

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

This Puget Sound Emergency Radio Network Operator Interlocal Cooperation Agreement ("Agreement") is entered into pursuant to chapter 39.34 RCW (the "Interlocal Cooperation Act") 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, as well as 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 are financed through a funding measure approved by voters at the April 2015 election.

D. The Parties executed 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 Implementation Period ILA contemplates that the Parties will create a new separate governmental agency under RCW 39.34.030(3)(b) that is organized as a non-profit corporation under Chapter 24.06 RCW as authorized by the Interlocal Cooperation Act to assume the ownership and control of the PSERN System following Full System Acceptance and 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 create the new governmental agency to be known as the "PSERN Operator" and establish the terms for governance of the PSERN Operator and the terms under which the PSERN Operator will 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 genders (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 King County, the due date shall be deemed to be the next Business Day.

1.1.9 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.

1.1.10 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 used in this Agreement and not otherwise defined herein (including in the recitals which are hereby incorporated into this Agreement by this reference) shall be given their ordinary and usual meanings or their well-known technical industry meanings except that the following terms are defined for this Agreement as follows:

1.2.1 Board of Directors or Board means the board described in Section 4.0 of this Agreement and shall be the governing body of the PSERN Operator.

1.2.2 Agreement means this Puget Sound Emergency Radio Network Operator Interlocal Cooperation Agreement, as it may hereafter be amended or modified from time to time, together with all exhibits and appendices hereto, as they may hereafter be amended or modified.

1.2.3 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, EPSCA and Valley Com, 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.

1.2.4 Director means a person designated as a member of the Board of Directors pursuant to Section 4.2 of this Agreement.

1.2.5 Dispatch Center means an organization that has entered into an agreement with King County or the PSERN Operator for console service on the PSERN System.

1.2.6 EPSCA means the Eastside Public Safety Communications Agency, formed pursuant to chapters 39.34 and 24.06 RCW, created by the cities of Bellevue, Issaquah, Kirkland, Mercer Island and Redmond, or its successor agency.

1.2.7 Executive Director means the chief executive officer for the PSERN Operator appointed by and serving at the pleasure of the Board of Directors.

1.2.8 Full System Acceptance or FSA means the determination issued to the PSERN System Contractor upon the Contractor satisfactorily completing the final system development phase milestone pursuant to King County Contract No. 5729347 (Contract for the Design, Development, Implementation, Testing and On-Going Support, Maintenance and Upgrade of the Puget Sound Emergency Radio System, executed on December 17, 2014).

1.2.9 KCERS means the King County Emergency Radio Communication System.

1.2.10 Operations Period means the period that commences with the first full month after FSA and continuing through the life of the PSERN System.

1.2.11 PSERN Transitional Employee means an individual: (1) who, at the time of FSA, is employed by King County, the City of Seattle, EPSCA, or ValleyCom in a management, administration, finance, operations, and/or maintenance position for a subregion of KCERCS; (2) whose employment with King County, the City of Seattle, EPSCA, or ValleyCom will be eliminated as a direct result of the PSERN project; and (3) who will not be hired by the PSERN Operator in a comparable capacity because the PSERN Operator has no or fewer comparable positions.

1.2.12 Puget Sound Emergency Radio Network Operator or PSERN Operator means the governmental agency formed under this Agreement and RCW 39.34.030(3)(b) that is organized as a nonprofit corporation under chapter 24.06 RCW as authorized by the Interlocal Cooperation Act for the purpose of owning, operating, maintaining, managing and ongoing upgrading/replacing of the PSERN System during the Operations Period.

1.2.13 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 during the Operations Period to provide public safety communication service(s) or an addition to an existing infrastructure during the Operations Period to provide new or additional public safety communication service(s).

1.2.14 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).

1.2.15 Service Rate means the rate or rates charged to User Agencies in accordance with the Rate Model at Exhibit A, or as it may be amended by action of the Board of Directors.

1.2.16 Services means voice, data, video, or other communication services provided to User Agencies and Dispatch Centers through an agreement with King County or the PSERN Operator.

1.2.17 User Agency means an entity that is authorized under an agreement with King County or the PSERN Operator to register and use a radio or other device on the PSERN System.

1.2.18 Valley Communications Center or Valley Com means the Governmental Administrative Agency formed by interlocal agreement under Chapter 39.34 RCW, created by the cities of Auburn, Federal Way, Kent, Renton, and Tukwila.

## **2.0 DURATION OF AGREEMENT**

This Agreement shall be effective on the date it is last signed by an authorized representative of each the Parties and is filed and/or posted as provided in Section 15.2 ("Effective Date"). This Agreement shall remain in effect until terminated as provided in Section 12.0.

### **3.0 PURPOSE OF THE AGREEMENT; FINANCING; SERVICES**

The purpose of this Agreement is to provide communication Services throughout the Operations Period to User Agencies 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 hereby create a governmental administrative agency called the “Puget Sound Emergency Radio Network Operator”. The Parties each assign to the PSERN Operator the responsibility of owning, operating, maintaining, managing and ongoing upgrading/replacing of the PSERN System during the Operations Period as permitted by the Interlocal Cooperation Act. The PSERN Operator shall be formed pursuant to RCW 39.34.030(3)(b) and shall be organized as a nonprofit corporation under chapter 24.06 RCW.

The Parties hereto acknowledge and agree that each is executing this Agreement in order to facilitate the creation of the PSERN Operator as a separate governmental administrative agency pursuant to the Interlocal Cooperation Act and not a “joint board” within the meaning of RCW 39.34.030(4)(a). All debts, obligations and liabilities incurred by the PSERN Operator shall be satisfied exclusively from the assets and properties of the PSERN Operator and no creditor or other person shall have any right of action against the Parties hereto, the User Agencies or any other public or private entity or agency on account of any debts, obligations, or liabilities of the PSERN Operator unless explicitly agreed to in writing by the Party hereto, the User Agency, or such entity or agency.

The expenses of the PSERN Operator shall be financed through a funding measure approved by voters at the April 2015 election and with user fees (Service Rates) to be assessed against and paid by all User Agencies. It is the intent of the Parties that Service Rates be computed as provided in Exhibit A and be set to cover all operating expenses of the PSERN Operator, unless otherwise directed by the Board of Directors.

This Agreement shall not obligate the Parties to incur debt on behalf of the PSERN Operator. Each Party’s financial obligations to PSERN shall be limited to payment of Service Rates unless otherwise agreed upon in writing.

The PSERN Operator shall have the responsibility and authority for providing communication Services as provided in this Agreement, including but not limited to owning, operating, maintaining, managing and ongoing upgrading/replacing of the PSERN System during the Operations Period and all related incidental radio communications functions.

### **4.0 BOARD OF DIRECTORS**

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

The PSERN Operator shall be governed by a Board of Directors that is hereby created pursuant to the Interlocal Cooperation Act and chapter 24.06 RCW that shall act in the best interests of PSERN and in furtherance of the purpose of this Agreement. The

Board's composition, powers, responsibilities, quorum and meeting requirements shall be included in the PSERN Operator's articles of incorporation or bylaws.

#### 4.2 Composition of the Board of Directors

4.2.1 The Board of Directors shall be composed of the four following voting members:

4.2.1.1 the King County executive, or a designee of the executive approved by the King County council;

4.2.1.2 the City of Seattle mayor, or his/her designee;

4.2.1.3 one mayor or city manager or his/her designee representing the Cities of Bellevue, Issaquah, Kirkland, Mercer Island and Redmond (the "EPSCA Cities"); and

4.2.1.4 one mayor or city manager or his/her designee representing the Cities of Auburn, Federal Way, Kent, Renton and Tukwila (the "Valley Com Cities").

4.2.2 The Board of Directors shall also include two nonvoting members to comment and participate in discussions 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.

4.2.3 An authorized representative of King County, the City of Seattle, the Valley Com Cities and the EPSCA Cities shall provide written notice of its initial Board of Directors member and alternate 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 or alternate shall be effective upon delivery of written notice to the Chair of the Board of Directors. The notice shall include the name and contact information for the new member or alternate.

4.2.4 An authorized representative of King County, the City of Seattle, the Valley Com Cities and the EPSCA Cities shall promptly replace any vacancy in its Board of Directors member or alternate and may, at any time, replace its Board of Directors member or alternate by giving notice as provided in Section 4.2.3. If the County or the City of Seattle fails to fill a vacancy for its Board of Directors member and alternate, its chief executive officer or his/her designee shall attend all meetings until one of the vacancies is filled. If one of the groups of cities listed in Sections 4.2.1.3 or 4.2.1.4 fails to fill a vacancy for its Board of Directors member and alternate, then the chief executive officer or his/her designee of one of the cities in that group shall attend all meetings until one of the vacancies is filled.

4.2.5 The officers of the PSERN Operator shall consist of a Chair, Vice Chair, a Secretary, a Treasurer and such other officers and assistant officers as may be

deemed necessary and set forth in the bylaws. Any two or more offices may be held by the same person, except the offices of Chair and Secretary. The officers shall be elected from among the voting members of the Board. The Chair shall preside at the meetings of the Board of Directors. The Vice Chair shall serve in the absence of the Chair.

#### 4.3 Quorum and Meeting Procedures

4.3.1 A quorum for a meeting of the Board of Directors shall be all four of the Board members who have voting authority. Action by the Board of Directors shall require the affirmative vote of all four voting Board members, except as provided otherwise in this Agreement.

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 voting 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, User Agencies 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' voting members.

4.3.3 The Board of Directors shall establish bylaws and procedures for its operations and meetings including setting a regular meeting schedule and location, providing for the scheduling of special and emergency meetings, and providing for attendance by telephone or other electronic voice communication.

4.3.4 The regular meeting schedule shall be established by the Board of Directors, with a minimum of two meetings being held each calendar year. Special or emergency meetings may be called by the Chair or by at least two voting members of the Board.

4.3.5 The first meeting of the Board of Directors will be held as soon as practicable and necessary to begin operations of the PSERN Operator. The members described in Section 4.2.3 shall attend the meeting and shall elect a Chair and Vice Chair to serve a term that will begin upon election and extend through the remainder of that calendar year and the calendar year immediately following. Thereafter, the Board of Directors shall elect a Chair and Vice Chair at the final meeting of each year to allow each to serve a two-year term that will begin on January 1 of the following year.

4.3.6 The Board of Directors shall hold an annual meeting to coincide with the first regular meeting each year. During the annual meeting, the Executive Director shall report on the state of the PSERN Operator.

4.3.7 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. Any voting Board member may call for a vote on an issue. Meetings shall be conducted according to the most recent edition of

Robert's Revised Rules of Order unless otherwise directed by the Board of Directors.

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

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

4.3.10 An alternate attending Board of Directors meetings on behalf of a regular member of the Board shall be considered to be a member for purposes of that meeting and 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.

4.3.11 Notwithstanding any other provision in this Agreement, the Board of Directors may take action by three affirmative 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 or properly notified and scheduled special meetings in accordance with the bylaws and RCW 42.30, and (3) the same voting member failed to attend both meetings and failed to send an alternate. In this event, for this one action item only, a quorum of the Board of Directors will consist of three members.

#### 4.4 Board of Directors Actions

The PSERN Operator, through its Board of Directors, shall have all powers allowed by law for interlocal agencies created under RCW 39.34.030 and chapter 24.06 RCW, as they now exist or may hereafter be amended, and as authorized, amended, or removed by the Board of Directors, as provided for in this Agreement, and including but not limited to the following:

- a. Amend this Agreement, subject to Section 15.13;
- 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. Adopt and amend purchasing and contracting policies consistent with state law;
- f. Direct and supervise the activities of the Operating Board;



- g. Direct the activities of the Executive Director;
- h. If the Board determines that the Executive Director will be directly hired as an employee of the PSERN Operator, then the Board shall hire, set the compensation for, and be authorized to terminate the employment of the Executive Director.
- i. If the Board determines that the Executive Director will be a contracted employee from another governmental agency, the Board will contract for an "at will" employee approved by the Board and who may be terminated from the position by a unanimous vote by the Board.
- j. Evaluate the Executive Director's performance and give the Executive Director a written evaluation of his or her performance at least annually;
- k. Establish a fund or special fund or funds as authorized by RCW 39.34.030;
- l. Establish Service Rates in accordance with Exhibit A or any amendments thereto;
- m. Review and amend terms of use for User Agencies, as necessary;
- n. Conduct regular and special meetings;
- o. Approve PSERN operation and maintenance standards;
- p. Determine the Services the PSERN Operator shall offer and the terms under which they will be offered;
- q. Approve agreements with third parties;
- r. Incur financial obligations in the name of the PSERN Operator to make purchases or contracts for Services to implement the purposes of this Agreement; provided, however, nothing in this Agreement shall authorize the PSERN Operator to issue bonds or incur indebtedness in the name of any Party hereto or that shall be considered a debt or a guarantee of any Party hereto without its express written consent;
- s. 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;
- t. Sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all of its real or personal property, or any interest therein, and assets;

- u. Sue and be sued, complain and defend, in all courts of competent jurisdiction;
- v. Hold licenses for radio frequencies;
- w. Recommend action to the legislative bodies of the Parties and User Agencies;
- w. Delegate the Board of Directors' authority under this Agreement subject to any applicable law and to such limitations and conditions as the Board of Directors may establish;
- x. Enter into agreements with other agencies to accomplish tasks for the PSERN Operator such as agreements for services such as procurement and property leasing;
- y. Contract for staff through agreements with other agencies that specify the employment policies, compensations amounts, and supervisory structure that will apply to such staff;
- z. Exercise any powers necessary to further the goals and purposes of this Agreement that are consistent with the powers of the Parties;
- aa. Add parties to this Agreement and concurrently amend the membership of the Board of Directors, subject to the limitations of Section 15.13;
- bb. Take necessary actions to prepare and plan for a public safety radio system(s) to succeed the PSERN System;
- cc. To the extent permitted by law, accept loans or grants of funds from any federal, state, local or private agencies and receive and distribute funds; and
- dd. The PSERN Operator shall have no power to levy taxes.

#### 4.5 Impasse Resolution Procedure

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

4.5.2 Within seven (7) days of receipt of a notice of impasse, the Board Chair shall designate a mediator to assist the Board in resolving the impasse. The mediator shall be experienced in resolving disputes among public sector and/or nonprofit agencies and may not be an employee or consultant of any of the Parties, unless otherwise agreed to by the Parties.

4.5.3 The Parties agree that it is essential to the success of the PSERN System that any impasse be resolved as quickly as possible and accordingly agree to instruct their respective Directors 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 Directors. The mediator may recommend one or more non-binding alternatives for resolving the impasse. Regardless of the outcome of the mediation, the cost of the mediator's fees and expenses shall be divided into four equal parts to be paid by (1) the County, (2) the City, (3) the EPSCA Cities and the (4) Valley Com Cities. The EPSCA Cities and Valley Com Cities shall each be responsible for apportioning their one quarter share of the costs among their members and for informing the PSERN Operator of the apportionment. The PSERN Operator shall pay the mediator and invoice each Party for its share. Each Party shall pay the PSERN Operator within thirty (30) days of the Party's receipt of 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 Board of Directors 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 office designated by the Valley Com Cities. The Board of Directors and the EEC shall convene to consider the matter and attempt to reach a resolution, which may include re-submitting the matter for a Board of Directors vote, not later than twenty (20) days after the date the mediator provided his/her recommendation(s).

## **5.0 OPERATING BOARD**

The Board of Directors will create an Operating Board of PSERN System User Agencies, which will include at least one fire commissioner as a member, to provide advice and perform other duties as deemed appropriate by the Board of Directors. The obligation to create and maintain an Operating Board shall be included in the PSERN Operator's articles of incorporation or bylaws.

## **6.0 EXECUTIVE DIRECTOR**

If the Executive Director is directly hired as an employee of the PSERN Operator, the Board shall be responsible for the appointment and termination of the Executive Director. If the Board enters into an agreement with another governmental agency to contract for an Executive Director, the agreement shall give the Board the authority to appoint the Executive Director and to terminate the Executive Director from his/her position.

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

## 6.1 Executive Director Duties

The Executive Director shall:

- a. Manage the PSERN Operator's day-to-day activities consistent with applicable policies, procedures, and standards;
- b. Retain appropriate PSERN Operator staff either through the direct hire of such staff or through an agreement with an agency to provide such staff;
- c. Hire, evaluate, supervise, discipline, and terminate staff in compliance with applicable budget, policies, procedures, agreements and standards;
- d. Propose and administer Annual Budgets including a contingency;
- e. Consistent with applicable budget and procurement policies adopted by the Board, approve expenditures and sign contracts in amounts as established by the Board of Directors without additional approval of the Board of Directors;
- f. Track the performance of PSERN systems and Services;
- g. Provide support to the Board of Directors;
- h. Recommend policies, procedures, and standards, and changes thereto, including without limitation policies governing the procurement of goods, services, public works and improvements, staffing and emergency responses;
- i. Provide written monthly reports to the Board of Directors describing the PSERN Operator's budget status, PSERN System performance against targets, partial or full PSERN System outages, purchases equal to or greater than \$10,000, and usage statistics;
- j. Maintain and manage records in accordance with applicable state and federal laws and regulations;
- k. Prepare an annual report for the PSERN Operator as required by RCW 23.95.255; and
- l. Perform other duties as assigned by the Board of Directors.

## 6.2 Qualifications and Status of the Executive Director

The Executive Director shall have experience or comparable equivalent skills in the technical, financial and administrative fields of public safety radio and his or her appointment shall be on the basis of merit only. If the Executive Director is directly hired by the PSERN Operator, he/she will serve in 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 only be terminated from his or her position by the Board of Directors.

## **7.0 EMERGENCY PROCEDURES**

In the case of an emergency, the Executive Director shall have the authority to issue a determination of emergency under applicable law. The Executive Director shall communicate to the Board of Directors each decision made pursuant to any emergency determination as soon as reasonably possible and shall issue a written finding of the existence of the emergency no later than two weeks following the award of any contract executed pursuant to the emergency determination.

## **8.0 PSERN OPERATOR EMPLOYMENT**

### **8.1 Employees Generally**

The Board of Directors shall require the PSERN Operator to comply with all applicable federal, state and local laws, ordinances and regulations pertaining to all current and future employees. In addition, the PSERN Operator shall be an equal opportunity employer and make reasonable efforts to maintain a diverse work force.

### **8.2. Employment of Current Regular Employees**

#### **8.2.1 Offer of Employment**

8.2.1.1 As of the Effective Date of this Agreement, there are 3.0 FTE City of Seattle employees and 8.0 FTE King County employees who are employed to primarily work on KCERCS infrastructure and whose job duties will be assumed by the PSERN Operator after FSA ("Qualified Employees"). It is the intention of the Parties that each of those Qualified Employees have the option of working for the PSERN Operator and that the PSERN Operator and the County and City of Seattle will work cooperatively to transition the employees who accept such option to work for the PSERN Operator on a schedule that does not adversely impact public safety functions prior to FSA.

#### **8.2.1.2 Directly Hired Employees**

If the Board of Directors determines that PSERN Operator staff shall be directly hired by the PSERN Operator and to implement the intent of Section 8.2.1., then no later than the date to be set by the Board of Directors, the PSERN Operator will offer employment to each of the Qualified Employees for similar employment with the PSERN Operator. The offer shall remain open for no more than thirty (30) days unless otherwise determined by the Board of Directors. Each Qualified Employee who accepts the offer shall become a "Transferring Employee." The PSERN Executive Director shall use best efforts to ensure each Transferring Employee a smooth and prompt transition to employment with the PSERN Operator.

The Board of Directors shall require the PSERN Operator to use its best efforts to offer the Transferring Employees opportunities for professional advancement and a package of employee benefits that are similar to the opportunities and benefits available to the Transferring Employees at their current agency at the time of transition to PSERN employment.

#### 8.2.1.3 Agency-Provided Employees

If the Board of Directors determines that PSERN Operator staff will be contracted for through an agreement with another governmental agency, then no later than the date set by the Board of Directors, the agency providing such staff will offer employment to each of the Qualified Employees for similar employment with the agency for PSERN Operator work. The offer shall remain open for no more than thirty (30) days unless otherwise determined by the agency providing the PSERN Operator staff. Each Qualified Employee who accepts the offer shall become an "Agency Employee." The agency providing PSERN Operator staff shall use best efforts to ensure each Agency Employee a smooth and prompt transition to employment with the agency and work for the PSERN Operator.

#### 8.2.2 Retirement Benefits

If the Board of Directors determines that PSERN Operator staff shall be directly hired, then the PSERN Operator will participate in the Public Employees' Retirement System (PERS) and will offer PERS retirement benefits through the Washington State Department of Retirement Systems to Transferring Employees and Transitional Employees.

### 8.3 Temporary Employment of PSERN Transitional Employees

8.3.1 Any PSERN Transitional Employee who requests temporary employment with the PSERN Operator shall be employed as a temporary employee by the PSERN Operator or if the PSERN Operator does not directly hire its employees, then by the agency providing staff for the PSERN Operator.. The period of temporary employment shall not exceed eighteen (18) months from the time of transition to such employment or a shorter duration if requested by the PSERN Transitional Employee. The time of transition shall be within 60 days after FSA unless another date is agreed to by the PSERN Operator and the PSERN Transitional Employee.

8.3.2 While employed as temporary employees performing work for the PSERN Operator, PSERN Transitional Employees shall be entitled to a salary and package of benefits similar to what the Transitional Employee received prior to his or her transition to PSERN Operator work. The full cost of compensation, including salary and benefits, provided to PSERN Transitional Employees shall be paid by the PSERN Operator, either directly or pursuant to an agreement with another agency for the provision of staff.

8.3.3 While employed as temporary employees performing work for the PSERN Operator, PSERN Transitional Employees must meet all employment requirements applicable to permanent PSERN Operator employees or employees of the applicable employing agency. Nothing in this Agreement shall preclude the PSERN Operator's or applicable employing agency's ability to take employment action, up to and including termination of employment, regarding a PSERN Transitional Employee who fails to meet any requirement of his/her employment.

8.3.4 Nothing in this section shall preclude the PSERN Operator or an applicable employing agency from hiring a PSERN Transitional Employee serving as a temporary employee to a permanent position.

#### 8.4 No Third-Party Beneficiaries.

Employees affected by this Agreement are not intended to be third-party beneficiaries to this Agreement and cannot sue to enforce its terms.

### 9.0 Service Level Requirements

#### 9.1 Contractor Services

The PSERN Operator shall ensure the following services are provided by the Contractor throughout the expected service life of the PSERN System:

- (i) technical support;
- (ii) infrastructure repair;
- (iii) System updates; and
- (iv) System upgrades.

#### 9.2 Minimum Performance

The PSERN Operator shall ensure the following minimum performance requirements for the PSERN System:

- (i) DAQ 3.4;
- (ii) 97% reliability;
- (iii) 97% portable on-street coverage in the Primary Bounded Area;
- (iv) 95% portable on-street coverage in the Highway Buffer Covered Areas;
- (v) grade of service of 1.0;
- (vi) 99.999% availability of backhaul;
- (vii) at least 17db added signal above the baseline PSERN design within the three (3) polygon coverage areas shown in Exhibit B; and
- (viii) provide 97% portable on-street coverage with 97% SAR (service area reliability) in the three (3) polygon coverage areas shown in Exhibit B.

### 10.0 RESERVED

## **11.0 WITHDRAWAL AND REMOVAL**

### **11.1 Withdrawal of a Party**

11.1.1 A Party may withdraw from this Agreement effective on the last day of a calendar year by giving written notice to the Board at least two years prior to the proposed effective date for withdrawal.

11.1.2 Any Party that has given notice of its intent to withdraw must meet with the Executive Director or his or her designee to develop a departure plan that is intended to ensure an orderly separation of the Party from the PSERN Operator in a manner that is consistent with this Agreement. The departure plan may include the transfer of funds and equipment or other assets and such plan must be approved by unanimous vote of the Board of Directors.

#### **11.1.3 Costs of Withdrawal**

11.1.3.1 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 15.17 as surviving a withdrawal.

11.1.3.2 As a condition of withdrawal, the withdrawing Party must pay any direct costs resulting from the withdrawal. The Board of Directors may also set a different withdrawal date as it deems appropriate; however, the withdrawal date shall not be later than one year after the withdrawing Party's proposed withdrawal date.

11.1.3.3 Any costs or other amounts owed by a withdrawing Party under this Agreement or any other agreement between the withdrawing Party and the PSERN Operator shall be paid prior to the effective date of the withdrawal or, if such amounts are not then known or established, then within thirty (30) days after the amount is known or established. However, the withdrawing Party shall not be responsible for amounts not known or established within one hundred (100) days of the date of withdrawal.

11.1.4 A member of the Board of Directors representing a Party that has given notice of withdrawal which is effective at a future date, shall be authorized to cast votes with the Board of Directors only on budgets and other items to be implemented prior to the withdrawal date unless permission to vote on a matter is granted by all remaining Board members.

11.1.5 A Party that has given its notice of withdrawal may revoke its notice of withdrawal by delivering a written notice of such revocation to the Board of Directors. The Board, in its sole discretion, may by unanimous vote of the remaining members of the Board, determine to accept or deny the revocation and under what conditions any acceptance shall be permitted.

11.1.6 If a Party withdraws from this Agreement, the withdrawing Party will forfeit any and all rights it may have to PSERN System real, personal, or intellectual



property and any rights to participate in the PSERN Operator, unless otherwise provided by the Board of Directors.

## **11.2 Removal of a Board Member.**

The Board of Directors may, by majority vote and for cause, remove a Board member from the Board of Directors and terminate the Board member's right to participate in governance of the PSERN Operator. Immediately after the vote removing a Board member, the Party's alternate shall become its Board of Directors member. If the Party has not designated an alternate, the vacancy provisions in Section 4.2.4 shall apply. Cause for removal may include failure to act in good faith in participating in the Board of Directors and willful, arbitrary failure to perform the Board member's obligations as set forth in this Agreement.

## **12.0 DISSOLUTION AND TERMINATION**

12.1 Three (3) or more Directors may, at any one time, call for a vote on the complete dissolution of the PSERN Operator and termination of this Agreement. Upon both: (a) the affirmative vote of a majority of the full Board for dissolution and termination; and (b) the affirmative vote of a majority of the Parties' legislative bodies for dissolution and termination, the Board shall establish a task force to determine how the PSERN System assets and liabilities will be divided upon such dissolution and termination. For purposes of this section, each Party shall determine what constitutes an affirmative vote of its legislative body.

12.2 Approval of the plan for disposition of the PSERN System assets and liabilities (the "Disposition Plan") shall require a unanimous affirmative vote of the full Board. If the Board fails to approve the Disposition Plan within one (1) year of the last legislative body vote under Section 12.1.b, the Parties shall proceed with the impasse resolution procedures in Section 4.5.

12.3 Following the approval of the Disposition Plan, the PSERN Operator shall wind up business in accordance with the Disposition Plan and any other terms set by the Board. The Board shall set the date for termination of this Agreement by affirmative majority vote of the full Board.

## **13.0 LEGAL RELATIONS**

### **13.1 Employees and No Third Party Beneficiaries**

13.1.1 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.

13.1.2 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.

### 13.2 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 willful or negligent acts or omissions arising out of this Agreement. 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 that other Party. Where such claims, suits, or actions result from concurrent negligence of two or more Parties, these indemnity provisions 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 Section 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.

### 13.3 Insurance

The Board of Directors, Executive Director, and PSERN Operator shall take such steps as are reasonably practicable to minimize the liability of the Parties, including but not limited to the utilization of sound business practices. The Board of Directors shall determine which, if any, insurance policies or self-insurance programs for governmental entities authorized in the State of Washington may be reasonably and practicably acquired to cover liability exposures and other potential losses arising from the operations of the PSERN Operator and the activities of the Parties pursuant to this Agreement (which may include Directors and Officers, Commercial General Liability, Auto, Workers' Compensation, Stop Gap/Employer's Liability, errors and omissions, crime/ fidelity insurance, CyberRisk, property damage or loss), and shall direct the acquisition of same.

## 14.0 PUBLIC RECORDS

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

14.2 Each Party shall keep records related to the PSERN System and PSERN Operator as required by 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.

14.3 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 Board of Directors.

## **15.0 GENERAL**

### **15.1 RESERVED**

#### **15.2 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.

#### **15.3 Time of the Essence**

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

#### **15.4 Compliance with Laws**

During the term of this Agreement, the Parties hereto agree to comply with all federal, state, and local laws as necessary to carry out the terms of this Agreement. Further, to the extent that any emergency communication Services involve the retention, security, confidentiality or other handling of certain "protected" health information under the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and its implementing regulations thereunder by the U.S. Department of Health and Human Services and other applicable laws including chapter 70.02 RCW, the Washington Uniform Health Care Information Act, as amended, the Parties agree to comply with such laws and execute documents as necessary to implement the requirements under such laws.

#### **15.5 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.

#### **15.6 No Waiver**

No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver, excuse, or consent shall be in writing and signed by the Party or Parties claimed to have waived or consented. If the waiving or consenting Party is the PSERN Operator, then the writing must be signed by all of the voting members of the Board of Directors. 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.

#### 15.7 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.

#### 15.8 Nondiscrimination

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

#### 15.9 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 Board of Directors.

#### 15.10 Merger, Consolidation or Sale of All or Substantially All Assets

Approval of the merger or consolidation of the PSERN Operator with another entity, or the sale of all or substantially all assets of the PSERN Operator, shall require a unanimous vote of the Board of Directors.

#### 15.11 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 under Section 4.5. In any event, if the matter is not resolved, then any Party shall be entitled to pursue any legal remedy available.

#### 15.12 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.

#### 15.13 Amendments

15.13.1 Except as provided in this Section, the Agreement may be amended by the Board of Directors from time to time in order to carry out the corporate

purposes of the PSERN Operator. Any such modification shall be in writing and executed by the Chair of the Board of Directors after providing not less than thirty (30) days' advance written notice to all Parties of such proposed modification, and upon unanimous approval of the Board of Directors. However, the following terms of this Agreement may only be amended in writing after approval of each of the legislative bodies of Seattle, King County, EPSCA, and Valley Com; however, for purposes of this legislative determination, EPSCA and Valley Com will each be responsible to determine what constitutes legislative approval or disapproval from their member cities, before tendering their single vote on amendment:

- a. Expansion of the PSERN Operator's scope of services or Party funding obligations described in Section 3.0.
- b. The composition of the Board of Directors.
- c. Addition of new Parties.
- d. Voting rights of members of the Board of Directors.
- e. Powers of the Board of Directors.
- f. Hold harmless and indemnification requirements.
- g. Provisions regarding duration, dissolution, termination or withdrawal.
- h. The conditions of this Section.

15.13.2 Nothing in this Section 15.13 shall be construed to require legislative authority consent for the agreement to serve an additional User Agency.

#### 15.14 Notices

15.14.1 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, courier 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.

15.14.2 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.

#### 15.15 Conflicts

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

15.15.2 In the event of a conflict between any provision of this Agreement and a provision of the Implementation Period ILA, the Implementation Period ILA shall control unless otherwise determined by the Board of Directors pursuant to vote under Section 4.3.1.

#### 15.16 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.

#### 15.17 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.

#### 15.18 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 13	Legal Relations
Section 14	Public Records
Section 15.16	Choice of Law; Venue

#### 15.19 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.

#### 15.20 Execution

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**

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

\_\_\_\_\_  
Approved as to Form:

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

**CITY OF AUBURN**

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

Attest:

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

Approved as to Form:

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

**CITY OF BELLEVUE**

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

Attest:

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

Approved as to Form:

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

**CITY OF FEDERAL WAY**

\_\_\_\_\_  
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 KENT**

\_\_\_\_\_  
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 MERCER ISLAND**

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

Attest:

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

Approved as to Form:

/s/ Bio Park 09/28/2020

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



**CITY OF REDMOND**

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

Attest:

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

Approved as to Form:

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

**CITY OF RENTON**

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

Attest:

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

Approved as to Form:

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

**CITY OF SEATTLE**

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

Approved as to Form:

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

**CITY OF TUKWILA**

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

Attest:

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

Approved as to Form:

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

## **Exhibit A**

### **Cost Allocation Model**

For the first year of PSERN System operation, rates to be paid by each User Agency and Dispatch Center will be computed as provided in this Exhibit A. The PSERN System annual operating budget and the number of public safety radios, other radios, and consoles will be known quantities at the time the rates are computed.

#### Division of Budget Between Radios and Consoles

Percentage of annual budget to be paid with radio user fees = X.

Percentage of annual budget to be paid with console user fees = Y.

$X = \frac{[83\% \text{ of employee-related costs in the PSERN System annual operating budget} + \text{annual vendor costs for radio-related equipment}]}{\text{PSERN System annual operating budget}} \times 100.$

$Y = \frac{[17\% \text{ of employee-related costs in the PSERN System annual operating budget} + \text{annual vendor costs for console-related equipment}]}{\text{PSERN System annual operating budget}} \times 100.$

#### Public Safety and Other Radio Rates

X% of the PSERN System annual operating budget will be paid with public safety radio rates and other radio rates combined.

The other radio rate shall be 78% of the public safety radio rate.

$X\% \text{ of PSERN System annual operating budget} = [12 \times \text{the monthly public safety radio rate} \times \text{the number of public safety radios}] + [12 \times \text{the monthly other radio rate} \times \text{the number of other radios}].$

#### Console Rates

Y% of the PSERN System annual operating budget will be paid with console rates.

$Y\% \text{ of PSERN System annual operating budget} = 12 \times \text{the monthly console rate} \times \text{the number of consoles}.$

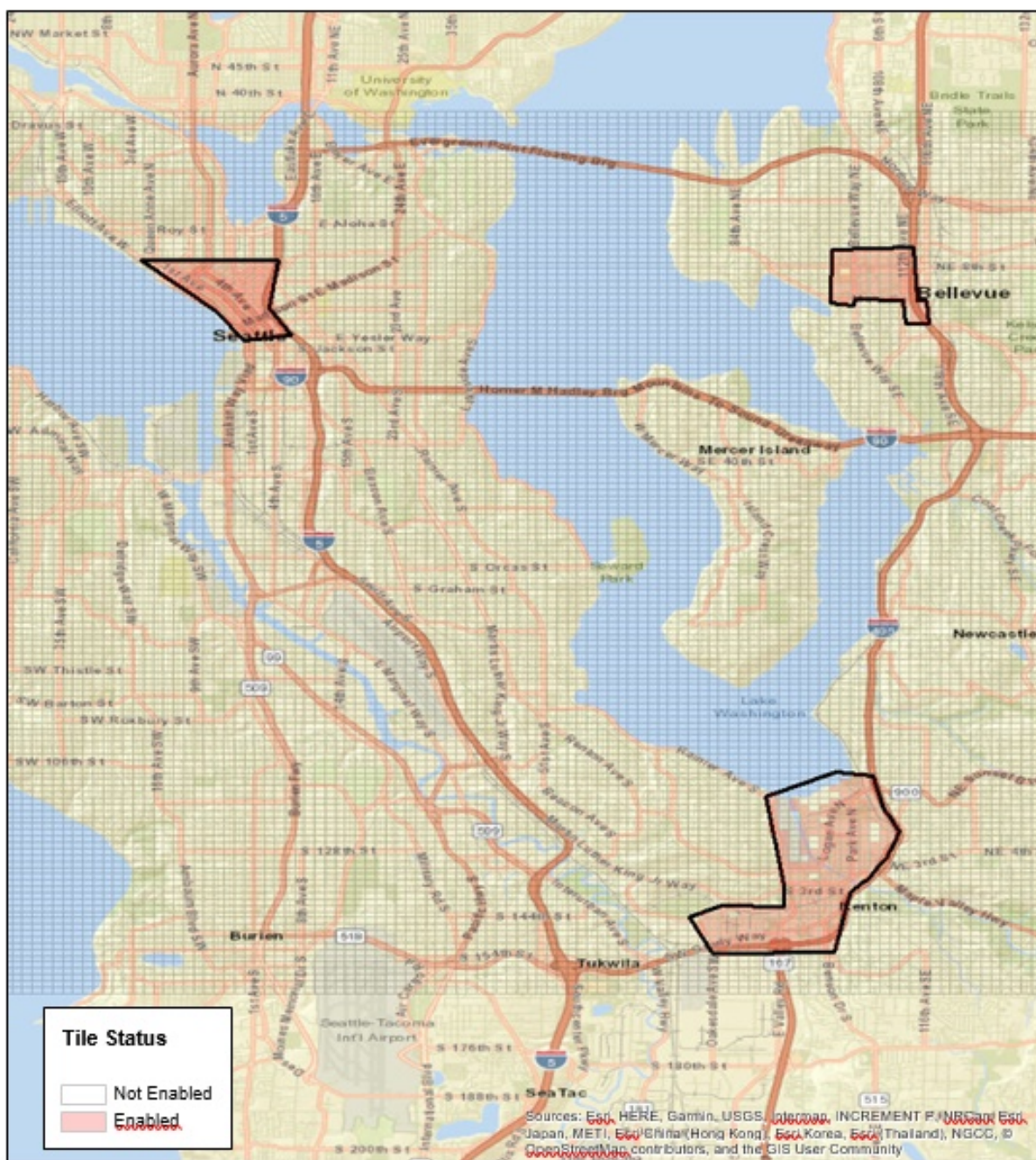
**END OF EXHIBIT A.**

## Exhibit B

### Polygon Coverage Areas with Added Signal



Puget Sound Emergency Radio Network  
May 17, 2019



PSERN 2018  
PSERN Job Buildout 2018 Baseline  
TBDH48  
TBDH48-ZBK15G3

Motorola Solutions Confidential Restricted

Pricing 7-1