

Adopted: 12/12//2018
Effective: 12/22/2018

SNOHOMISH COUNTY COUNCIL
SNOHOMISH COUNTY, WASHINGTON

ORDINANCE NO. 18-099

APPROVING AND AUTHORIZING THE COUNTY EXECUTIVE TO SIGN THE
INTERLOCAL AGREEMENT FOR EMERGENCY RADIO SYSTEM REPLACEMENT
BETWEEN SNOHOMISH COUNTY AND SNOHOMISH COUNTY EMERGENCY
RADIO SYSTEM

WHEREAS, the Snohomish County Emergency Radio System (“SERS) is a municipal instrumentality of its members, jointly organized by such members as a nonprofit corporation under chapter 24.06 RCW as expressly authorized by RCW 39.34.030(3)(b); and

WHEREAS, SERS owns and operates a radio system necessary to support emergency communications services; and

WHEREAS, SERS desires to replace the radio system necessary to support emergency communications services (“Emergency Public Radio System Replacement Project”); and

WHEREAS, SERS has negotiated a contract with Motorola, Inc., the successful bidder for the Emergency Public Radio System Replacement Project; and

WHEREAS, on November 6, 2018, the voters of Snohomish County approved Snohomish County Proposition 1, a sales tax increase of one-tenth of one percent to be used for emergency communication systems and facilities pursuant to RCW 82.14.420; and

WHEREAS, the County desires to provide SERS revenues to fund the Emergency Public Radio System Replacement Project; and

NOW, THEREFORE, BE IT ORDAINED:

Section 1. The County Council hereby adopts the foregoing recitals as findings of fact and conclusions as if set forth in full herein.

Section 2. The Snohomish County Council approves and authorizes the Snohomish County Executive, or designee, to execute the Interlocal Agreement between Snohomish County and Snohomish County Emergency Radio System, in the form attached hereto as Exhibit A.

1 PASSED this 12th day of December, 2019.

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3 SNOHOMISH COUNTY COUNCIL
4 Snohomish County, Washington

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9 Chairperson

10 ATTEST:

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14 Asst. Clerk of the Council

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16 () APPROVED
17 () EMERGENCY
18 () VETOED

19 DATE: 12-12-18

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23 for County Executive
24 ERIC PARKS
25 Deputy Executive

26 ATTEST:

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30 Approved as to form only:

31  11/19/18
32 Deputy Prosecuting Attorney
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EXHIBIT A

INTERLOCAL AGREEMENT FOR EMERGENCY RADIO SYSTEM REPLACEMENT BETWEEN SNOHOMISH COUNTY AND SNOHOMISH COUNTY EMERGENCY RADIO SYSTEM

THIS INTERLOCAL AGREEMENT, dated as of December 24, 2018, is made by and between Snohomish County (the “County”), a political subdivision of the State of Washington and Snohomish County Emergency Radio System (“SERS”), a municipal instrumentality of its members, jointly organized by such members as a nonprofit corporation created pursuant to chapters 39.34 and 24.06 RCW and an interlocal agreement effective July 1, 1999, as thereafter amended.

RECITALS

WHEREAS, the Snohomish County Emergency Radio System (“SERS”) is a municipal instrumentality of its members, jointly organized by such members as a nonprofit corporation under chapter 24.06 RCW as expressly authorized by RCW 39.34.030(3)(b); and

WHEREAS, SERS owns and operates a radio system necessary to support emergency communications services; and

WHEREAS, SERS desires to replace the radio system necessary to support emergency communications services (“Emergency Public Radio System Replacement”); and

WHEREAS, the Snohomish County Council, through Snohomish County Council Ordinance No. 18-037, authorized submitting to the qualified voters of Snohomish County, a ballot proposition for a sales tax increase to be used for emergency communication systems and facilities; and

WHEREAS, on November 6, 2018, the voters of Snohomish County approved Snohomish County Proposition 1, a sales tax increase of one-tenth of one percent to be used for emergency communication systems and facilities; and

WHEREAS, revenue raised from this additional sales tax will be expended for the following priority purposes: 1) repayment of bonds used to finance emergency communications equipment and infrastructure, 2) setting aside sufficient capital for future equipment replacements - including technology upgrades and infrastructure improvements, and 3) providing funds for maintenance and operation costs paid by system users; and

WHEREAS, the County wishes to provide SERS revenues from the sales tax increase to fund the Emergency Public Radio System Replacement including project management costs, and other priorities identified by the County as authorized by RCW 82.14.420; and

WHEREAS, this Agreement is authorized by the Interlocal Cooperation Act (chapter 39.34 RCW);

NOW THEREFORE, in consideration of the promises and agreements contained in this Agreement and subject to the terms and conditions set forth herein, it is mutually understood and agreed by the parties as follows:

SECTION 1. INTENT AND PURPOSE

It is the intent and purpose of this Agreement to memorialize the terms by which the County will provide SERS funds from Snohomish County Financing and Sales Tax Revenues to fund the Emergency Public Radio System Replacement including project management costs, and other priorities identified by the County as authorized by RCW 82.14.420.

The parties agree that it is in the public interest to finance, acquire, install, operate, maintain, and repair the Emergency Public Radio System Replacement for public safety. The parties agree that no separate legal entity will be created to fulfill the purposes of this Agreement.

SECTION 2. TERM OF AGREEMENT

This Agreement shall commence on upon filing and/or posting as required by chapter 39.34 RCW and continue through [insert date]. Thereafter, this Agreement shall be of infinite duration, subject to termination provisions contained herein.

SECTION 3. DEFINITIONS.

Capitalized terms used in this Agreement shall have the following meanings:

a. Agreement. “Agreement” means this Interlocal Agreement For Emergency Radio System Replacement Between Snohomish County and SERS, as it may hereafter be further amended or modified from time to time, together with all exhibits and appendices hereto, as they may hereafter be amended or modified.

b. Emergency Public Safety Radio System. The “Emergency Public Safety Radio System” or “Radio System” is the Snohomish County emergency radio system developed, owned and operated by SERS and its successors or assigns.

c. Emergency Public Radio System Replacement. The “Emergency Public Radio System Replacement” or “Radio System Replacement” is the project to upgrade the Emergency Public Safety Radio System as contemplated by Snohomish County Ordinance No. 18-037 and as evidenced by the contract agreement between SERS and Motorola executed on December 6, 2018. The Emergency Public Radio System Replacement costs are those associated with the procuring, constructing, and readying for use the system purchased by SERS from Motorola, Inc..

d. State. “State” means the state of Washington.

e. Sales Tax Revenues. “Sales Tax Revenues” means revenue from the sales tax increase authorized by the electorate of Snohomish County on November 6, 2018, and appropriated on an annual basis by Snohomish County for purposes set forth in RCW 82.14.420

f. Snohomish County Financing. “Snohomish County Financing” means revenue from Snohomish County, including debt proceeds derived from a Snohomish County interfund loan(s), bond issuance, or other sources as determined by the County.

SECTION 4. OWNERSHIP.

Except as otherwise specifically addressed in this Agreement or amendment hereto or any user agreements (for subscriber equipment), SERS, or its successors and assigns shall acquire, construct, receive, own, maintain, and operate the Emergency Public Radio System Replacement.

SECTION 5. FUNDING; BUDGET REQUEST

a. Initial Funding. Snohomish County shall provide an amount not to exceed \$3.5 million to SERS for the first milestone payment to Motorola, Inc., for the Emergency Public Radio System Replacement.

b. Emergency Communication Systems and Facilities Fund. The County shall deposit all Sales Tax Revenues and Snohomish County Financing into an Emergency Communication Systems and Facilities Fund established exclusively to account for the County’s receipt and disbursement of funds for the Emergency Public Radio System Replacement and other expenses as allowed by RCW 82.14.420.

c. Budget Request. On or prior to June 30th of each year, SERS shall prepare an annual budget request, in conjunction with a recommendation from the Advisory Board as set forth in SCC 4.30.070, for procuring, constructing, and readying for use of the Emergency Public Radio System Replacement, and other expenses allowed by RCW 82.14.420. For the 2019 fiscal year, SERS shall provide its annual budget request, in

conjunction with a recommendation from the Advisory Board as set forth in SCC 4.30.070, to the County by January 30, 2019.

d. Annual Appropriation. The County, through its normal budget process shall consider SERS annual budget request and adopt an annual appropriation from the Emergency Communication Systems and Facilities Fund as it deems appropriate.

e. Priorities of Annual Appropriation.

The County shall appropriate funds from the Emergency Communication Systems and Facilities Fund in the following order of priority:

- i. From the effective date of this Agreement through September 30, 2019, the County shall appropriate funds for Initial Funding as detailed above.
- ii. From April 1, 2019, through December 31, 2019, the County will retain Sales Tax Revenue to create a cash flow reserve in the Emergency Communication Systems and Facilities Fund.
- iii. From January 1, 2019 through December 31, 2024, Snohomish County shall distribute Snohomish County Financing to SERS on a invoiced-monthly basis to pay for the procuring, constructing, and readying for use of the Emergency Public Radio System Replacement. The County shall provide funds to SERS for its milestone payments to Motorola, Inc., for the procuring, constructing, and readying for use of the Emergency Public Radio System Replacement. Milestone payments are due 30 days after receipt of invoice from SERS.
- iv. From January 1, 2020 through December 31, 2035, the County shall appropriate Sales Tax Revenue first to pay all current debt service payments associated with Snohomish County Financing. The County may appropriate any or all remaining Sales Tax Revenues to SERS. In the event that actual Sales Tax Revenue receipts are less than the appropriated amount to pay debt service payments and the SERS appropriation, the debt service payments shall take priority. The County shall pay SERS for expenses authorized under RCW 82.14.420 on a monthly basis within 30 days receipt of invoice, or on any other schedule proposed by SERS in its budget request and approved by the County Council, and as administered by the County Executive.

f. Eligible Uses. SERS shall only use Sales Tax Revenues received from the County for eligible uses as required by RCW 82.14.420. SERS shall only use Snohomish County Financing for the procuring, constructing, and readying for use of the Emergency Public Radio System Replacement.

SECTION 6. AUDIT

SERS shall maintain adequate records to support its budget request. Said records shall be maintained for a period of seven (7) years after completion. The County or any of its duly authorized representatives shall have access at reasonable times to any books, documents, papers and records of SERS that are directly related to this Agreement for the purposes of making audit examinations, obtaining excerpts, transcripts or copies, and ensuring compliance by the County with applicable laws. Expenditures by SERS that are determined by audit to be ineligible for reimbursement and for which payment has been made to SERS, shall be refunded to the County by SERS.

SECTION 7. AMENDMENT OF AGREEMENT.

No changes or additions shall be made in this Agreement except as agreed to by both parties, reduced to writing and executed with the same formalities as are required for the execution of this Agreement.

SECTION 8. TERMINATION OF AGREEMENT; DISSOLUTION.

This Agreement may be terminated for any reason at any time prior to its expiration upon sixty (60) days' prior written notice by one party to the other after completion and final acceptance of the Emergency Public Radio System Replacement project contract by and between SERS and Motorola. This Agreement may be terminated by mutual agreement at any time.

SECTION 9. DISPUTE RESOLUTION.

a. Whenever any dispute arises between the County and SERS (referred to collectively in this Section as the "parties") under this Agreement that is not resolved by routine meetings or communications, the parties agree to seek resolution of such dispute by the process described in this Section.

b. The parties shall seek in good faith to resolve any such dispute or concern by meeting, as soon as feasible.

c. If the parties do not come to an agreement on the dispute or concern, any party may request mediation through a process to be mutually agreed to in good faith between the parties within 30 days, which may include binding or nonbinding decisions or recommendations (whichever is mutually agreed to). The mediator(s) shall be mutually agreed upon and shall be skilled in the legal and business aspects of the subject matter of this Agreement. The parties shall share equally the costs of mediation and assume their own costs.

SECTION 10. INVENTORY AND PROPERTY

SERS shall maintain and bi-annually update an inventory of capital assets and equipment purchased with Sales Tax Revenues that it owns. SERS shall bi-annually provide this inventory to the County. Property purchased by SERS with Sales Tax Revenues shall be owned, maintained, and replaced by SERS.

SECTION 11. INSURANCE.

SERS shall determine which insurance coverages or self-insurance programs for governmental entities authorized in the State of Washington may be reasonably and practicably acquired to cover its liability exposures and other potential losses arising from the operations of the radio communications system 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.

SERS shall include all the County as an additional insured under all applicable policies.

SECTION 12. INDEMNIFICATION AND HOLD HARMLESS.

The parties acknowledge and agree that the sole role of the County in this Agreement is as a funding source only and the County has no role in the activities, services and or deliverables of SERS. Therefore the parties agree as follows: to the maximum extent permitted by law and except to the extent caused by the sole negligence of the County SERS shall indemnify and hold harmless the County, their officers, officials, agents and employees, from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatsoever kind or nature arising out of, in connection with, or incidental to the services and/or deliverables provided by or on behalf of the SERS under this Agreement. In addition, SERS shall assume the defense of the County its officers and employees in all legal or claim proceedings arising out of, in connection with, or incidental to such services and/or deliverables and shall pay all defense expenses, including

reasonable attorneys' fees, expert fees and costs incurred by the County on account of such litigation or claims.

The above indemnification obligations shall include, but are not limited to, all claims against the County by an employee or former employee of SERS or its subcontractors, and SERS, by mutual negotiation, expressly waives all immunity and limitation on liability, as respects only the County under any industrial insurance act including Title 51 RCW, other worker's compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim.

In the event that the County or SERS incurs any judgment, award and/or cost including attorneys' fees arising from the provisions of this section, or to enforce the provisions of this section, any such judgment, award, fees, expenses and costs shall be recoverable from the other Party.

In addition to injuries to persons and damage to property, the term "claims," for purposes of this provision, shall include, but not be limited to, assertions that the use or transfer of any software, book, document, report, film, tape, or sound reproduction or material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, and/or otherwise results in an unfair trade practice.

The indemnification, protection, defense and save harmless obligations contained herein shall survive the expiration, abandonment or termination of this Agreement.

Nothing contained within this provision shall affect or alter the application of any other provision contained within this Agreement.

Both Parties shall give the other Party proper notice as provided herein of any claim or suit coming within the purview of these indemnities. Termination of this Agreement, shall not affect the continuing obligations of the Parties as indemnitor hereunder with respect to those indemnities and which shall have occurred prior to such Termination.

SECTION 13. INTERGOVERNMENTAL COOPERATION.

SERS shall cooperate with local, State and federal governmental agencies in order to maximize the utilization of any grant funds for equipment and operations and to enhance the effectiveness of SERS's operations and minimize costs of service delivery.

SECTION 14. NOTICE.

Notices required to be given to SERS under the terms of this Agreement shall be directed to the following unless all Principals are otherwise notified in writing:

SERS

ATTN: Executive Director
14900 40th Ave. NE #102
Marysville, WA 98271

Notices to the County shall be directed to the following:

Executive Office
3000 Rockefeller Ave, MS 407
Everett, WA 98201

SECTION 15. COMPLIANCE WITH LAWS; COMPLIANCE WITH GRANT TERMS.

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 services under this Agreement 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.

The Contractor shall comply with any and all conditions, terms and requirements of any federal, State or other grant, if any, that wholly or partially funds the Contractor’s work hereunder.

SECTION 16. VENUE; GOVERNING LAW.

The venue for any action related to this Agreement shall be in the Superior Court in and for Snohomish County, Washington at Everett, Washington, or if applicable, in Federal District Court, Western District of Washington.

This Agreement shall be governed by the laws of the State of Washington.

SECTION 17. NO THIRD PARTY BENEFICIARIES.

There are no third-party beneficiaries to this Agreement. No person or entity other than a party to this Agreement shall have any rights hereunder or any authority to enforce its provisions, and any such rights or enforcement must be consistent with and subject to the terms of this Agreement. In addition to the foregoing, nothing in this Agreement is intended to create a special relationship or other basis for third party liability.

SECTION 18. SEVERABILITY.

The invalidity or any clause, sentence, paragraph, subdivision, section or portion of this Agreement shall not affect the validity of the remainder of this Agreement.

SECTION 19. ASSIGNMENT

As contemplated by that certain AMENDED AND RESTATED SNOHOMISH COUNTY REGIONAL PUBLIC SAFETY COMMUNICATIONS AGENCY INTERLOCAL AGREEMENT, dated as of January 1, 2019, and as permitted by Resolution No. 18-01 adopted by the SERS Board of Directors on October 4th, 2018 and Resolution No. 2018-17 adopted by the Snohomish County 911 Board of Directors on October 4, 2018, Snohomish County 911 SERS will be merged into Snohomish County 911 as provided as of January 1, 2019. The parties agree that as of January 1, 2019, Snohomish County 911 will assume all rights and responsibilities of SERS under this Agreement. Except as otherwise provided for by this Agreement, SERS shall not subcontract, assign, or delegate any of its rights, duties or obligations covered by this Agreement without prior express written consent of the County.

SECTION 20. PUBLIC RECORDS

This Agreement and all public records associated with this Agreement shall be available from the County for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the SERS are needed for the County to respond to a request under the Act, as determined by the County, SERS agrees to make them promptly available to the County. If SERS considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, SERS shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by SERS and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify SERS (a) of the request and (b) of the date that such information will be released to the requester unless SERS obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If SERS fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of SERS to claim any exemption from disclosure under the Act. The County shall not be liable to the Contractor for releasing records not clearly identified by SERS as confidential or proprietary. The County shall not be liable to SERS for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

SECTION 21. FORCE MAJEURE

If either party is unable to perform any of its obligations under this Agreement as a direct result of an unforeseeable event beyond that party's reasonable control, including but not limited to an act of war, act of nature (including but not limited to earthquake and flood), embargo, riot, sabotage, labor shortage or dispute (despite due diligence in obtaining the same), or governmental restriction imposed subsequent to execution of the Agreement (collectively, a "force majeure event"), the time for performance shall be extended by the number of days directly attributable to the force majeure event. Both parties agree to use their best efforts to minimize the effects of such failures or delays.

SECTION 22. AUTHORITY

Each signatory to this Agreement represents that he or she has full and sufficient authority to execute this Agreement on behalf of the County or SERS, as the case may be, and that upon execution of this Agreement it shall constitute a binding obligation of the County or the Contractor, as the case may be.

SECTION 23. SURVIVAL

Those provisions of this Agreement that by their sense and purpose should survive expiration or termination of the Agreement shall so survive.

IN WITNESS WHEREOF, this Agreement shall be effective as of the date set forth above.

SNOHOMISH COUNTY

SERS

SUSAN NEELY
Executive Director

By: *Susan Neely*
Snohomish County Executive

By: *Jan Gehring*

Date: 12-24-18

Date: 12/06/18

COUNCIL USE ONLY
Approved: 12.12.18
Docfile: D-19