**CITY OF KIRKLAND**
**City Attorney's Office**
**123 Fifth Avenue, Kirkland, WA 98033 425.587.3030**
**www.kirklandwa.gov**

# MEMORANDUM

**To:** Kurt Triplett, City Manager

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

**Date:** November 12, 2014

**Subject:** Public Safety Emergency Radio Network Implementation ILA

## RECOMMENDATION

That the City Council considers and adopts the enclosed Resolution authorizing the City Manager to sign, on behalf of the City, the Public Safety Emergency Radio Network Implementation Period Interlocal Cooperation Agreement ("PSERN Implementation ILA" or "Agreement").

## BACKGROUND

The City Manager briefed the City Council on the proposed Public Safety Emergency Radio Network ("PSERN") at the October 21, 2014 Council Meeting. A copy of the staff memo providing the history and background leading up to this point is attached to this staff report as Attachment A.

The attached PSERN Implementation ILA addresses implementation of the new PSERN system. 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. A second interlocal agreement will cover the creation of a new regional PSERN entity to operate the PSERN system once it is fully implemented and tested ("Entity ILA"). The Entity ILA, which will govern the creation of the new PSERN entity, is currently being negotiated between the parties and will be brought to Council at a subsequent Council Meeting.

On September 11, 2014, the EPSCA Board adopted a resolution recommending that its member cities support the PSERN project and adopt the Implementation ILA and the Entity ILA so long as seven items are addressed. Those items, coupled with a description of how they are addressed, are as follows:

- EPSCA member jurisdictions retain the ability to select and appoint the EPSCA area PSERN Board member according to the process and terms decided by EPSCA member jurisdictions;

**PSERN Implementation ILA Section 4.2.1 provides that EPSCA Cities may collectively appoint one of the four Joint Board Representatives.**

• All remaining EPSCA reserves stay with EPSCA member cities when the transition to PSERN occurs;

**The PSERN Implementation ILA does not contain any language or requirements regarding transfer of reserves. EPSCA successfully objected to language that could have been interpreted as requiring transfers of reserves.**

• All emergency radios are owned by the individual jurisdictions and not by PSERN;

**PSERN Implementation ILA Section 7 provides that King County will make the initial purchase of emergency radios and transfer ownership to the user agencies.**

• A rate stabilization fund that phases in the cost increases to all jurisdictions in King County associated with the new radio system is included in the ballot measure;

**Section 8.8 of the PSERN Implementation ILA provides for a stabilization fund to cover rate increases in radios or consoles. The fund amount is currently blank because the amount is in the process of being finalized, but King County anticipates the amount of the fund will be approximately $2,500,000.**

• An appropriate EPSCA staff retention and transition plan is reached between EPSCA and PSERN;

**This item is not addressed in the PSERN Implementation ILA because it relates more to the creation of the new PSERN entity and its hiring decisions. The Parties continue to negotiate this item and it will be addressed as part of the negotiation of the Entity ILA.**

• An "operations board" of emergency radio users is created that will advise the PSERN Board;

**Section 4.4.1.b of the PSERN Implementation ILA calls for creation of an advisory Operations Board.**

• Appropriate legal agreements are reached between EPSCA and PSERN that allow for EPSCA member jurisdictions to retain the rights to and value of the radio spectrum that EPSCA will transition to PSERN in the event that PSERN is not created or PSERN is abolished at some point in the future.

**PSERN Implementation ILA Section 5.4 and 5.5 provide that during the Implementation Period, existing frequencies will be co-licensed to King County. After Full System Acceptance and creation of the PSERN entity, necessary frequencies will be transferred to the PSERN entity. Any frequencies not transferred to the PSERN entity will remain in the name of the original licensee (Section 5.4.5). In the event Full System Acceptance does not occur,**

**or the PSERN system is abolished in its entirety, King County and the PSERN entity will take all steps necessary to transfer frequencies back to the original license holders (Section 5.4.6).**

Finally, the PSERN Implementation ILA contains a provision that clarifies that PSERN cannot deny any current dispatch center radio consoles, and that consoles will be made available to all Dispatch Centers on substantially similar terms and conditions (Section 6.2). This was an issue of particular concern to EPSCA since Issaquah, Redmond and NORCOM are all provide dispatch centers that serve EPSCA cities.

Cost to EPSCA and Kirkland of the PSERN System

The potential cost of the new system was a critical focus of EPSCA during the PSERN negotiations over the past year. Kirkland currently pays EPSCA approximately $33 per radio per month for each radio that Kirkland owns. Initial levy estimates for the new radio system were anywhere from $300 million to $400 million dollars. Preliminary operating cost estimates for the PSERN system were that monthly rates could rise as high as $40-$45 dollars per radio in 2014 dollars. EPSCA staff and Steering Committee representatives worked hard with the County and the region to bring the levy and operating costs down. Although the final ballot measure has not been set, the very good news is that the current estimates are that the PSERN levy will likely be closer to $225 million dollars, and that the monthly radio rates will range from $20-$27 per month in 2014 dollars. These lower radio rates will be partially offset by increased radio console charges from PSERN to dispatch centers. NORCOM rates will likely rise anywhere from $100,000 to $170,000 (in 2014 dollars) to pay for the consoles under PSERN. Staff is currently analyzing the total cost impact to EPSCA members and Kirkland from the combination of lower radio rates and higher console rates and NORCOM dues, but it appears that the final costs will be similar to or less than what Kirkland pays today for the emergency radio system. The financial analysis will be completed and presented at the City Council meeting.

Final ILA and Exhibits

The final PSERN Implementation ILA is being reviewed by multiple parties and is nearly complete, but signature blocks and exhibits have yet to be added to the Agreement. Staff expects the Implementation ILA to be fully complete before the Council meeting on Tuesday, November 18 and the final document will be presented to the Council at the meeting. At this time, staff believes there will be no significant changes to the PSERN Implementation ILA and that the final version will be substantially similar to the version that accompanies this staff report. If there are significant changes that would change the recommendation for adoption, staff will highlight them during the Council presentation.

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# MEMORANDUM

**To:** Kurt Triplett, City Manager

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

**Date:** October 28, 2014

**Subject:** Public Safety Emergency Radio Network Briefing and Update

## RECOMMENDATION

That the City Council reviews this staff memo and provides any necessary direction regarding the City's participation in the process of forming a new regional Public Safety Emergency Radio Network ("PSERN").

## BACKGROUND

### 1. History of the Emergency Radio Network in King County.

The City currently receives its emergency radio services through the Eastside Public Safety Communications Agency ("EPSCA"). EPSCA was formed in 1992 through an interlocal agreement between the cities of Bellevue, Redmond, Kirkland, Mercer Island, and later Issaquah. The purpose of EPSCA is to create an emergency radio sub-region in East King County to better serve and represent the area with respect public safety communications while maintaining local control of emergency radio assets and two way radio communications for public safety.

EPSCA is governed by an executive board consisting of the chief executive officer of each of the EPSCA cities. For Kirkland, Bellevue and Mercer Island, the City Managers are the EPSCA board members. For Issaquah and Redmond, the board members are the Mayors. Board members are allowed to appoint alternates. In addition, an operations board made up of public safety officials from each area manages EPSCA operations and advises the board. Overall operations are managed by an EPSCA Executive Director, which is currently Scott Hatfield. EPSCA is a separate legal entity tasked with developing, owning, operating, and managing an eastside radio system, which comprises a portion of a larger county-wide system.

There are four entities responsible for the current emergency radio system —EPSCA, King County, City of Seattle and Valley Communications (ValleyComm). The current radio system was formed in connection with a 1992 King County ballot measure. King County distributed funds to the four entities and each entity was responsible for building a portion of the overall system. Each entity owns separate towers and equipment, all of which is run by a central system. The current county-wide system was completed in 1997 and still provides the emergency radio network for this region serving 16,000 radios. In addition to first responders, the current system is used by some school districts, utilities, transportation providers, hospitals, and other government entities.

The Current system is approaching 20 years old and is built on a technology that is 30 years old. The vendor has indicated that support for the current system is coming to an end and will be eliminated in 2018. In addition, more repairs are required as the system ages, and replacement parts and support for some aspects of the system are no longer available. The system does not provide the desired level of coverage in certain parts of the County and its capacity is taxed during major events. Responder operational needs have changed since the first system was implemented and the current system no longer meets those needs.

**2. Steps towards a New, Regional Emergency Radio System (PSERN).**

In 2012, King County convened a group of King County, EPSCA, Seattle and ValleyComm officials to consider how to implement a new state-of-the-art, seamless, unified emergency radio system. The new system was named the Public Safety Emergency Radio Network (PSERN). A Steering Committee from the four entities was created to guide the technology, policy and fiscal issues associated with a new system, and a King County project office was created for implementation. In 2013 the four parties cooperatively issued an RFP for replacement of the current system. The new system will require another countywide ballot measure to fund, take 5-6 years to complete and users will begin migrating from the current radio system to the new one in 2019. King County expenses will be reimbursed by the levy proceeds.

The Steering Committee has been developing two proposed interlocal agreements for the governance and implementation of the new system. One interlocal agreement will govern the implementation of the new system and the process of transferring users from the current system to the new system ("Implementation ILA"). During implementation of the new system and migration of users from the old to the new system, King County will be the lead agency responsible for overseeing the project. Major project decisions will be made by a Joint Board comprised of four members—one each from King County, EPSCA, Seattle and ValleyComm. Each entity will select its own member to the Joint Board. Unanimous Joint Board approval will be required for major project decisions that impact the cost or scope of the project.

Under the Implementation ILA, King County will be responsible for managing the project and overseeing the transition from the old 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.

The second interlocal agreement will address the type of entity that will be responsible for operation and maintenance PSERN once full system acceptance has occurred ("Entity ILA"). The consensus 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 EPSCA user in Issaquah may communicate over facilities owned by one of the other three jurisdictions.

There will be even more overlap and interconnectivity under the new system, which is more advanced technologically. The increasing interdependence of the new system makes the regional divisions of the current system less meaningful. There will also be benefits associated with having a single entity responsible for the entire system and having consistent inspection, maintenance and repair practices across the entire system. The Implementation ILA has been the subject of

extensive negotiations, and staff anticipates that it will request Council authorization to sign the Implementation ILA at the November 18, 2014 Council Meeting.

The Entity ILA is not as far along, and staff anticipates bringing that ILA to a subsequent Council Meeting. Under the Entity ILA, each of the current owners will have one equally weighted vote on the Board governing the new system. In other words, EPSCA 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. Under the new PSERN entity:

- All infrastructure including radio tower sites, backhaul equipment, and dispatch consoles would be owned by PSERN.
- All subscriber radios (mobile and portable radios) would be owned by the end user.
- All capital costs as well as initial emergency radios would be covered by a county wide ballot measure to occur in April 2015. End users would be responsible for subsequent replacement radios.
- Subscriber fees would be paid to the new PSERN entity to cover all maintenance of the infrastructure and console equipment as well as all upgrade and update costs.

King County has indicated that entering into the Implementation ILA is a prerequisite for it to place the PSERN measure on the ballot.

**3. Funding PSERN**

The PSERN project, including sites, equipment, labor, sales tax, and interest on bonds will cost approximately $225 million. The King County Executive anticipates asking the King County Council to put a funding measure on the ballot in April 2015. King County anticipates proposing a levy lid lift to fund PSERN. The current estimate of the impact of the ballot measure, if passed, is 6.5-7.0 cents per $1,000 of assessed value over 9 years.

EPSCA and the City have worked hard on ensuring that user rates for radios and consoles stay relatively stable under the new PSERN system since rates will fund the ongoing operation of the system. Recent projections show that radio rates will remain stable or may drop slightly in connection with the new system. Nonetheless, EPSCA has requested that language be added to the Implementation ILA that would require funds to be reserved so that they can be used to reduce rates for users or entities that experience rate increases as a result of the PSERN transition.

**4. Prior EPSCA Actions**

EPSCA has been working with King County, Seattle and ValleyComm on the various issues associated with the transition from the current system to a new PSERN system. This transition can only occur if approved by each of the EPSCA member cities. On September 11, 2014, the EPSCA Board adopted a resolution recommending that its member cities support the PSERN project and adopt the Implementation ILA and the Entity ILA so long as the following items are addressed:

- EPSCA member jurisdictions retain the ability to select and appoint the EPSCA area PSERN Board member according to the process and terms decided by EPSCA member jurisdictions;

- All remaining EPSCA reserves stay with EPSCA member cities when the transition to PSERN occurs;

- All emergency radios are owned by the individual jurisdictions and not by PSERN;

- A rate stabilization fund that phases in the cost increases to all jurisdictions in King County associated with the new radio system is included in the ballot measure;

- An appropriate EPSCA staff retention and transition plan is reached between EPSCA and PSERN;

- An "operations board" of emergency radio users is created that will advise the PSERN Board;

- Appropriate legal agreements are reached between EPSCA and PSERN that allow for EPSCA member jurisdictions to retain the rights to and value of the radio spectrum that EPSCA will transition to PSERN in the event that PSERN is not created or PSERN is abolished at some point in the future.

The parties to the Implementation ILA are in the process of finalizing the ILA and prepare it for approval by their respective governing bodies. City staff anticipates bringing the Implementation ILA to the City Council for adoption at the November 18, 2014 Council Meeting.

Council Meeting: 11/18/2014
Agenda: Unfinished Business
Item #: 10. c.

RESOLUTION R-5083

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING THE CITY MANAGER TO EXECUTE A PUGET SOUND EMERGENCY RADIO NETWORK OPERATOR INTERLOCAL COOPERATION AGREEMENT TO PROVIDE FOR THE IMPLEMENTATION OF A NEW REGIONAL EMERGENCY RADIO NETWORK SYSTEM.

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

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

WHEREAS, the Parties, under various interlocal agreements, are responsible for the ownership, operations and maintenance of various elements of KCERCS, a public safety voice radio system that is nearly twenty years old and is increasingly unsupported by the supplier of the system's equipment, software and repairs; and

WHEREAS, the Parties have determined that it is in the public interest that a new public safety radio system ("Puget Sound Emergency Radio Network System" or "PSERN 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 at a cost-effective price; and

WHEREAS, the Parties seek to enter into an Interlocal Agreement to establish the terms under which the Parties will undertake the planning, financing, procurement, site acquisition and development, equipment installation, and other activities necessary to implement the PSERN System ("Agreement"); and

WHEREAS, concurrent or subsequent to this Agreement, the Parties will enter into a second interlocal cooperation agreement ("PSERN Operations Interlocal Agreement") to establish the terms under which the Parties will create a new entity ("PSERN Operator), to be responsible for the ownership, operations, maintenance, and on-going upgrading or replacing of the PSERN System during its anticipated useful life; and

WHEREAS, the Kirkland City Council finds that it is in the public interest of the City 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 at a cost-effective price; and

WHEREAS, Chapter 39.34 RCW authorizes the Parties to enter into interlocal agreements to perform any governmental service, activity or undertaking which each contracting party is authorized by law to perform;

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

Section 1. The City Manager is authorized and directed to execute on behalf of the City of Kirkland an Interlocal Agreement substantially similar to that attached as Exhibit "A", which is entitled "Puget Sound Emergency Radio Network Implementation Period Interlocal Cooperation Agreement."

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2014.

Signed in authentication thereof this ____ day of _____, 2014.

_____
MAYOR

Attest:

_____
City Clerk

# PUGET SOUND EMERGENCY RADIO NETWORK
# IMPLEMENTATION PERIOD
# INTERLOCAL COOPERATION AGREEMENT

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Ex. 5 List of User Agencies Eligible for Radio Exchanges

Ex. 6 Contact Information

# PUGET SOUND EMERGENCY RADIO NETWORK
# IMPLEMENTATION PERIOD
# INTERLOCAL COOPERATION AGREEMENT

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

## RECITALS

A. The Parties, under various interlocal agreements, are responsible for the ownership, operations 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 repairs.

B. The Parties have 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 at a cost-effective price. Said new system is referred to herein as the "Puget Sound Emergency Radio Network System" or "PSERN System."

C. The Parties seek to finance the costs of implementing the PSERN System by a funding measure to be placed on the ballot by the King County Council for consideration by the qualified electorate in King County.

D. The Parties desire that the County act as the lead agency for planning, procurement, financing and implementation of the PSERN System and that a new non-profit entity will be formed to assume the ownership and control of the PSERN System following Full System Acceptance.

E. The purpose of this Agreement is to establish the terms under which the Parties will undertake the planning, financing, procurement, site acquisition and development, equipment installation, and other activities necessary to implement the PSERN System.

F. Concurrent with this Agreement, the Parties have entered into a second interlocal cooperation agreement, referred to herein as the "PSERN Operations ILA," to establish the terms under which the Parties will create a new entity, referred to herein as the "PSERN Operator", to be responsible for the ownership, operations, maintenance, and on-going upgrading/replacing of the PSERN System during its anticipated useful life.

## TERMS AND CONDITIONS OF AGREEMENT

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 terms and conditions.

### 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 statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to.

1.1.3 References to sections, exhibits, attachments or appendices are 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:

1.2.1 Agreement means this Puget Sound Emergency Radio Network Implementation Period Interlocal Cooperation Agreement.

1.2.2 Alternate means a person appointed to serve in the absence of a Joint Board Representative.

1.2.3 Appointing Party(ies) means the City of Seattle, the EPSCA Cities, the ValleyCom Cities and King County.

1.2.4 Confidential Information means any information in written, graphic, verbal or machine-recognizable form that: (a) is related to PSERN; (b) is provided to a Party by another Party, the PSERN Contractor or another person or entity; and (c) is marked or identified as “confidential”, “proprietary,” “trade secret” or similar designation.

1.2.5 Cost Allocation Model means the method used for determining the user rates applicable to Dispatch Centers and User Agencies for fees they will pay to either the County or the PSERN Operator during the Operations Period.

1.2.6 County means King County, Washington.

1.2.7 Dispatch Center means a facility or an entity that uses PSERN to dispatch users of Subscriber Radios.

1.2.8 EPSCA means the Eastside Public Safety Communications Agency.

1.2.9 EPSCA Cities means the Cities of Bellevue, Issaquah, Kirkland, Mercer Island and Redmond, Washington.

1.2.10 Full System Acceptance (FSA) means the determination issued to the PSERN Contractor upon satisfactorily completing the final system development phase milestone.

1.2.11 Implementation Period means that period of time from the effective date of this Agreement through and until the beginning of the first full month after issuance of FSA.

1.2.12 Joint Board means the board formed by the Parties under this Agreement.

1.2.13 KCERCS means the existing King County Emergency Radio Communication System.

1.2.14 NAC means a notice of apparent completion issued under the contract with the PSERN Contractor.

1.2.15 Operations Budget means the budget funded by fees from Dispatch Centers and User Agencies to pay for the costs of operating, maintaining and upgrading PSERN after FSA.

1.2.16 Operations Period means the period that commences with the first full month after FSA.

1.2.17 Party means a signatory to this Agreement and excludes a signatory that withdraws from this Agreement.

1.2.18 Project (or PSERN Project) means all authorized activities relating to the planning, analysis, design, development, acquisition, site development, installation, testing, training, and operation of the PSERN System until FSA, starting-up a new PSERN Operator, transferring the PSERN System to same and any decommissioning, contract close-out and other project completion activities.

1.2.19 Project Budget means the budget approved by the Joint Board to spend the funds the County Council has appropriated to carry out PSERN Project activities.

1.2.20 Project Fund means the funds held by the County to fund the Project Budget including proceeds from the County-wide levy and proceeds from any bond or debt instruments.

1.2.21 Project Director means the County employee assigned to lead Project activities.

1.2.22 PSERN means the Puget Sound Emergency Radio Network.

1.2.23 PSERN Contractor means the prime contractor under County Contract #_____ (or the County Contract) that is responsible, among other things, for supplying the PSERN System's equipment and software.

1.2.24 PSERN Operations Period ILA (or Operations Period ILA) means the interlocal cooperation agreement entered into by the Parties concurrent with this Agreement to establish the terms under which the Parties will create a new PSERN Operator to own, operate, maintain, manage and upgrade/replace the PSERN System during the Operations Period.

1.2.25 PSERN Operator means the new entity formed pursuant to the PSERN Operations Period ILA.

1.2.26 PSERN Project (see "Project").

1.2.27 Representative means a person appointed by an Appointing Party(ies) to serve on the Joint Board.

1.2.28 Subscriber Radio means an end user radio and includes a mobile (vehicular) and portable (handheld) radio which has been authorized and programmed to operate on the System.

1.2.29 System means all the elements constituting the PSERN System, excluding Subscriber Radios unless the context indicates inclusion.

1.2.30 User Agency means an entity that uses the PSERN System for its employees' radio communications.

1.2.31 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 System.

1.2.32 ValleyCom means the Valley Communications Center.

1.2.33 ValleyCom Cities means the Cities of Auburn, Federal Way, Kent, Renton, and Tukwila, Washington.

## 2.0 DURATION OF AGREEMENT

2.1 This Agreement shall take effect on the date when last signed by an authorized representative of each Party.

2.2 Unless extended by written amendment as provided in Section 15.10 or terminated earlier as provided in Section 13, this Agreement shall expire upon the issuance of FSA and the County's written notice to the other Parties that all Project activities have been completed.

2.3 Notwithstanding Section 2.1 and 2.2 above, if the Project is not funded by a voter approved measure prior to January 1, 2018, this Agreement shall terminate on January 1, 2018 unless extended by agreement of the Parties.

## 3.0 THE PARTIES' RESPONSIBILITIES

3.1 Appointing Representatives to Joint Board

The Parties, or groups of Parties, shall appoint Representatives to the Joint Board as provided under Section 4.

3.2 Use of Land and Improvements

To the extent provided in Section 5.3, each Party agrees to make land and improvements available for PSERN System use.

3.3 Use of Licensed Spectrum

To the extent provided in Section 5.4, each Party agrees to make licensed spectrum under its direct or indirect control available for PSERN System use.

3.4 Cooperation on PSERN System Activities

Each Party understands and agrees that it is essential to public safety, within its jurisdiction and throughout King County, that the PSERN System be implemented without delay. In support of that objective, each Party agrees to cooperate in good faith with each other in all activities related to the PSERN System's implementation, operation and maintenance, which cooperation shall include: promptly responding to requests for information among the Parties; exercising best efforts to expedite the processing and execution of any requested reviews, inspections, approvals, permits, leases and agreements; and timely performing any construction, installation, testing and maintenance activities related to the PSERN System.

3.5 Other Responsibilities

The Parties shall be responsible for such other activities and obligations as are specified herein or arise from a Joint Board action.

## 4.0 JOINT BOARD

4.1 Creation of Joint Board

By executing this Agreement, the Parties hereby create a Joint Board pursuant to RCW 39.34.030(4). The Joint Board is not a separate legal or administrative entity within the meaning of RCW 39.34.030(3). The Joint Board shall oversee the activities of the Parties in connection with the PSERN System as provided in this Agreement. The Joint Board shall act on behalf of all Parties and as may be in the best interests of the PSERN Project. The Joint Board is not authorized to enter into contracts, own assets, or hire employees.

4.2 Joint Board Representatives

4.2.1 The Joint Board shall consist of four (4) voting Representatives appointed as follows by the Parties, or groups of Parties:

a. City of Seattle: one (1) Representative and one (1) Alternate.

b. Cities of Bellevue, Issaquah, Kirkland, Mercer Island and Redmond collectively: one (1) Representative and one (1) Alternate.

c. Cities of Auburn, Federal Way, Kent, Renton and Tukwila collectively: one (1) Representative and one (1) Alternate.

d. King County: one (1) Representative and one (1) Alternate.

4.2.2 The non-voting Chair of the Joint Board shall be the Deputy County Executive or his/her designee. The Chair or designee shall conduct the Joint Board's meetings and supervise the administrative activities related to meetings including scheduling, preparing the agendas, providing reports and other

information materials to the Representatives and creating records of Joint Board actions.

4.2.3 The Joint Board may also appoint a chief of a police agency and a chief of a fire agency to serve as non-voting participants on the Joint Board, provided they are from agencies within King County.

4.2.4 The County Executive, the Mayor of the City of Seattle, the Mayors of the EPSCA Cities, and the Mayors of the ValleyCom Cities shall each provide to the Joint Board's Chair a written notice identifying the names of a primary Representative and an alternative Representative (Alternate) who are authorized to speak, vote and otherwise act on behalf of their respective Appointing Party or group of Parties. Such notices shall include the name(s), contact information and effective date(s) of the appointments.

4.2.5 An Alternate may only speak and vote on behalf of his/her Appointing Party(ies) if: (a) the Chair has received written notice of the Alternate's appointment; and (b) the primary Representative is absent from the meeting. References in this Agreement to a "Representative" shall include an Alternate who has been appointed in accordance with this Agreement and is acting in the absence of the primary Representative.

4.2.6 The Appointing Party or group of Parties shall promptly replace any vacancy in its positions of Representative and Alternate and may, at any time, replace its Representative or Alternate by giving the Chair of the Joint Board written notice of the change including: the name(s), contact information and effective date(s) of the replacement(s).

4.2.7 Each Representative and each Alternate shall be an employee of his/her Appointing Party(ies), ValleyCom or EPSCA. No Representative or Alternate shall be deemed to be an employee of, or entitled to compensation from, any Party other than his/her Appointing Party.

4.3 Quorum and Meeting Procedures

4.3.1 A quorum for a meeting of the Joint Board shall be all four (4) voting Representatives and the Chair or his/her designee.

4.3.2 The Joint Board shall establish procedures for its operations and meetings, including the establishing of a regular monthly meeting schedule and location and providing for the scheduling of special and emergency meetings. To the extent allowed by Washington law, the Joint Board may establish procedures for conducting meetings by telephonic or other electronic means provided that all Representatives and members of the public are able to hear each other during the meeting. If such procedures are established by the Joint Board, any Representative participating in a meeting by such means is deemed to be present at the meeting for all purposes including establishing a quorum.

4.3.3 The Joint Board shall take action by the unanimous vote of all four (4) voting Representatives.

4.3.4 Representatives must be present at a meeting to vote and may not vote by proxy.

4.3.5 The voting Representatives may select an acting Chair to serve in the absence of the Chair or his/her designee.

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

4.4 Joint Board Actions

4.4.1 The Joint Board shall oversee the implementation, operation and maintenance of the PSERN System to the extent provided in this Agreement. In furtherance of that oversight, the Joint Board is specifically authorized to take the following actions:

a. Amend this Agreement including any exhibits;

b. Establish committees and advisory groups, including an advisory operations board of emergency radio users, to perform activities related to the PSERN Project or to provide reports or recommendations to the Joint Board related to the PSERN Project;

c. Adopt and amend policies, business rules, procedures, standards and guidelines related to the PSERN System including System access and use, security, and System and Subscriber Radio maintenance, upgrading and security;

d. Approve the Project Budget subject to County Council appropriation;

e. Approve contracts related to the Implementation Period;

f. Approve those leases related to the PSERN System for which the monthly rent exceeds the per site monthly rent authorized in the Project Budget;

g. Approve changes to PSERN System-related contracts if the cost of the change exceeds the authority granted to the Project Director under the Contracting Plan attached hereto and made a part hereof as Exhibit 1;

h. Approve the PSERN System design and any changes to same affecting System performance;

i. Approve the issuance by the County to the PSERN Contractor of Notice of Apparent Completion (NAC) of the following milestones:

(i) Milestone 3H: System Optimization and RF Coverage Testing

(ii) Milestone 3J Operational and Functional System Test

(iii) Milestone 3K Pilot Test with 100 Users

(iv) Milestone 5C Full System Acceptance

j. Approve a transition plan that defines the tasks, responsibilities and schedule for transitioning from the KCERCS to the PSERN System including moving Dispatch Centers and User Agencies onto the PSERN System;

k. Approve the County's entering into agreements with User Agencies and Dispatch Centers establishing the terms and conditions for access to and use of the PSERN System;

l. Approve such other actions as are specified under this Agreement as being made by the Joint Board;

m. Delegate the Joint Board's authority under this Agreement subject to such limitations and conditions as the Joint Board may establish; and

n. Approve a Party's request to withdraw from this Agreement and the terms and conditions of such approval in accordance with Section 13.

4.4.2 The PSERN System-related contracts will require prompt review of deliverables and notices of milestone completion. The Joint Board shall hold special meetings as needed and take action in a timely manner so as to avoid delay and other claims by PSERN System-related contractors.

4.5 Impasse Resolution Procedure

4.5.1 If a matter requiring Joint Board action is moved at a Joint Board meeting but fails for lack of a unanimous vote by all four (4) Representatives, a voting Representative may submit written notice of an impasse to the other Representatives and the Joint Board Chair. The notice shall include a statement of the action being sought and the history of any Joint Board deliberation or vote(s) on the matter.

4.5.2 Within seven (7) days of receipt of a notice of impasse, the Chair or his/her designee shall designate a mediator to assist the Joint Board in resolving the impasse. The mediator shall be experienced in resolving disputes in public sector capital projects and may not be an employee of any of the Parties.

4.5.3 The Parties agree that it is essential to the success of the PSERN Project that any impasse be resolved as quickly as possible and accordingly agree to instruct their respective Representatives to cooperate with the mediator in good faith including expediting responses to any mediator requests for information and discussion.

4.5.4 The mediator shall promptly investigate the impasse and the respective positions of the voting Representatives. The mediator may recommend one or more non-binding alternatives for resolving the impasse. Regardless of the outcome of the mediation, each Party shall pay an equal percentage share of the

cost of the mediator's fees and expenses, if any. The County shall pay the mediator and invoice each Party for its share. Each party shall pay the County within thirty (30) days after receiving the invoice.

4.5.5 If the impasse is not resolved within ten (10) days of the mediator providing his/her recommendation(s), the Elected Executives Committee (EEC) shall meet with the Joint Board to attempt to resolve the impasse. The EEC shall be composed of the King County Executive; the Mayor of the City of Seattle; one elected official designated by the EPSCA Cities; and one elected official designated by the ValleyCom Cities. The Joint Board and the EEC shall convene to consider the matter and attempt to reach a resolution, which may include re-submitting the matter for a Joint Board vote, not later than twenty (20) days after the date the mediator provided his/her recommendation(s).

4.6 Emergency Procedures

Consistent with applicable Washington State law, the Joint Board may adopt procedures for providing direction and decision-making in the event of emergencies that have or may have direct, significant and material negative effects on the implementation, operation and maintenance of the PSERN System when consideration of such emergencies by the Joint Board could not occur in a timely manner, all as determined by the Chair of the Joint Board. The procedures shall set forth how an emergency is declared and who declares it. Such procedures may allow expedited procurement and contracting procedures by the Project Director to address the emergency, as may be permitted by Washington State law. Each decision made pursuant to such procedures shall be communicated to the Parties as soon as reasonably possible and shall be subject to ratification by the Joint Board in a regular or special meeting within two (2) weeks after the finding of an emergency by the Chair of the Joint Board.

4.7 Record of Action

Actions by the Joint Board shall be memorialized in writing and signed by the Chair or acting chair of the Joint Board. A copy of each action shall be distributed to each Joint Board Representative and Alternate within ten (10) Business Days of the action.

4.8 Joint Board Administrative Support

The County shall provide administrative support for the Joint Board. The cost of providing such support shall be covered by the PSERN Project Budget during the Implementation Period and by the PSERN Operations Budget during the Operations Period.

## 5.0 PSERN SYSTEM IMPLEMENTATION

5.1 Project Management

The County will be responsible for performing all Project management activities including:

a. all personnel actions related to the Project Director and other County employees assigned to Project activities;

b. scheduling and management of day-to-day Project activities;

c. developing a Project Budget and obtaining County Council appropriation(s), approving expenditures, and tracking expenditures against the Project Budget including its contingency;

d. developing, tracking, and updating all required Project documentation;

e. developing and performing all financial, accounting and inventory-control processes including establishing a Project Fund to receive levy and bond proceeds, processing invoices and making payments and distributions from the Project Fund, responding to audits, and tracking the receipt and distribution of equipment and other deliverables in accordance with applicable laws, regulations and policies;

f. developing and implementing a transition plan for Joint Board approval;

g. coordinating PSERN Project activities with the Parties and the KCERCS's users; and

h. providing regular reports to the Joint Board on the Project's activities during the Implementation Period.

5.2 Contracting and Equipment Ownership

5.2.1 Subject to Joint Board approval, the County will procure, execute and administer all contracts, licenses and agreements related to the planning, analysis, design, development, installation, construction and testing of the equipment, software, facilities, improvements and other elements of the PSERN System.

5.2.2 The Project Director shall be responsible for contract procurement and contract administration activities in accordance with Exhibit 1 and any emergency contracting procedures approved by the Joint Board.

5.2.3 As the Party entering into the contract(s), the County will become the owner of the delivered PSERN System equipment except as provided in Section 7 for Subscriber Radios. The County will transfer said ownership to the new PSERN Operator formed under the PSERN Operations ILA in accordance with Section 9.

5.3 PSERN System Sites

5.3.1 Subject to Joint Board approval if required under Section 4.4.1(f), the County will enter into leases and other arrangements to acquire the rights, for itself and its contractors, successors and assigns, to access, install, use, develop, or construct towers, structures, equipment, facilities and other improvements as needed for PSERN System implementation.

5.3.2 The PSERN System sites identified in the List of Party Owned/Controlled Sites, attached hereto and made a part hereof as Exhibit 2, are controlled directly or indirectly by those Parties as indicated therein. If and to the extent a Party's interest permits, each such listed Party agrees to enter into a lease(s), assignment or other appropriate agreement with the County to permit the use by the PSERN System of the listed site(s) under its control on terms and conditions no worse than the best terms and conditions (for the lessee) that are then applicable in a comparable lease, license or agreement with another governmental entity. Consideration for such a lease may be provided as a cash payment, credit, or reciprocal benefit.

5.3.3 If during the PSERN System design process, other potential locations for PSERN System equipment or facilities are identified on any land or any improvement (such as buildings and towers) in which any Party has an ownership or tenancy interest, or otherwise controls, directly or indirectly through EPSCA or ValleyCom, then subject to any legal limitations, such Party agrees to enter into a lease(s), assignment or other appropriate agreement with the County to permit the use of such land or improvements by the PSERN System. Notwithstanding the forgoing, a Party shall not be required to enter into any lease, assignment, or other agreement that impairs a Party's right and ability to use the equipment or facilities as necessary for KCERCS or the Party's own purposes. The land and improvements shall be offered to the County:

a. with a right of first refusal; and

b. on terms and conditions no worse than the best terms and conditions (for the lessee) that are then applicable in a comparable lease, license or assignment with another governmental entity. Consideration for such a lease may be provided as a cash payment, credit, or reciprocal benefit.

5.3.4 Nothing in this Agreement shall require a Party, ValleyCom, or EPSCA to terminate or interfere with an existing lease or use of land or improvements.

5.3.5 The Parties will cooperate with the County in fulfilling its role and responsibilities under this Agreement. Without limiting the foregoing, the EPSCA Cities and the ValleyCom Cities shall propose and support measures at the EPSCA and ValleyCom boards, respectively, as necessary to effect the purposes and intent of this Section 5.3 and to the extent permitted by law.

5.3.6 In the event the Project is not funded by a voter approved measure prior to January 1, 2018, and this Agreement terminates on January 1, 2018, all leases and agreements entered into pursuant to this Section 5.3 shall also terminate on January 1, 2018 unless otherwise agreed to by the parties to the lease or agreement.

5.4 Frequencies

5.4.1 The Parties agree that they will cooperate with the County in any Federal Communications Commission process or application necessary to make available, or cause to be made available, for use in the PSERN System the

licensed frequencies identified in the List of Frequencies attached hereto and made a part hereof as listed in Exhibit 3. As part of the PSERN System design process, the Parties agree to cooperate in the development of PSERN Frequency Plans including agreeing to relicensing frequencies from the sites in which they are currently used to other sites in the PSERN System. Further, the Parties will consent to use of frequencies by the County and the PSERN Contractor under the design standards of the PSERN System.

5.4.2 The Parties will cooperate with the County in fulfilling its role and responsibilities under this Agreement. Without limiting the foregoing, the EPSCA Cities and the ValleyCom Cities shall propose and support measures at the EPSCA and ValleyCom boards, respectively, as necessary to effect the purposes and intent of this Section 5.4.

5.4.3 In the event a Party withdraws or otherwise terminates its participation in this Agreement and the PSERN System, it shall surrender all rights and interests it may have or claim to have in any frequencies determined by the Joint Board to be necessary for the PSERN System. The provisions and obligations of this Section 5.4 shall survive any termination of, or a Party's withdrawal from, this Agreement.

5.4.4 As more fully described in the PSERN Operations ILA, the Parties agree to take all steps necessary to ensure that all spectrum used in the PSERN System is transferred to and licensed in the name of the PSERN Operator to which ownership of the PSERN System is transferred after FSA. Said transfer and re-licensing shall be effected within sixty (60) days after ownership of the PSERN System has been transferred to the PSERN Operator.

5.4.5 Any frequencies currently used in KCERCS which are not reused in the PSERN System shall remain in the name of the original licensee under KCERCS and shall not be transferred to the PSERN Operator.

5.4.6 If the PSERN Project is terminated prior to FSA, or if following FSA the PSERN System is abolished in its entirety, the PSERN Operator (or if it has not yet been created, the County) shall take all steps necessary to transfer the frequencies surrendered pursuant to this Section 5.4 back to each of the Parties, EPSCA, and ValleyCom, and/or their successors.

5.5 Transition from KCERCS to the PSERN System

5.5.1 The Parties agree to continue to operate and maintain the central switch, sub-systems and other elements of KCERCS to the extent the Parties directly or indirectly control such elements until the issuance of FSA of the PSERN System or such other time as the Joint Board approves. Nothing in this Agreement shall be interpreted to require a Party to undertake any action that would adversely and materially impact a Party's ability to operate KCERCS as necessary for public safety through the Implementation Period.

5.5.2 The Parties shall cooperate with each other in implementing the transition from the KCERCS to the PSERN System including:

a. moving or removing, or causing/permitting such moving or removing, of KCERCS equipment to accommodate the installation of PSERN System equipment;

b. consenting to the use by the County of frequency licenses for use in the PSERN System during the Implementation Period and until the licenses are transferred to the PSERN Operator, by:

(1) executing letters of concurrence allowing the County to be a co-licensee for those frequencies during the Implementation Period; and

(2) unlicensing those frequencies used by PSERN; and

c. timely performance of all applicable tasks and responsibilities specified in the Transition Plan adopted by the Joint Board.

5.5.3 The County will serve as the PSERN System manager and enter into preliminary agreements with Dispatch Centers and User Agencies establishing the terms and conditions for their transition to and use of the PSERN System, as more fully described in Sections 6 and 7.

5.5.4 Through their direct or indirect participation on the KCERCS's Regional Communications Board, the Parties agree to take such actions as are necessary to effect the purposes of this section and any other matter necessary to the transition from the KCERCS to the PSERN System.

5.6 Decommissioning of KCERCS

It is expected that through the PSERN Project, all KCERCS equipment will be decommissioned and removed. However, to the extent KCERCS equipment is not decommissioned and removed due to a decision by the Joint Board or a Party, the Parties shall be responsible for decommissioning the elements of the KCERCS that they own or are owned by entities in which they participate.

## 6.0 DISPATCH CENTER EQUIPMENT IMPLEMENTATION

6.1 Dispatch Center Equipment

The PSERN Project Budget will fund the purchase of certain PSERN System equipment that will be installed at Dispatch Centers in King County in a like-for-like exchange of existing KCERCS-related equipment in order to enable the Dispatch Centers to access and use the PSERN System. The County shall be the owner of said PSERN System equipment during the Implementation Period and will transfer ownership to the PSERN Operator as provided in Section 9.

6.2 Dispatch Center Agreements

Neither the County nor PSERN may deny consoles or console service to any Dispatch Center. As a condition of using said new equipment and the PSERN System, each Dispatch Center shall enter into an agreement (Dispatch User Agreement) with the County or the PSERN Operator. The County and the PSERN operator shall make consoles and console service available to each Dispatch Center on substantially similar terms and conditions. The Dispatch User Agreements, shall include, among other terms, the following:

a. a grant by the Dispatch Center to the County and its successors and assigns for the space, access rights, power, fiber connections, internet access and other resources necessary for the County and its contractors to deliver, store, install, test, operate and maintain PSERN System equipment;

b. the quantities and types of equipment that will be funded by the PSERN Project Budget and installed at the Dispatch Center;

c. the schedule and locations for installation and testing of said equipment and training users;

d. the provision that the County or PSERN Operator, as appropriate, will provide maintenance, updates, and upgrades to consoles for as long as they shall remain in service and owned by the County or the PSERN Operator;

e. the process for repairing/replacing/upgrading equipment;

f. the obligations for the Dispatch Center to pay the user fees and other costs of connecting to the PSERN System during the Operations Period;

g. the Dispatch Center is responsible for theft, damage or other loss after delivery of equipment to the Dispatch Center's facility; and

h. a commitment by the Dispatch Center to execute a novation replacing the County with the new PSERN Operator for the Operations Period.

If a Party or entity is both a Dispatch Center and a User Agency, the above provisions may be addressed in a single Dispatch Center/User Agency Agreement.

## 7.0 SUBSCRIBER RADIO EQUIPMENT IMPLEMENTATION

### 7.1 County Purchase of Initial Order of Subscriber Radios

Pursuant to an executed User Agency Agreement as provided in Section 7.4, the County will purchase initial orders of Subscriber Radios on behalf of all User Agencies. Ownership of said County-purchased Subscriber Radios will be transferred to the User Agencies following FSA. User Agencies may enter into "piggyback" contracts with the PSERN Contractor for the direct purchase of additional Subscriber Radios.

### 7.2 Project Funding for Certain Subscriber Radios

The PSERN Project Budget will be used to fund the initial order of certain types of Subscriber Radios and accessories for the User Agencies identified in the List of User Agencies Eligible for Radio Exchanges, which is attached hereto and made a part hereof as Exhibit 5. A User Agency listed in Exhibit 5 shall be eligible to receive a Project-funded Subscriber Radio and a kit of standard accessories in exchange for a trade-in radio used in the KCERCS, provided that each trade-in radio:

a. was an active radio in the KCERCS zone controller within thirty (30) days prior to the date of the exchange; and

b. is an operable radio at the time of the exchange.

The new Subscriber Radio funded by the Project Budget shall be the type of radio as listed in Exhibit 5 that is the nearest equivalent to the trade-in radio.

7.3 Payments by User Agencies

7.3.1 A User Agency that is listed on Exhibit 5 shall pay the County for the added costs of any Subscriber Radios, features and accessories that are not covered by the Project Budget under Section 7.2.

7.3.2 A User Agency that is not listed in Exhibit 5 shall pay the County for the full cost, including taxes, of any Subscriber Radio purchased by the County on its behalf.

7.3.3 The County shall establish the method and timing of such payments in advance of placing an order with the PSERN Contractor.

7.4 User Agency Agreements

No User Agency may register or use a radio or other device on PSERN unless it has entered into a User Agency Agreement with the County or the PSERN Operator. Neither the County nor the PSERN Operator may deny radios or radio service to any agency permitted to be licensed in the 800 MHz Public Safety Radio Spectrum pursuant to 47 C.F.R. Part 90 if that agency enters into and complies with the provisions of a User Agency Agreement. The User Agency Agreements shall include, among other terms, the following:

a. the quantities and types of Subscriber Radios that will be funded by the PSERN Project Budget and the amounts to be paid by the User Agency;

b. designation of the User Agency's status (primary or secondary) and priorities at the talkgroup level;

c. a grant of all space, access rights, power and other resources necessary for the County and its contractors to deliver, store, install, and test Subscriber Radios;

d. the schedule and locations for installation and testing of Subscriber Radios and user training;

e. the central management of encryption keys and the template for programming User Agency radios;

f. the prohibition with applicable timeframes on a User Agency's re-sale or transfer of any Subscriber Radios and the requirements for tracking and reporting all Subscriber Radios to the County;

g. the terms for use of the System including acceptable equipment models and features, protocols, maintenance standards and other conditions;

h. the process for repairing/replacing Project-funded Subscriber Radios through the end of the warranty period;

i. the obligations for the User Agency to pay the user fees and other costs of connecting to the PSERN System during the Operations Period;

j. the User Agency is responsible for theft, damage or other loss after delivery of equipment to the User Agency's facility; and

k. a commitment by the User Agency to execute a novation replacing the County with the new PSERN Operator for the Operations Period.

## 8.0 PSERN PROJECT BUDGET FOR IMPLEMENTATION PERIOD

8.1 Funding of Project Budget

The PSERN Project Budget will be funded by proceeds from a County-wide property tax levy and, as needed, proceeds from bond or other debt instruments issued by the County. The reimbursement and other payments provided under this Section are conditioned upon voter-approval of the funding levy and the County Council's adoption of an appropriation for the PSERN Project Budget. Except as provided in this Agreement or by action of the Joint Board, the City of Seattle, the EPSCA Cities, and ValleyCom Cities shall not be required to reimburse the PSERN Project Budget or the County for costs incurred during the Implementation Period.

8.2 Elective Contract Change

8.2.1 Any Contract Change determined by the Project Director to be elective, must be approved in advance by the Joint Board. The Joint Board may approve the Contract Change either as an Elective Contract Change or if the Joint Board determines the change is not elective, as a Contract Change. At the time the Joint Board approves an Elective Contract Change, it shall also approve a reimbursement allocation for the cost of the Elective Contract Change to be paid by one or more Parties in the event the Project Budget is insufficient to cover some or all of the cost of the Elective Contract Change as described in Section 8.2.2 below.

8.2.2 At the end of the Implementation Period, if the PSERN Project Budget is insufficient to pay the reimbursements and payments provided in this Section 8,

the Parties shall reimburse the PSERN Project Budget for all Elective Contract Changes according to the allocations approved by the Joint Board, up to the amount of the budget shortfall beginning with the first adopted Elective Contract Change and proceeding in chronological order.

8.3 Reimbursement of Planning Phase Costs

8.3.1 The County shall use the Project Budget to reimburse itself, the City of Seattle, EPSCA and ValleyCom for the following costs incurred from August 1, 2012, through the start of the Implementation Period:

a. the costs of staff labor hours expended on planning, analysis, procurement, legal and other PSERN System-related activities; and

b. the costs of technical, financial, consultant, legal and other contractor services related to the PSERN System.

Reimbursement of labor hours shall be at the applicable hourly, monthly or annual rate that is used in the normal course when the employee's time is charged for other purposes. Reimbursement for contractor services shall be at the reasonable, actual amount paid by the agency seeking reimbursement.

8.3.2 Requests for reimbursement under this Section 8.2 may be submitted to the County after the County Council's adoption of a PSERN Project Budget and appropriation.

8.3.3 Requests shall be submitted on a form prescribed by the County and be accompanied by such documentation as the County may require including time records and invoices.

8.4 Administrative, Election and Financing Costs

The Project Budget shall cover the County's costs of providing administrative support to the Joint Board and the election, legal, financing, administration and other costs associated with the levy and the issuance of any bonds or other debt financing.

8.5 Reimbursement of Implementation Period Costs

8.5.1 The Project Budget shall cover all of the County's costs incurred during the Implementation Period including:

a. payments to the PSERN Contractor and other contractors
b. County labor and internal charges
c. rents, fees and other costs related to real property access and development activities
d. insurance
e. equipment, tools, technology, devices, vehicles and supplies
f. travel
g. training
h. fuel
i. freight

j. utilities
k. security systems and services
l. road maintenance
m. cost of claims, litigation and related legal and other expenses.

8.5.2 The County shall use the Project Budget to reimburse the City of Seattle, EPSCA and ValleyCom for the costs of staff labor hours expended during the Implementation Period on the following PSERN System-related activities:

a. preparation for and participation at Joint Board and technical committee meetings;

b. witnessing the PSERN Contractor's factory testing, field testing of infrastructure and coverage testing; and

c. escorting PSERN Contractor personnel to sites at which the City of Seattle, EPSCA or ValleyCom have current KCERCS maintenance responsibilities.

Reimbursement of labor hours shall be at the applicable hourly, monthly or annual rate that is used in the normal course when the employee's time is charged for other purposes. Requests for reimbursement shall be submitted on a calendar quarter basis following the County Council's adoption of an appropriation for the PSERN Project Budget. Failure to submit a request within sixty (60) days after the end of a calendar quarter shall constitute a waiver of any reimbursement for cost incurred in said quarter. Requests shall be submitted on a form prescribed by the County and be accompanied by such documentation as the County may require including time records and invoices.

8.6 Subscriber Radio Purchases

The Project Budget will be used to fund the initial order of certain types of Subscriber Radios and accessories as provided in Section 7.

8.7 PSERN Operator's Start-up Costs

Upon creation of a new PSERN Operator as provided in Section 9.1, the County shall pay to said PSERN Operator the amount specified in the Project Budget for the new PSERN Operator's pre-FSA expenses for start-up activities under Section 9.2 and the Operations Period ILA.

8.8 System Transition Stabilization Fund

The County shall, within the Project Budget, create a PSERN System Transition Stabilization Fund in the amount of $ _____, the purpose of which shall be to reduce and phase in the impact of increased console and radio rates on PSERN System User Agencies. By March 31 of the year prior to the expected date for FSA as projected by the Project Manager, the Joint Board shall adopt a System Transition Stabilization Fund plan.

## 9.0 TRANSFER OF SYSTEM FOR OPERATIONS PERIOD

9.1 Creation of a new PSERN Operator

Not later than one year prior to the expected date for FSA as projected by the Project Manager, the Parties shall create and establish a non-profit corporation as authorized under RCW 39.34.030 to own, operate, maintain, manage and upgrade/replace the PSERN System during the Operations Period.

9.2 Start-up of PSERN Operator

As provided in the Operations Period ILA, the Parties shall cause said new PSERN Operator to hire an Executive Director and staff, train staff, establish facilities, contract for goods and services, install systems and undertake all other steps necessary for the PSERN Operator to be able to accept the transfer of the PSERN System from the County and be fully responsible for the Operations Period upon issuance of FSA by the Joint Board.

9.3 Transfer and Novation Agreements

The Parties shall cause the PSERN Operator to enter into agreements with the County and third parties that effect the following upon FSA and after the County has determined and notified the Parties that all Implementation Period activities have been completed:

a. transfer all PSERN System-related equipment (other than subscriber radios as provided in Section 7.0); and

b. the novation of the contract with the PSERN Contractor, the Dispatch Center and User Agency Agreements and all licenses, leases and other contracts and agreements related to the PSERN System.

The Parties intend and agree that the PSERN Operator shall be deemed to be the successor to the County for all PSERN System purposes and shall assume all of the County's rights, responsibilities and liabilities under said contracts, licenses, leases and agreements.

## 10.0 OPERATIONS AND MAINTENANCE PENDING TRANSFER

10.1 Interim Operations

If the transfer of the PSERN System is not completed as provided in Section 9.0 above and the PSERN Operations Period ILA, then the County may continue to operate and maintain the PSERN System after FSA.

10.2 Cost Allocation Model

10.2.1 In the event the transfer to a new PSERN Operator has not occurred and if the County continues to act as the lead for operations and maintenance beyond FSA, the County will be paid monthly user rates by each Dispatch Center and User Agency, based on the Cost Allocation Model, until the transfer occurs and the County has closed out its role and incurs no more costs.

10.2.2 The Cost Allocation Model shall be applied to an annual Operations Budget developed by either the County or the PSERN Operator for each calendar year of Operations after FSA. The Dispatch Center and User Agency rates shall be recalculated annually to reflect cost changes from January 1 through December 31 of each year, and shall be included in the Operations Budget, which shall be subject to approval by the Joint Board.

10.2.3 By May 1 of each year, the County or PSERN Operator shall calculate the share of costs to be billed to the Dispatch Centers and User Agencies in accordance with the Cost Allocation Model and Operations Budget in the coming year and transmit that information to each Dispatch Center and User Agency.

10.3 The County shall collect fees in accordance with the Dispatch Center and User Agency Agreements.

## 11.0 INTELLECTUAL PROPERTY, CONFIDENTIAL INFORMATION AND RECORDS

11.1 Intellectual Property

The Parties may be provided with products, documents or other deliverables related to the PSERN System that are the subject of copyright, trade secret and other intellectual property rights of, or claims of such rights. Each Party agrees that it will exercise any intellectual property license rights in accordance with the license provisions of the County Contract and any other applicable licenses so long as the Party has prior notice of the license requirements.

11.2 Confidential Information

11.2.1 Each Party agrees that it will: (a) limit the distribution of Confidential Information to those employees, contractors or other persons who have a reasonable business need to know such information; and (b) take all reasonable care, and not less than the care the Party applies to its own confidential information, to prevent unauthorized use or disclosure of Confidential Information. Each Party agrees that it will not use, copy, convey or disclose any Confidential Information to any other person or entity unless expressly authorized in writing by the person that provided the Confidential Information or as may be required by law.

11.2.2 Such care shall include: (a) requiring such employees, contractors or other persons to sign a nondisclosure agreement; (b) requiring any contractors to also undertake reasonable protection measures; and (c) promptly enforcing any violations of such agreements.

11.3 Records.

11.3.1 Each Party shall keep records as required by state law and in accordance with such policies, procedures and retention schedules as may be established by the Joint Board. To the extent permitted by law, all records,

accounts and documents relating to matters covered by this Agreement shall be subject to inspection, copying, review or audit by the Washington State Auditor or any Party. Upon reasonable notice, during normal working hours, each Party shall provide auditors from the Washington State Auditor or the other Parties with access to its facilities for copying said records at their expense.

11.3.2 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 Joint Board. If a Party receives a public records request for records related to the PSERN System, the Party receiving the request shall promptly notify the Project Director and the Joint Board. Absent agreement by the Parties on other arrangements, the Party receiving the request shall remain responsible for responding to the requester. In the event a request for records is addressed to the Joint Board 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 Joint Board but does not specify records of a single Party, the County shall assume responsibility for coordinating the Parties' response to the request.

11.3.3 If the requested records include any Confidential Information, the Party receiving the request shall promptly notify the Party or other person or entity that designated the information as Confidential Information. Any Party receiving a public records request that includes Confidential Information shall not disclose the Confidential Information for ten (10) business days in order to give the affected Party or third party the opportunity to take whatever action they deem necessary to protect their interests before disclosure of the Confidential Information. A Party receiving a public disclosure request shall not be required to take any legal action in order to prevent disclosure of Confidential Information, nor shall a Party incur any liability to any other Party for disclosing Confidential Information in response to a public disclosure request so long as the disclosing Party has complied with the provisions of this Section 11.

## 12.0 FORCE MAJEURE

Acts of nature, acts of civil or military authorities, acts of war, terrorism, fire, accidents, shutdowns for purpose of emergency repairs, strikes and other labor disruptions, and other industrial, civil or public disturbances that are not reasonably within the control of a Party causing the Party's inability to perform an obligation under this Agreement are "Force Majeure Events." If any Party is rendered unable, wholly or in part, by a Force Majeure Event, to perform or comply with any obligation or condition of this Agreement, such obligation or condition shall be suspended for the time and to the extent reasonably necessary to allow for performance and compliance and restoration of normal operations.

## 13.0 TERMINATION OF AGREEMENT; WITHDRAWAL AND REMOVAL OF A PARTY

13.1 Termination of Agreement by Joint Board.

The Joint Board may terminate this Agreement in its entirety by the unanimous affirmative vote of all voting Representatives.

13.2 Withdrawal of a Party.

13.2.1 In the event that a Party desires to withdraw from this Agreement, it shall give written notice to the Joint Board including its reasons therefor, a description of the probable impacts on the other Parties, a description of the probable impacts to the scope, schedule and budget of the PSERN Project and a proposed withdrawal work plan that will identify all necessary actions which need to be undertaken to effect the withdrawal.

13.2.2 Upon receipt of the above-described notice and information, the Joint Board will consider the request for withdrawal. The Joint Board may in its sole discretion approve a Party's request to withdraw from this Agreement and establish any terms and conditions for approval. Approval requires a unanimous vote of all voting Representatives on the Joint Board.

13.2.3 A Party that is permitted to withdraw shall remain responsible for any obligations that arose prior to the effective date of the withdrawal and for any that are specified under Section 15.14 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 yet established, then within thirty (30) days after the amount is established.

## 14.0 LEGAL RELATIONS

14.1 Independent Contractors and No Third Party Beneficiaries

14.1.1 Each party to this Agreement is an independent contractor with respect to the subject matter herein. No joint venture or partnership is formed as a result of this Agreement.

14.1.2 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.

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

14.2 Claims Arising from the Joint Board's Acts or Omissions

The Parties agree to share the cost, including the costs of defense, in the event of any claim, lawsuit, demand, judgment, award or liability of any kind against the Joint Board, any Party, ValleyCom or EPSCA and their respective officials and employees ("Claim(s)") arising out of, or in any way resulting from: (a) a Joint Board action or failure to act; or (b) the County's acts or omissions arising from a Joint Board action or failure to act. The Parties agree to share the costs arising from such a Claim(s), including the costs of defense in the following percentages:

a. King County shall be liable for 25%;

b. City of Seattle shall be liable for 25%;

c. the EPSCA Cities shall be jointly and severally liable for 25%; and

d. the ValleyCom Cities shall be jointly and severally liable for 25%

The Parties agree to cooperate with each other as necessary in responding to and defending against all such Claims, which may include developing a joint defense plan.

14.3 Other Claims

Except for a Claim covered by Section 14.2, 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. No Party will be required to indemnify, defend, or save harmless any 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.

14.4 Waiver of Consequential and Certain Other Damages

ALTHOUGH EACH PARTY ACKNOWLEDGES THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, EACH PARTY AGREES TO WAIVE ALL CLAIMS AGAINST EPSCA, VALLEYCOM, THE OTHER PARTIES, AND THEIR RESPECTIVE OFFICALS AND EMPLOYEES FOR ANY: COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT, PROVIDED THAT THIS SECTION SHALL ONLY APPLY TO CLAIMS BETWEEN AND AMONG THE PARTIES, EPSCA AND VALLEYCOM, AND SHALL NOT BE INTERPRETED TO LIMIT ANY CLAIMS BROUGHT PURSUANT TO SECTION 14.3.

14.5 In the event that any of the Parties or combination of the Parties incurs any judgment, award, and/or cost arising therefrom, including attorney fees, to enforce the provisions of this Section 14, all such fees, expenses, and costs shall be recoverable from the responsible Party or combination of the Parties to the extent of that Party's/those Parties' culpability.

14.6 The provisions of this Section 14 shall survive the expiration or termination of this Agreement.

## 15.0 GENERAL

15.1 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.

15.2 Time of the Essence

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

15.3 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.

15.4 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.

15.5 Parties Not Relieved of Statutory Obligations

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 Joint Board, the performance may be offered in satisfaction of the obligation or responsibility.

15.6 Nondiscrimination

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

15.7 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 Joint Board.

15.8 Dispute Resolution

If one or more Parties believes 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 accordance with the process provided in Section 4.5. If the Parties submit the matter to mediation and the matter is not resolved, then the aggrieved Party shall be entitled to pursue any legal remedy available.

15.9 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.

15.10 Amendment Only In Writing

This Agreement may be amended by action of the Joint Board in accordance with Section 4.4.1.

15.11 Notices

15.11.1 Any notice under this Agreement shall be in writing and shall be addressed to the Chair of the Joint Board, the Project Director and to each Party's Representative. Any notice may be given by certified mail, overnight delivery, facsimile telegram, or personal delivery. Notice is deemed given when delivered. Email may be used for notice that does not allege a breach or dispute under this Agreement.

15.11.2 The names and contact information set forth in Contact Information, attached hereto and made a part hereof as Exhibit 6, shall apply until amended in writing by a Party providing new contact information to each other Party.

15.12 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.

15.13 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.

15.14 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 from this Agreement.

Section 11 Intellectual Property, Confidential Information and Records

Section 14 Legal Relations

Section 15.12 Choice of Law; Venue

Additionally, unless otherwise determined by the Joint Board, Sections 5.3 and 5.4 shall survive a Party’s withdrawal from this Agreement.

15.15 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.

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

[signature blocks to be added]