and such procedures as may be established by the Administration Board.

10.1.4 If a Party or the PSERN Operator or the Executive Director receives a public records request for records related to the PSERN System or the PSERN Operator, the recipient of that request shall promptly notify the other parties to this Agreement, Chair of the Administration Board and the Executive Director.

10.1.5 Absent agreement by the Parties or other arrangements, the recipient of that request shall remain responsible for responding to the requester. In the event a request for records is addressed to the PSERN Operator, the Executive Director or the Board of Directors but specifies records of a single Party, such Party shall assume responsibility for responding to the request. In the event a request for records is addressed to the Board of Directors but does not specify records of a single Party, PSERN shall assume responsibility for coordinating the Parties' response to the request.

## **11.0 GENERAL**

### **11.1 Filing of Agreement**

Pursuant to RCW 39.34.040, prior to its entry into force, this Agreement shall be filed with the King County Recorder's Office or, alternatively, listed by subject on a Party's web site or other electronically retrievable public source.

### **11.2 Time of the Essence**

The Parties recognize that time is of the essence in the performance of the provisions of this Agreement.

### **11.3 Specific Performance**

In the event a Party fails to perform an obligation under this Agreement, the other Parties or any one of them shall have the right to bring an action for specific performance, damages and any other remedies available under this Agreement, at law or in equity.

### **11.4 No Waiver**

No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the Party or Parties claimed to have waived or consented. Waiver of any default of this Agreement shall not be deemed a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach. Waiver of such default and waiver of such breach shall not be construed to be a modification of the terms of this Agreement unless stated to be such through written approval of all Parties.

#### 11.5 Parties Not Relieved of Statutory Obligation

Pursuant to RCW 39.34.030(5), this Agreement shall not relieve any Party of any obligation or responsibility imposed upon it by law except that to the extent of actual and timely performance thereof by the Board of Directors, the performance may be offered in satisfaction of the obligation or responsibility.

#### 11.6 Nondiscrimination

The Parties shall comply with the nondiscrimination requirements of applicable federal, state and local statutes and regulations.

#### 11.7 No Assignment

No Party shall transfer or assign a portion or all of its responsibilities or rights under this Agreement, except with the prior authorization of the Administration Board.

#### 11.8 Dispute Resolution

If one or more Parties believe another Party has failed to comply with the terms of this Agreement, the affected Parties shall attempt to resolve the matter informally. If the Parties are unable to resolve the matter informally, any Party may submit the matter to mediation. In any event, if the matter is not resolved, then any Party shall be entitled to pursue any legal remedy available.

#### 11.9 Entire Agreement

The Parties agree that this Agreement, including any attached exhibits, constitutes a single, integrated, written contract expressing the entire understanding and agreement between the Parties. No other agreement, written or oral, expressed or implied, exists between the Parties with respect to the subject matter of this Agreement, and the Parties declare and represent that no promise, inducement, or other agreement not expressly contained in this Agreement has been made conferring any benefit upon them.

#### 11.10 Amendment Only In Writing

This Agreement may be amended by an affirmative majority vote the Board of Directors and unanimity of the Parties.

#### 11.11 Notices

11.11.1 Any notice under this Agreement shall be in writing and shall be addressed to the Parties' as listed below. Any notice may be given by certified mail, overnight delivery, or personal delivery. Notice is deemed given when delivered. Email, acknowledgement requested, may be used for notice that does not allege a breach or dispute under this Agreement. Email notice is deemed given when the recipient acknowledges receipt.

11.11.2 The names and contact information set forth in this Agreement shall apply until amended in writing by a Party providing new contact information to each other Party and the date the amendment is effective.

#### 11.12 Conflicts

In the event that any conflict exists between this Agreement and any exhibits hereto, the Agreement shall control.

#### 11.13 Choice of Law; Venue

This Agreement and any rights, remedies, and/or obligations provided for in this Agreement shall be governed, construed, and enforced in accordance with the substantive and procedural laws of the State of Washington. The Parties agree that the Superior Court of King County, Washington shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.

#### 11.14 Severability

The provisions of this Agreement are severable. If any portion, provision, or part of this Agreement is held, determined, or adjudicated by a court of competent jurisdiction to be invalid, unenforceable, or void for any reason whatsoever, each such portion, provision, or part shall be severed from the remaining portions, provisions, or parts of this Agreement and the remaining provisions shall remain in full force and effect.

#### 11.15 Survival Provisions

The following provisions shall survive and remain applicable to each of the Parties notwithstanding any termination or expiration of this Agreement and notwithstanding a Party's withdrawal or removal from this Agreement.

Section 8	Legal Relations
Section 10	Public Records

Section 11.13 Choice of Law; Venue

11.16 Counterparts

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

11.17 Execution and Effective Date.

This Agreement shall be executed on behalf of each Party by its duly authorized representative, pursuant to an appropriate motion, resolution, or ordinance of such Party.

IN WITNESS WHEREOF, authorized representatives of the Parties have signed their names and indicated the date of signing in the spaces provided below.

**KING COUNTY**

**CITY OF AUBURN**

\_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

\_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

Attest:  
\_\_\_\_\_  
City Clerk

Approved as to Form:

Approved as to Form:

\_\_\_\_\_  
Deputy Prosecuting Attorney

\_\_\_\_\_  
City Attorney

**CITY OF BELLEVUE**

**CITY OF FEDERAL WAY**

\_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

\_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

Attest:

City Clerk \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
City Attorney

**CITY OF ISSAQUAH**

\_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

Attest:

City Clerk \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
City Attorney

**CITY OF KIRKLAND**

\_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

Attest:

City Clerk \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
City Attorney

**CITY OF KENT**

\_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

Attest:

City Clerk \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
City Attorney

**CITY OF MERCER ISLAND**

\_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

Attest:

Attest:

City Clerk \_\_\_\_\_

City Clerk \_\_\_\_\_

Approved as to Form:

Approved as to Form:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
City Attorney

**CITY OF REDMOND**

**CITY OF RENTON**

\_\_\_\_\_  
Name \_\_\_\_\_

\_\_\_\_\_  
Name \_\_\_\_\_

\_\_\_\_\_  
Title \_\_\_\_\_

\_\_\_\_\_  
Title \_\_\_\_\_

\_\_\_\_\_  
Date \_\_\_\_\_

\_\_\_\_\_  
Date \_\_\_\_\_

Attest:

Attest:

City Clerk \_\_\_\_\_

City Clerk \_\_\_\_\_

Approved as to Form:

Approved as to Form:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
City Attorney

**CITY OF SEATTLE**

**CITY OF TUKWILA**

\_\_\_\_\_  
Name \_\_\_\_\_

\_\_\_\_\_  
Name \_\_\_\_\_

\_\_\_\_\_  
Title \_\_\_\_\_

\_\_\_\_\_  
Title \_\_\_\_\_

\_\_\_\_\_  
Date \_\_\_\_\_

\_\_\_\_\_  
Date \_\_\_\_\_

Attest:

Attest:

City Clerk \_\_\_\_\_

City Clerk \_\_\_\_\_

Approved as to Form:

Approved as to Form:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
City Attorney

DRAFT