

RESOLUTION NO. 1611

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON AUTHORIZING THE EXECUTION OF AN AMENDED AND RESTATED INTERLOCAL AGREEMENT FOR COMMUNICATIONS SERVICES TO ADD THE CITY OF PUYALLUP AS A MEMBER AGENCY; AUTHORIZE 63-20 FINANCING; INCORPORATE PROVISIONS RELATING TO THE RESPONSIBILITIES OF MEMBER AGENCIES IN THE EVENT OF FUTURE SHORTFALLS IN TAX COLLECTIONS; AND UPDATE OUTDATED LANGUAGE.

WHEREAS, in 2011, Pierce County, the City of Tacoma, the City of Lakewood, and Pierce County Fire Protection District No. 3 (West Pierce Fire & Rescue) (“Member Agencies”) executed an Interlocal Agreement for Communications Services (“Agreement”) for the purpose of providing consolidated public safety communications services under a new emergency communications agency entitled South Sound 9-1-1 Agency (“Agency”), and

WHEREAS, on the November 8, 2011, General Election ballot, Pierce County voters approved Proposition No. 1, authorizing a county-wide, one-tenth of one percent local sales and use tax to fund costs associated with financing, design, acquisition, construction, equipping, operating, maintaining, remodeling, repairing and re-equipping the county’s 9-1-1 emergency communication system and facilities infrastructure, and

WHEREAS, since the adoption of the original Agreement, the Agency has been working to identify additional regional partners, and

WHEREAS the City of Fife was added as a Member Agency in 2012, and

WHEREAS, it is necessary to add the City of Puyallup as a Member Agency to the Agreement, and

WHEREAS, Section 16C of the Agreement states that Pierce County can, at its discretion, issue bonds on behalf of the Agency for the purpose of financing the capital assets required by the Agency, but required, in part, that all Member Agencies would enter into formal signed agreements which would identify how the Agency would continue to meet its payment obligations if the dedicated sales tax ever became unavailable or insufficient, and

WHEREAS, the Member Agencies entered into a Memorandum of Agreement

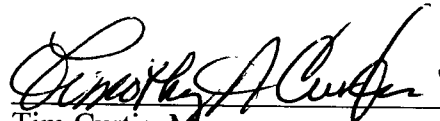
on July 13, 2013, to facilitate the bonding of a regional radio upgrade, including radio network infrastructure, dispatch consoles, and public safety radios, and

WHEREAS, the Agency has completed preliminary planning for the development of a consolidated regional dispatch and records center, and is contemplating utilizing a 63-20 financing methodology through Pierce County, and

WHEREAS, the Member Agencies have also negotiated a number of additional amendments, to include authorizing 63-20 financing and incorporating similar provisions to the July 13, 2014, Memorandum of Agreement regarding the responsibilities of Member Agencies in the event of a future shortfall in tax collections; updates to outdated language due to completion of activities originally included in the Agreement; and changes to terminology; Now, Therefore,

BE IT RESOLVED that the Fife City Council hereby authorizes the City Manager to execute the Amended and Restated Interlocal Agreement for Communications Services substantially in the form attached hereto.

ADOPTED by the City Council at an open public meeting held on the 8th day of August, 2014.


Tim Curtis, Mayor

Attest:


for Carol Etgen, City Clerk

AMENDED AND RESTATED

INTERLOCAL AGREEMENT FOR COMMUNICATIONS SERVICES

THIS INTERLOCAL AGREEMENT (“Agreement”), made and entered into by and among PIERCE COUNTY, the CITY OF TACOMA, the CITY OF LAKEWOOD, the CITY OF FIFE, the CITY OF PUYALLUP and PIERCE COUNTY FIRE PROTECTION DISTRICT NO. 3 (WEST PIERCE FIRE & RESCUE) (“Parties”) who are signatories to the Agreement.

WHEREAS, prior to November 2011, existing public safety communications systems, including public safety answering point (PSAP) facilities and radio system infrastructure, required updating and new technologies to meet future demands; and

WHEREAS, the Parties and the residents of Pierce County benefit both in terms of efficiency and economy from a communications system consolidated into a single agency for the purpose of providing public safety communications services to Pierce County and the cities and fire protection districts within Pierce County; and

WHEREAS, Chapter 39.34 RCW, the Interlocal Cooperation Act, authorizes the Parties to enter into an interlocal agreement for the joint provision of communication services; and

WHEREAS, radio systems infrastructure is an integral part of communications between public safety officials in the field and dispatch facilities; and that such radio systems infrastructure are currently – and will continue to be – owned, operated and maintained by Pierce County, the City of Tacoma, City of Fife, City of Puyallup and West Pierce Fire & Rescue; and

WHEREAS, the Parties desire that radio systems infrastructure be upgraded, maintained and operated to ensure such systems operate reliably; and that adequate funding will be provided to radio systems infrastructure owners to accomplish such upgrades; and

WHEREAS, Pierce County is an existing governmental structure encompassing the entire geographic, economic and population region to be served and has established, in collaboration with those agencies served, an emergency communications agency with the capability of providing consolidated communication services to the Parties; and

WHEREAS, Chapter 82.14.420 RCW, Sales and Use Tax for Emergency Communication Systems and Facilities, authorizes a county legislative authority to submit an authorizing proposition to the county voters in order to allow the county legislative authority to fix and impose a sales and use tax for the purpose of providing funds for emergency communications systems and facilities; and

WHEREAS, the Pierce County Council did submit such a proposition to the voters in November 2011, and a majority of such voters did approve such a proposition, enabling the establishment of a new consolidated emergency communications agency; and

WHEREAS, Chapter 82.14.420 RCW requires that prior to submitting such sales and use tax to the voters, a county with a population of more than five hundred thousand in which any City over fifty thousand operates emergency communication systems and facilities shall enter into an interlocal agreement with the City to determine distribution of the revenue; and

WHEREAS, since the foregoing statute applied, the Original Parties determined that an interlocal agreement was appropriate and therefore entered into an Interlocal Agreement for Communications Services ("the Original ILA") to which this Amended and Restated Interlocal Agreement is the successor; and

WHEREAS, pursuant to the Original ILA, a new emergency communications agency known as South Sound 911 has been formed to provide consolidated communications for all of Pierce County; and

WHEREAS, the staff and personnel of the Law Enforcement Support Agency (LESA) have now become employees or personnel of South Sound 911, and the City of Tacoma Fire Department communications personnel, West Pierce Fire & Rescue (Fire Comm) communications personnel, Fife Dispatch communications personnel, and the City of Puyallup (City Comm) communications personnel are an integral component of South Sound 911 even as they may remain employed by separate employers; and

WHEREAS, it is the intent to continue the employment of existing operational staff and personnel of the City of Tacoma, the City of Fife, the City of Puyallup (City Comm) and West Pierce Fire and Rescue (Fire Comm) to the extent practicable within South Sound 911 through a variety of methods including, but not limited to, direct Agency employment and/or interlocal agreements with existing employers;

WHEREAS, by Amendment No. 1 to the Original ILA, executed in 2013, the Original Parties added the City of Fife to the Member Agencies participating in South Sound 911; and

WHEREAS, South Sound 911 executed a Participation Agreement with the City of Puyallup in 2014, agreeing to add the City of Puyallup to the Member Agencies participating in South Sound 911; and

WHEREAS, now the Parties deem it necessary and appropriate to amend and restate the Interlocal Agreement between the Parties to bring it up to date, given all that has occurred since 2011 when the Original ILA was executed by the Original Parties, and to add the City of Puyallup to the Policy Board and the Operations Board, and to make other clarifying changes to the Original ILA, particularly with regard to financing of an agency facility housing communications dispatch and municipal emergency operations co-located with the fire services dispatch center and supporting radio communications infrastructure; and

WHEREAS, in addition to revenue generated by the sales and use tax, revenue may be generated by other means in order to address specific capital needs; and

WHEREAS, revenue needed to finance interoperable radios was generated by the issuance of bonds through Pierce County as agreed between the Original Parties; and

WHEREAS, revenue needed to finance a hybrid facility to serve the communications dispatch and municipal emergency operations co-located with fire services dispatch is best served through the issuance of 63-20 bonds which will be a general obligation of Pierce County pursuant to this agreement reached by the Member Agencies.

NOW THEREFORE, the Parties agree as follows:

1. The foregoing recitals are incorporated into and are a part of this Agreement.
2. **Purpose.** It is the purpose of this Agreement to provide consolidated communications services for the parties hereby benefiting from them in terms of efficiency and economy.
3. **Transition.** The Operations Board, in conjunction with the Executive Director, shall develop a transition plan for Policy Board approval.
4. **Definitions.** As used in this Agreement the words and phrases in this Section shall have the meanings indicated unless the context clearly requires otherwise.
 - A. "Agency" shall mean South Sound 911.
 - B. "Assessments" shall be costs for communication services to Member Agencies that are over and above projected revenues from sales and use taxes, the recently approved 20 cent Next Generation 911 tax, grants, and contracts.
 - C. "Communication Services" shall include 24 hour dispatch for law enforcement services and fire services, radio system operations, or any communication service recommended by the Operations Board and approved by the Policy Board.
 - D. "County" shall mean Pierce County.
 - E. "Executive Director" is responsible for the management and day to day operation of the Agency, including signing contracts up to \$50,000.
 - F. "Fees" shall be billed costs for extraordinary services provided to Member Agencies and services to Non-Member Agencies. Fees are separate from and may be in addition to member agency Assessments.
 - G. "Funding Formula" shall describe how Member Agencies are assessed within each specific service (i.e., law enforcement and fire service).
 - H. "General Obligations" for purposes of this agreement shall be those general obligations issued for the sole purpose of constructing the facility approved by all Member Agencies as described in 16(E) of this agreement (herein referred to as "General Obligations") to which Pierce County's full faith and credit are pledged and which are incurred only after meeting the requirements detailed in this agreement.

I. "Member Agencies" are the following agencies who are currently or will become Parties to this Agreement that receive communication services:

- i. Pierce County
- ii. City of Tacoma
- iii. City of Lakewood
- iv. Pierce County Fire Protection District No. 3 (West Pierce Fire & Rescue)
- v. City of Fife
- vi. City of Puyallup
- vii. All municipalities or special district that becomes a party to this Agreement

J. "Non-Member Agency" shall be any entity receiving communication services which is not a Member Agency and which is not or does not become a Party to this Agreement.

K. "Service Specific" shall relate to projects that address the needs of only law enforcement, or only fire service.

5. Provision of Communications Services.

A. The Agency shall be responsible for providing communications services pursuant to this Agreement either directly, or by contract or similar agreement or arrangement.

B. The Agency, through the Policy Board, may contract with Non-Member Agencies to provide South Sound 911 services. These Non-Member Agencies shall pay Fees for these services as established by the Policy Board.

6. Personnel.

A. As of a "Transition Date" in December of 2012, former LESA employees became employees of South Sound 911, and all existing collective bargaining agreements, personnel rules and regulations, civil service system, accrued benefits and other legal rights of such former employees of LESA were honored by South Sound 911. Former LESA employees who were members of the Tacoma Employees Retirement System remained such as South Sound 911, and former LESA employees who were members of the Washington State Public Employees Retirement System (PERS) remained as such. New hires will be in PERS.

B. All employees of the Agency will be subject to any employment rules and regulations adopted by the Policy Board, except as these may be modified by collective bargaining agreements or this Agreement. The Policy Board shall be responsible for ratification of collective bargaining agreements for Agency employees.

7. Policy Board.

A. There is hereby established a Policy Board consisting of the following elected or appointed officials who are representatives of the Member Agencies, or their designees:

- i. One member of the Pierce County Council;
- ii. The Pierce County Executive;
- iii. The Mayor of Tacoma;

- iv. One member of the Tacoma City Council;
- v. The Mayor or one member of the Lakewood City Council;
- vi. The Pierce County Sheriff;
- vii. The Mayor or one member of the Fife City Council;
- viii. The Mayor or one member of the Puyallup City Council;
- ix. One Fire Commissioner of West Pierce Fire & Rescue;
- x. One Mayor or Council member of a city or town within Pierce County with a population under (50,000) fifty-thousand residents, provided that such city or town contracts with South Sound 911 or a Member Agency. Such position shall be filled for two-year terms by appointment through a vote of the Policy Board.

B. The responsibilities of the Policy Board shall be as follows:

- i. Develop appropriate board governance procedures, such as by-laws, and appoint a Chair.
- ii. Budget approval.
- iii. Approval of contracts in excess of \$50,000.00 as recommended by the Executive Director.
- iv. Approval of policies for expenditures of budgeted items, personnel, travel and training for the Agency.
- v. Confirming appointment of the Executive Director as recommended by the Operations Board. In the event of a tied vote on the Operations Board regarding termination of the Executive Director, the Policy Board may remove the Executive Director by majority vote.
- vi. Setting the salary range for the Executive Director.
- vii. Reviewing and/or changing the Funding Formula as necessary to assure fair and equitable funding of the Agency.
- viii. Ratification of Collective Bargaining Agreements for Agency employees.
- ix. Adoption of personnel rules and regulations for Agency employees.
- x. Setting Assessments and Fees.

8. Operations Board.

A. There is hereby established an Operations Board under authority of the Policy Board. The members of the Operations Board will be the members of the Law Enforcement Services and Fire Services Committees. Each committee will have (1) one vote. If the Operations Board cannot reach consensus, the deciding vote will be cast by the Policy Board.

B. The responsibilities of the Operations Board shall be as follows:

- i. Develop appropriate board governance procedures, such as by-laws, and appoint a Chair.
- ii. Recommend appointment of the Executive Director subject to confirmation by the Policy Board.
- iii. Supervise the Executive Director, through its Chair, to include an annual performance appraisal. Terminate the Executive Director, when appropriate. In the event of a tied vote on the Operations Board regarding termination of the Executive Director, the Policy Board may remove the Executive Director by majority vote.
- iv. Develop operational priorities, policies and procedures.

- v. Review requests for additional communications services and determine if such services should be provided. If approved by a majority of the Operations Board, provide the Policy Board with the recommendation and cost for the additional services.
- vi. Ensure that the law enforcement service data communications network and any Criminal History Records Information received by means of such network shall be used solely for the purposes of the administration of the criminal laws or for the purposes enumerated in the Revised Code of Washington.
- vii. Ensure that the fire service data communications network and any Protected Health Information Records received by means of such network shall be used solely for the purposes of providing medical treatment or for the purposes defined within State and Federal law.
- viii. Any action by the Operations Board requires at least 1 representative from each service.
- ix. Set the salary of the Executive Director within the range established by the Policy Board

9. Law Enforcement Services Committee.

A. There is hereby established a Law Enforcement Services Committee under authority of the Operations Board consisting of the following members or their designee:

- i. Pierce County Sheriff's designee.
- ii. Tacoma Police Chief.
- iii. Lakewood Police Chief.
- iv. Fife Police Chief
- v. Puyallup Police Chief
- vi. One (1) Law Enforcement representative for each jurisdiction that joins the Agency.

B. The responsibilities of the Law Enforcement Services Committee shall be as follows:

- i. Make recommendations on operational priorities, policies and procedures related to law enforcement specific issues.
- ii. Make recommendations on operational priorities, policies and procedures related to the Law Enforcement PSAP.
- iii. Recommend any necessary rules and regulations governing access to, security for, and operation of the data communications network and any Criminal Justice Records Information received by or through means of such network. Such rules and regulations shall be consistent with the provisions and requirements of the Revised Code of Washington.

C. Voting:

- i. Voting within the Law Enforcement Committee will be determined by the number of Law Enforcement commissioned officers within a Member's Agency compared to the total number of Law Enforcement commissioned officers represented by the whole Law Enforcement Services Committee.

10. Fire Services Committee.

A. There is hereby established a Fire Services Committee under authority of the Operations Board consisting of the following members or their designee:

- i. Tacoma Fire Chief.
- ii. West Pierce Fire & Rescue Chief.

B. The responsibilities of the Fire Services Committee shall be as follows:

- i. Make recommendation on operational priorities, policies and procedures related to fire service specific issues.
- ii. Make recommendation on operational priorities, policies and procedures related to the Fire Services PSAP.
- iii. Recommend any necessary rules and regulations governing access to, security for, and operation of the data communications network and any Protected Health Information Records received by or through means of such network. Such rules and regulations shall be consistent with the provisions and requirements of State and Federal law.

C. Voting:

- i. Voting within the Fire Services Committee will be determined by the number of uniformed Fire Personnel within a Member's Agency compared to the total number of uniformed Fire Personnel represented by the whole Fire Services Committee.

11. Executive Director.

A. There shall be an Executive Director of the Agency appointed by the Operations Board subject to confirmation by the Policy Board. The Executive Director shall be selected upon the basis of administrative and technical competence.

B. The responsibilities of the Executive Director shall be as follows:

- i. Administration, budget, Agency personnel, dispatching, records, communications, security and other Communications Center Functions in conformance with the policies of the Operations Board.
- ii. Work with the Operations Board to prepare and present a proposed budget to the Policy Board for approval.
- iii. Have the authority to employ, supervise and terminate Agency employees subject to Agency procedures and policies set forth by the Policy and Operations Board.
- iv. Other, as determined by the Policy Board.

12. Equipment. Subject to Section 16D, radio systems infrastructure and end user subscriber units shall be owned by the Member Agencies that operate them, unless otherwise agreed to in writing. All other assets acquired by the Agency through purchase or contributions shall be owned by the Agency for the benefit of the Parties, unless otherwise agreed to in writing.

13. Records Reports and Information. Records reports and information are an essential aspect of law enforcement and fire services response to emergencies. The new system will contain and link call receiving and dispatch data with operational information systems. This will promote citizen safety, proper level of response and responder safety in any and all 911 calls.

14. Dissolution. This Agreement may be dissolved by the majority of the then-existing Member Agency Parties who are governmental signatories by vote weighted to represent each signatory's proportion of the total population served. The Parties' obligations, if any, concerning debt or other liabilities shall not be affected by dissolution unless agreed in writing by the Parties. Upon cessation of the Agency for any reason, assets originally contributed to the Agency or its predecessor (LESA) by the City of Tacoma or Pierce County (or the value thereof) shall be returned to the Party contributing the same, assets purchased by LESA (or the value thereof) shall be equally divided between the City of Tacoma and Pierce County. In addition, assets originally contributed by West Pierce Fire & Rescue, City of Fife or City of Puyallup shall be returned to the respective Parties. Remaining assets owned by the Agency at the time of cessation may be purchased by a Party to this Agreement at a value as determined by the Policy Board. Property not disposed in the foregoing manner shall be disposed of in the same manner as surplus County property but without Council approval: PROVIDED, that equipment purchased with any Federal or State grant shall be disposed of in accordance with the terms of the grant. All proceeds then remaining shall be divided among the then, existing governmental signatories based upon their proportionate share of the total contributions made by them to South Sound 911.

15. Budget.

- A. The Executive Director, in consultation with the Operations Board, shall present a proposed budget for Policy Board consideration. The proposed budget shall include the programs and objectives, any changes in the Fees or Assessments, and the required financial participation for each Member Agency and Non-Member Agency for the following year.
- B. The Policy Board shall adopt a proposed budget, and forward a copy of that budget by July 1 for the next year's budget to each Member Agency for their consideration.
- C. The budget process for the Agency shall include a process for public participation prior to final adoption.
- D. The Policy Board shall adopt the final annual budget, including Assessments and Fees, and submit to the Member Agencies by September 1 for the next year's budget.
- E. Member Agency assessments shall be approved through the Member Agency's budget process as applicable.
- F. Member Agency shall be converted to Non-Member Agency; for failure to approve its share of the budget; for nonpayment or delinquency in payment of Fees or Assessments; or for failure to participate in a manner approved by the Policy Board in an approved issuance of bonds. On the date of such conversion, said former Member Agency shall:
 - i. lose its representation on the Policy Board and Service Committees;
 - ii. lose its right to receive a share of the Agency assets upon dissolution of the Agency;

- iii. become subject to payment of Fees in accordance with the then applicable Fee formula for a Non-Member Agency; and
- iv. be bound by the terms of the then current Non-Member Agency service contract.

The conversion of a Member Agency to a Non-Member Agency shall not discharge or relieve any Member Agency of its obligations to the Agency.

- G. Each Member Agency shall pay its assessment to the Agency in four equal installments payable within 10 days from the beginning of the quarter.

16. Funding.

- A. All the funding for the Agency will be provided through sales and use taxes (1/10th of 1% for Emergency Communications), the 20 cent Enhanced 911 taxes, grants, contracts, Member Agency and Non-Member Agency service Fees. An additional funding source available is Member Agency Assessments, which are assessed only if approved as described in the budget process above.
- B. All of the sales and use tax collected by the County under the authority of RCW 82.14.420 shall be distributed to the Agency and specifically and exclusively allocated for the purposes of construction, Agency operations and maintaining Agency facilities including debt service on bonds issued for such purposes.
- C. At the sole discretion of the Pierce County Council, Pierce County, with the approval of all Member Agencies, has issued bonds and may incur General Obligations for the sole purpose of constructing the facility as described in 16(E) to which Pierce County's full faith and credit are pledged to finance capital assets for the Agency, but only after the following conditions have been satisfied: (1) The first priority for distribution of the new 1/10th of 1% sales and use tax will be for debt service payments on such bonds and General Obligations; (2) The debt service payments on such bonds and General Obligations for the year in which the bonds and General Obligations will be issued have been included in the budget for that year in the manner specified in Section 15; and, (3) All Member Agencies through a formal signed agreement have committed to (a) including the debt service and other required payments on such bonds and General Obligations in the budget each year in the manner specified in Section 15 and (b) making their share of debt service and other required payments on such bonds and General Obligations should either the new 1/10th of 1% sales and use tax for any reason not generate adequate revenues to make such debt service and other required payments or should the new 1/10th of 1% sales and use tax for any reason cease. Should bonds be issued other than by Pierce County for the purposes of constructing the facilities as described in 16(E), this Amended and Restated ILA will satisfy any requirement for a formal signed agreement as may be required by this section 16(C)(3).
- D. All capital assets of the Agency financed with proceeds of bonds issued and General Obligations incurred by Pierce County will be owned by Pierce County for as long as the bonds and General Obligations issued or incurred for the related capital assets are outstanding for use by the Agency in accordance with this Agreement. Disposal and/or lease of such capital assets will be in accordance with established policies and procedures of Pierce

County. IRS post issuance compliance will be the responsibility of Pierce County in accordance with its established policies and procedures. After such bonds and General Obligations are no longer outstanding, such assets shall be owned in accordance with Section 12 hereof.

E. Introduction – Hybrid Campus to be Financed with 63-20 Bonds: Agency facilities, housing communications dispatch, and municipal emergency operations co-located with the fire services dispatch center, and supporting radio communications infrastructure (the only capital structures contemplated by this Agreement), may be constructed using the proceeds of bonds issued by a nonprofit corporation that are treated as issued on behalf of Pierce County pursuant to Rev. Ruling 63-20 and Rev. Proc. 82-26 (“63-20 bonds”). If such financing method is chosen by the Policy Board, debt service on the 63-20 bonds will be funded by lease payments required to be made by Pierce County to the nonprofit corporation pursuant to a lease between the nonprofit corporation and Pierce County, whose payment obligations will be general obligations to which Pierce County’s full faith and credit will be pledged (“County lease payments”), and the following provisions shall apply:

1. Tax Shortfall – Covered by Member Agencies Paying Fair Share: So long as revenues received from the 1/10th of 1% sales and use tax are sufficient to pay the capital costs (County lease payments) of such capital assets that have been financed with such 63-20 bonds (with such capital costs to be measured by the debt service requirements on the 63-20 bonds and related County lease payments), with regard to capital assets that are to be used and operated by Member Agencies and/or South Sound 911 to provide emergency communications services for the benefit of the Member Agencies, neither South Sound 911 nor any Member Agency shall be obligated to pay for its use of or benefit received from such capital assets. In the event that revenues derived from the 1/10th of 1% sales and use tax are insufficient to fully pay those capital costs or the 1/10th of 1% sales and use tax should cease to exist, each Member Agency agrees, subject to the provisions of Section 7 hereof, that it will make payments for its use of such assets, and the benefits received by it from such capital assets (“use and benefit payments”) to South Sound 911. The amount of such use and benefit payments, if any, that are required to be made by a Member Agency shall be measured by reference to its Member Agency Share of that portion of the periodic debt service requirements on the 63-20 bonds that were issued and the related County lease payments incurred to finance the capital costs of acquisition and installation of such capital assets, insofar as the costs are not funded by revenues derived from the 1/10th of 1% sales and use tax. Any such use and benefit payments required to be made by Member Agencies in accordance with their respective Member Agency Shares may be derived from revenues received from Subscribers for emergency communications services, Assessments of Member Agencies made by South Sound 911 under the Interlocal Agreement, or any other funds made available for that purpose by the Member Agencies under the Interlocal Agreement. Each Member Agency agrees that it shall provide the funds, if any, required to make use and benefit payments for its Member Agency Share of the capital costs of such capital assets not funded by revenues from the 1/10th of 1% sales and use tax. For this purpose, Pierce County will provide to South Sound 911 and its Member Agencies notice, as early as may be practicable, of any events or circumstances of which Pierce County becomes aware that indicate that revenues expected to be received from the 1/10th of 1% sales and use tax are expected to be

insufficient to pay such capital costs, but this notice shall not be a condition to the responsibility of any Member Agency or South Sound 911 to provide funds to meet its Member Agency Share of any such capital costs.

2. Shares Proportional to Call Volume: Each of the Member Agencies' respective Member Agency Shares of the capital costs, if any, that may not be fully paid from revenues derived from the 1/10th of 1% sales and use tax will be determined by South Sound 911 for the purposes of this Agreement by taking into account the degree of actual use of and benefit from the capital assets and equipment, purchased with proceeds of the private bonds, based upon the best available data at that time. Such determination will be based upon the respective proportionate shares of the actual call volume.

3. Shares May Change if Circumstances Change: Accordingly, the Member Agencies' respective Member Agency Shares are to be proportional to each Member Agency's usage of the aforesaid facilities, as determined by call volume. The Parties recognize that it may be necessary to adjust these Member Agency Shares periodically in the future due to various future events, such as a change in the number of Member Agencies of South Sound 911, a major acquisition by South Sound 911 of new capital assets financed by additional Pierce County or South Sound 911 bonds, additional 63-20 bonds or other obligations or other events or circumstances the Parties determine will significantly change the factors used to determine the initial Member Agency Shares. Any such adjustment will be accomplished by each Member Agency's governing body approving and authorizing an appropriate amendment to this Agreement.

4. Shares Deemed Operational Expense – Not Debt: The parties contemplate that South Sound 911, through its Policy Board and Operations Board, will regard the debt service obligations on the 63-20 bonds and the related County lease payments to be an operational expense of South Sound 911, such that any shortage of sales tax revenue, immediately prior to the due date on any payment of principal or interest on any such bond and the related County lease payments, would be paid by fees or charges, and/or other revenue of South Sound 911, and then, if that be deemed insufficient, through Member Agency Assessments, if necessary, and if possible through the annual South Sound 911 budget process set forth in the Interlocal Agreement between the parties. No Member Agency is expected to incur indebtedness in order to defray these expenses.

5. Shares Pay for Facility Use – Not Debt: The obligation of a Member Agency to pay capital costs, if any, which are not funded by the 1/10th of 1% sales and use tax is an obligation to make payments in exchange for the actual use and operation of, and benefit provided to the Member Agency from, the communications dispatch centers, a municipal emergency operations center co-located with the fire services dispatch center, and supporting radio communication infrastructure constructed with the proceeds of the 63-20 bonds supported by the County lease payments. The Member Agency obligation is contingent on such facilities being furnished and made available to the Member Agency for its use, operation and benefit. The Member Agency obligation is not a debt of the Member Agency and is not a guarantee of the payment of all or any portion of the debt service on the 63-20 bonds or the related County lease payments. No bondholder will be a third-party beneficiary hereof or otherwise have rights to enforce the obligations of Member

Agencies hereunder. Because the obligations of Member Agencies hereunder are not security for bonds issued by any issuer for South Sound 911, and are not provided for the benefit of the owners of such bonds, the obligations of Member Agencies hereunder will not be referenced in any official statement or disclosure materials used to market such bonds to potential investors.

6. Nothing in this Section 16.E shall modify or affect the obligations of any Member Agency under that certain Memorandum of Agreement Relating to Financing of Capital Assets for South Sound 911 dated August 9, 2013, entered into by and among the Member Agencies pursuant to Section 16.C of this Agreement in respect of limited tax general obligation bonds issued by Pierce County in 2012 and 2013 to finance certain emergency communication facilities for South Sound 911, or any similar agreement entered into by the Member Agencies pursuant to Section 16.C of this Agreement

- F. The Funding Formula for assessments, if necessary, will be determined by the Policy Board. Assessments will generally be based on usage.
- G. If in any year revenues from sales and use taxes, 911 taxes, and contracts exceed expenditures for budgeted items and funds placed in reserve, the Policy Board may refund all or part of Member Agency Assessments in such year
- H. An operating reserve shall be created in an amount to be determined by the Policy Board.
- I. An equipment replacement fund shall be created in an amount to be determined by the Policy Board.

17. Support Services. Pierce County shall act as fiduciary agent of the Agency. The Policy Board (or the Executive Director, if so designated by the Board) shall, as necessary, direct the Agency to provide in-house or contract as appropriate for staff and auxiliary services including, but not limited to, personnel, legal, records, payroll, accounting, purchasing and data processing. Before such services are provided, the Agency and the service provider shall develop and execute service level agreements for the requested services, and the method of determining the direct and indirect costs for the services. The cost of the requested services shall be invoiced on a monthly, quarterly or other periodic basis as approved by the Agency and the service providers.

18. Admission of New Parties. Additional Member Agencies may be added as Parties to this Agreement upon such terms and conditions as determined by the Policy Board. The admission of such additional Member Agencies as Parties shall be by written addendum to this Agreement, signed by the Chair of the Policy Board and the new Member Agency Party.

19. Amendments. Amendments to this Agreement may be made by written agreement of all Parties hereto.

20. Arbitration. Any controversy between the Parties in regard to the application or interpretation of this Agreement may be submitted to and determined by arbitration in accordance with the Revised Code of Washington Chapter 7.04A.

- 21. Insurance.** The Agency will contract for general liability insurance to an amount the Policy Board deems necessary, not less than one million dollar liability limit.
- 22. Indemnification.** Each Party shall defend, indemnify, and hold each other harmless from and against any and all claims, demands, suits, actions, judgments, recoveries, liabilities damages, penalties, costs and expenses, including but not limited to reasonable attorneys' fees, resulting from damage to property or bodily injury, including death, to the extent caused by a Party's breach of this Agreement or the negligent actions or omissions of that Party, or its employees, servants, agents, or officers elected or appointed. The foregoing indemnity specifically covers actions brought by the Party's own employees, and each Party agrees that the foregoing indemnity is specifically and expressly intended to constitute a waiver of immunity under Washington's Industrial Insurance Act, RCW Title 51, but only as to the Party or Parties entitled to indemnity and only to the extent necessary to provide a full and complete indemnity as required under this Section. The indemnification obligation provided in this section shall survive the expiration or earlier termination of this Agreement for the duration of any applicable statute of limitations.
- 23. Duration of Agreement.** The term of this Agreement shall be for a minimum term of one year commencing upon execution by all Parties, and unless terminated or modified, it shall continue in effect for subsequent terms of one year: PROVIDED, any party may withdraw from this Agreement by giving written notice to all parties and the Policy and Operations Boards prior to June 1 of the then current term of its intent to withdraw at the close of such term. A withdrawing party shall remain liable for any obligations incurred by the Agency which occurred during the time the withdrawing party was a party. The withdrawal of any party shall not require dissolution of this Agreement and no compensation shall be owed to any withdrawing party. PROVIDED FURTHER the Agency has the authority to terminate any non-performing Member Agency Party from this Agreement.

NOTE: EACH PARTY WILL SIGN A SEPARATE SIGNATURE PAGE.