

Resolution 157

A RESOLUTION OF THE GOVERNING BOARD OF NORCOM APPROVING A SERVICE LEVEL AGREEMENT WITH PUGET SOUND EMERGENCY RADIO NETWORK (PSEERN)

WHEREAS, the Puget Sound Emergency Radio Network (PSERN) is responsible for implementing a new public safety emergency radio network in King County; and

WHEREAS, NORCOM is an emergency communications services Public Safety Answering Point (PSAP) which requires radio services; and

WHEREAS, NORCOM currently contracts with the Eastside Public Safety Communications Agency (EPSCA) for public safety emergency radio network services in King County; and

WHEREAS, EPSCA is merging into PSERN and NORCOM needs to contract with PSERN for continued public safety emergency radio network services;

NOW, THEREFORE, BE IT RESOLVED by the Governing Board of NORCOM as follows:

Section 1. Authorization. The Board hereby approves the Service Level Agreement between NORCOM and PSERN in substantially the form attached hereto as Exhibit A and incorporated herein by this reference (the "SLA"). The Executive Director of NORCOM is hereby authorized to execute the SLA with such modifications and revisions as determined to be necessary by the Executive Director and legal counsel to NORCOM.

Section 2. Further Authority; Prior Acts. All NORCOM officials, their agents, and representatives are hereby authorized and directed to undertake all action necessary or desirable from time to time to carry out the terms of, and complete the transactions contemplated by, this resolution. All acts taken pursuant to the authority of this resolution but prior to its effective date are hereby ratified and confirmed.

Section 3. Effective Date. This resolution shall take effect immediately upon its passage and adoption.

Passed by a majority vote of the Governing Board in an open public meeting on this ____ day of _____, 2019.

Signed in authentication thereof on this ____ day of _____, 2019.


Chair

Attest: 

Exhibit A
(see attached)

DISPATCH CENTER SERVICE LEVEL AGREEMENT

This Dispatch Center Service Level Agreement ("Agreement") is entered into this 11TH day of JANUARY, 2018, by and between **North East King County Regional Public Safety Communication Agency (NORCOM)** ("Dispatch Center") and King County ("County") (individually, a "Party" and collectively, the "Parties").

WHEREAS, the Dispatch Center is located in King County and utilizes the King County Emergency Radio System (KCERCS) to dispatch resources; and

WHEREAS, KCERCS is nearing the end of its useful life and is being replaced with a new system, the Puget Sound Emergency Radio Network ("PSERN"); and

WHEREAS, the PSERN Project is a capital project funded by a voter-approved levy; and

WHEREAS, eleven King County cities and the County adopted the Implementation Period ILA to establish the terms under which they will undertake the planning, financing, procurement, site acquisition and development, equipment installation, and other activities necessary to implement PSERN; and

WHEREAS, the Implementation Period ILA provides that County will be the lead agency for implementing PSERN and initially "serve as the PSERN System manager"; and

WHEREAS, the Implementation Period ILA provides that a new organization referred to as the "PSERN Operator" will be formed to own, operate, maintain, manage and upgrade/replace PSERN following Full System Acceptance; and

WHEREAS, the Implementation Period ILA provides that the PSERN Project will fund the purchase of certain dispatch equipment in a like-for-like exchange to be installed at all dispatch centers that enter into Dispatch Center Service Level Agreements; and

WHEREAS, the Implementation Period ILA provides that the County shall be the owner of such dispatch equipment until ownership is transferred to the PSERN Operator; and

WHEREAS, the Parties want the PSERN Project to fund, supply, maintain, repair, Update, Upgrade, and replace dispatch equipment for the Dispatch Center as provided in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS

1.1 Words and terms shall be given their ordinary and usual meanings except as provided in this section or in parentheses following the definition of a particular term.

1.1.1 **Backhaul** means the connections designed to carry data between PSERN sites.

- 1.1.2 **Dispatch Center** means the organization that runs the Dispatch Center's day-to-day operations. When the Dispatch Center is owned or controlled by another organization or is a department of another organization, the Dispatch Center should be read to include both the Dispatch Center and that other organization. Note: The upper case use of "Dispatch Center" refers to the Dispatch Center who is party to this Agreement. When used in lower case it either refers to generic dispatch centers or centers that are not party to this specific agreement.
- 1.1.3 **Confidential Information** means any information in written, graphic, verbal, or machine-recognizable form that is: (a) related to the PSERN System; (b) provided to the Dispatch Center by the Contractor, the Service Provider, or the Service Provider's contractor; and (c) marked or identified as "confidential," "proprietary," "trade secret" or similar designation.
- 1.1.4 **Contract (or Vendor Contract)** means the County's contract with Motorola Solutions, Inc., King County Contract Number 5729347.
- 1.1.5 **Contractor** means Motorola Solutions, Inc. the company hired by the King County to provide services for the construction, operation, maintenance or other support of PSERN.
- 1.1.6 **Emergency** means unforeseen circumstance that causes or may reasonably be expected to cause a decrease or loss in network clarity, capacity, coverage, reliability, security, features, or functions.
- 1.1.7 **Equipment** means all components of the console system, including software and hardware owned by the County or PSERN Operator and provided to the Dispatch Center pursuant to this Agreement in the types and quantities listed in Exhibit 1. [NOTE: When the lower case word, "equipment," is used in this Agreement, that use is not intended to be the defined use of the term "Equipment."]
- 1.1.8 **Field Servicer (Servicer)** means a PSERN Operator employee, contractor, or subcontractor whose job duties include traveling to sites to repair site electronics that cannot be repaired remotely.
- 1.1.9 **Full System Acceptance (FSA)** means the determination issued to the Contractor upon satisfactorily completing the final system acceptance phase milestone.
- 1.1.10 **Government Approvals** means all necessary federal, state and local licenses, permits, and approvals for the improvements needed for the construction, Equipment installation, and operation of PSERN.
- 1.1.11 **Governing Body** means initially the Joint Board formed under the Implementation Period IIA, and later the board of directors for the PSERN Operator when it is formed and assumes the ownership, operations, and governance of PSERN.

- 1.1.12 **Implementation Period** means that period of time as defined in the Implementation Period ILA.
- 1.1.13 **Implementation Period ILA** means the Puget Sound Emergency Radio Network Implementation Period Interlocal Cooperation Agreement.
- 1.1.14 **Joint Board** means the PSERN Project governing board formed under the Implementation Period ILA.
- 1.1.15 **KCERCS** means the County-wide Emergency land mobile radio system established under the King County Emergency Radio Communication System Interlocal Agreement.
- 1.1.16 **Major Violation** means an action that significantly diminishes the operations of PSERN or could result in the loss of PSERN's spectrum licenses, or repeated defaults under the Agreement.
- 1.1.17 **Monitoring** means real-time fault checking on a continuous basis using sophisticated tools for remote checking and event characterization.
- 1.1.18 **Monthly Fee** (or Fee) means the monthly charge paid by the Dispatch Center to the Service Provider after FSA for the Service Provider's operation and maintenance of PSERN and for the Dispatch Center's use of PSERN.
- 1.1.19 **Operations Period** means the period that commences with the first full month after FSA.
- 1.1.20 **Operations Period ILA** means the Puget Sound Emergency Radio Network Operations Period Interlocal Cooperation Agreement as adopted, amended, modified, or superseded.
- 1.1.21 **Part 90** means Part 90 of Title 47 of the Code of Federal Regulations (CFR).
- 1.1.22 **Premises** means the areas near and in the Dispatch Center: the Temporary Use Area used for staging and construction; the area where Equipment will be installed and occupy inside the Dispatch Center; the area between the right-of-way and Equipment the Service Provider will use for access to the Equipment; and the area between the right-of-way and Equipment to be used for the installation and maintenance of utilities, if any.
- 1.1.23 **PSERN Project** means all authorized activities relating to the planning, analysis, design, development, acquisition, site development, installation, testing, training, and operation of the PSERN until FSA, starting-up a new Service Provider, transferring the PSERN to same, and any decommissioning, contract close-out and other project completion activities.
- 1.1.24 **PSERN Operator** means the agency that will be established to take over PSERN's ownership, operation, and governance after FSA.
- 1.1.25 **Rate Stabilization Allocation** means those funds in the PSERN Project budget totaling \$2,619,406 earmarked to offset rate increases for PSERN Users and to be distributed via a formula determined by the Governing Body.

- 1.1.26 **Resolution Time** means the period measured between the earlier of the time when the Service Provider learns of a problem or receives the repair request and the time the Service Provider deems that it has fixed the problem and notified the Dispatch Center of the resolution. The Service Provider will not deem the problem fixed until after consulting with the Dispatch Center and receiving concurrence the problem has been resolved.
- 1.1.27 **Resources** means the number of voice or data sources that can be assigned, Monitored, and controlled by an individual console at any one time.
- 1.1.28 **Response Time** means the period measured between the earlier of the time when the Service Provider learns of a problem or receives a repair request for a problem, and the time the Service Provider has engaged on the service request and has notified the Dispatch Center that repair has started.
- 1.1.29 **Service Provider (or Operator)** means the County during the Implementation Period and up until the transfer of ownership, operation, and governance of PSERN to the PSERN Operator. After the transfer, Service Provider means the PSERN Operator who is responsible for the day-to-day operation and maintenance of PSERN. Service Provider also includes the Service Provider's employees, agents, consultants, contractors, subcontractors, permittees, successors and assigns.
- 1.1.30 **Site Plan** means a drawing of the Dispatch Center Premises indicating 1) the route the Dispatch Center wants the Service Provider to use between the building and the right-of-way, 2) the door the Dispatch Center wants the Service Provider to use in accessing the building, 3) the places within the building where Equipment will be stored, when delivered, and 4) the places within the building where Equipment will be installed. The Site Plan does not need to be based on a survey and locations are intended to be approximate.
- 1.1.31 **Temporary Use Area** means the area of the Dispatch Center's property that Service Provider is authorized to use for the storage, staging, and installation of the Dispatch Center's Equipment.
- 1.1.32 **Update** means revisions as required for the continued operation and maintenance of the Equipment software including error corrections, bug fixes, work-arounds, patches, anti-virus definitions, intrusion detection sensor signatures, changes in third party software or changes to software and Equipment required to accommodate such third party software changes and any other fixes and changes not constituting an Upgrade.
- 1.1.33 **Upgrade** means migrating to a new platform or adding features through changes to equipment and/or software.
- 1.1.34 **User** means an employee, agent, or volunteer of an organization authorized to use PSERN.
- 1.1.35 **Warranty Period** means the period beginning when the Equipment is made operational by the Contractor and extending for two (2) years after Full System Acceptance, as defined in King County Contract Number 5729347.

- 1.1.36 **Work** means all of the tasks the Service Provider is obligated to perform under this Agreement, including: maintaining, repairing, Updating, Upgrading, and replacing Equipment, including amendments, revisions, and modifications effective at the time.

2. EQUIPMENT REPLACEMENT

- 2.1 By and through the Contractor, the County will replace the Dispatch Center's existing equipment and install and commission Equipment for the Dispatch Center in the numbers and of the types specified in Exhibit 1.
- 2.2 Equipment will be standardized with features chosen to make it useable by the majority of Dispatch Centers. The Dispatch Center may purchase optional accessory equipment directly from the Contractor Examples of accessory equipment are listed in Exhibit 6.
- 2.3 By and through the Contractor, the County will configure and install the Equipment. The Dispatch Center shall not perform this work or hire an outside agency to perform the work on its behalf.
- 2.4 The console Equipment points of demarcation will be the headset jacks and the AC Power strips. Everything between these two points will be the responsibility of the Service Provider. Anything that is plugged into the headset jack will be the responsibility of the Dispatch Center.
- 2.5 Only Equipment installed by the Contractor prior to FSA and approved by the PSERN Operator after FSA shall be installed in or made for use on PSERN. The Dispatch Center agrees to not use or purchase P 25 Phase 1 radios for use on PSERN.
- 2.6 The County will own the Equipment provided by the PSERN Project. When the new PSERN Operator is formed, ownership of this Equipment shall be transferred to the PSERN Operator at no cost to the Dispatch Center or to the PSERN Operator when it assumes operation, ownership, and governance of PSERN.
- 2.7 The Train-the-Trainer model will be used to train Dispatch Center staff to use the Equipment. Each Dispatch Center shall designate staff to be trained, and supply that (those) name(s) to the Service Provider. The trainers will receive detailed training on use of the Equipment from the Contractor.

3. TRANSITION PLAN

- 3.1 The Service Provider, Dispatch Center, and Contractor will work together to develop a mutually agreeable written transition plan.
- 3.2 The Transition Plan will include:
- The Site Plan and the approximate dates the Equipment will be delivered and installed;
 - Diagrams for configuring the Equipment;
 - Plans for storing the Equipment if there is a gap between when it will be delivered and installed;

- The approximate dates and plan for removal of existing equipment by the Contractor. Such equipment cannot be retained or repurposed by the Dispatch Center;
- The plan for training the Dispatch Center's staff to use the Equipment;
- Description of the steps that will be taken by the Contractor to minimize the interruptions and decreases in service; and
- Description of the steps that will be taken to lessen the impacts of interruptions and decreases in service, including by performing installations and testing at the times of day the Dispatch Center determines it has the lowest average number of calls.

4. INSTALLATION AND TESTING

- 4.1 If the Dispatch Center has any special requirements pertaining to the disposition of its existing equipment it shall notify the Service Provider within five (5) days of receiving notification of installation and testing.
- 4.2 The Service Provider shall secure all Government Approvals required for the installation and operation of the Equipment. The Dispatch Center agrees to reasonably assist the Service Provider with applications for such approvals and with any steps necessary to obtain and maintain the approvals.
- 4.3 All Equipment will be tested by the Contractor to determine if it is operating in accordance with manufacturer's specifications. Any improperly installed or configured Equipment will be reinstalled or reconfigured, and then retested by the Contractor until it is properly installed and configured.
- 4.4 The Service Provider will notify the Dispatch Center of installation and testing at least fifteen (15) business days in advance. Dispatch Center staff may attend the installation and testing.
- 4.5 The Dispatch Center shall be entitled to have the Service Provider reconfigure the Equipment once in every twelve (12) consecutive month period as part of its Monthly Fee. The Service Provider shall also reconfigure Equipment at no charge if the reconfiguration is required because of maintenance or an Update or Upgrade.
- 4.6 If the Dispatch Center wants to have a piece of Equipment reconfigured more than as provided in Section 4.5, the Service Provider will accommodate this on a best efforts basis.

5. OPERATIONS

- 5.1 In implementing and managing PSERN, the Service Provider shall:
 - Be responsible for, or during the Warranty Period ensure the Contractor is responsible for, the repair of defective Equipment, and for programming and installing Equipment purchased and installed during the Implementation Period;
 - Monitor PSERN;
 - Maintain, operate, repair, Update, Upgrade and test PSERN in accordance with the Equipment manufacturer's recommendations for routine maintenance;
 - Provide the Dispatch Center with a phone number and email address to report system problems. The phone number shall be reachable and Monitored 24 hour X 7 day X 365 day per year;

- Respond to network and Equipment problems in accordance with Response and Resolution Tables contained in Exhibit 2;
 - Have on staff factory trained subject matter experts (Duty Technician(s)) who specialize in the diagnosis, troubleshooting and resolution of network performance and Equipment problems;
 - Have a Duty Technician to act as liaison between itself and the Contractor;
 - Resolve warranty claims with the Contractor;
 - Manage talk-groups; and
 - Give the Dispatch Center at least thirty (30) days' notice before undertaking scheduled activities that will interrupt or reduce Dispatch Center service by twenty-five percent (25%) or more.
- 5.2 Upon execution of the Operations Period ILA and formation of the PSERN Operator, whichever is later, the PSERN Operator shall:
- Adopt policies governing the replacement, removal, and addition of Equipment under its control;
 - Adopt policies defining the approved Equipment authorized for use in PSERN;
 - Adopt and implement information assurance controls, policies, procedures and processes.
 - Adopt policies governing the change management program; and
 - Work in partnership with the dispatch centers to develop and regularly report on performance and operating metrics indicating system performance as well as the PSERN Operator's ability to meet dispatch centers' service requirements.
 - Upon request of the Dispatch Center, provide monthly reports in a mutually agreeable format on system usage statistics including:
 - Push to talk statistics
 - Talk time statistics
 - Radio emergency button activations
 - Active radio reports
- 5.3 In using the Equipment and PSERN, the Dispatch Center agrees to:
- Prevent unauthorized and untrained personnel from accessing consoles;
 - Promptly report Equipment and network problems to the Service Provider and indicate the impact of the problem on the Dispatch Center (e.g., if a console goes down does the Dispatch Center have a spare it can use?);
 - Comply with all information assurance controls, policies, procedures, and processes developed and implemented by the PSERN Operator;
 - Notify the System Provider immediately if the Dispatch Center knows or suspects that an asset purchased by the PSERN Project has been lost, stolen, or damaged so that the System Provider can: 1) comply with the reporting requirements for loss of public assets set forth in RCW 43.09.185; and 2) disable the asset, if necessary;
 - Not transfer, give away, or dispose of Equipment without the Governing Body's prior written approval; and
 - Assist the Service Provider in responding to any correspondence, complaint, information request, or claim it receives that pertains to Dispatch Center operations.
- 5.4 The Change management program to be adopted pursuant to Section 5.2 shall be mutually agreed to by the Parties and shall include:
- Request for change (RFC) documentation.

- Classification of the RFC quantifying the risk/impact and the category.
 - Risk/Impact may be: low, medium, high
 - Category may be: standard or emergency
- Assessment and Authorization of the RFC.
- Communication with Dispatch Centers of the RFC's implications.
- Implementation of the change.
- Assessment of the quality of the implementation.
- Closure of the RFC record.

6. RESPONSE AND RESOLUTION TIMES

- 6.1 During the Warranty Period when a User reports or the Monitoring equipment detects a problem and reports it to the Service Provider, a trained technologist will acknowledge and attempt to remotely diagnose the problem. Appropriate responses could include continuing Monitoring the event for further development, attempting remote remediation, or dispatching a Field Servicer (Servicer) for onsite remediation.
- 6.2 The table in Exhibit 2 lists Response Times for three levels of severity and the correlating Resolution Time for each.
- 6.3 The Service Provider shall repair or replace a defective piece of Equipment at no cost above the monthly fee to the Dispatch Center. However, any piece of Equipment needing repair or replacement due to the intentional or negligent act of the Dispatch Center, its agents, employees, or invitees, will be repaired or replaced by the Service Provider at the Dispatch Center's cost. Such cost is in addition to the Monthly Fee. Disputes regarding the responsibility for repair or replacement cost will be resolved pursuant to Section 23.
- 6.4 The Service Provider will keep or have access to sufficient spare parts and pieces of Equipment so that defective, broken, or wrongly programmed Equipment can be promptly replaced or repaired.

7. UPDATES AND UPGRADES

7.1 Updates

- 7.1.1 During the Warranty Period, The Contractor shall provide and install Updates. Thereafter, the Contractor shall provide Updates that shall be installed by the Service Provider. The cost of Updates shall be included in the Monthly Fee.

7.1.2 Regular Updates shall include:

- 7.1.2.1 Contractor's most current software enhancement release Update which includes defect corrections, bug fixes, patches, and service packs.
- 7.1.2.2 Patch releases, service packs and other non-security-related Updates released by Contractor, its subcontractors if applicable, and other providers of Equipment

operating and application software including Microsoft, Red Hat Linux, Sun Solaris, and other third parties.

7.1.2.3 Contractor's regular security-related Updates, referred to by Contractor as "Security Update Service" (SUS) that include operating system patches and service packs, anti-virus engines and definitions, intrusion detection systems and signatures, and firewall setting and other security-related Updates.

7.1.3 Updates to software necessary as a result of a failure will be provided based on the severity level of the failure as follows:

7.1.3.1 For failures that affect PSERN service, traffic/capacity, operations, material functions, maintenance capabilities or system administration, the Service Provider shall commence corrective action immediately and exercise its best efforts to work with the Contractor to develop, test, and install a fix in the shortest time possible.

7.1.3.2 For cosmetic or minor failures that do not affect PSERN service, traffic/capacity, operations, material functions, maintenance capabilities or system administration, the Service Provider shall work with the Contractor to develop, test, and install the fix as part of an Update to be otherwise provided in this Section.

7.1.4 Prior to installation of an Update, the Service Provider shall confirm that the Update has been successfully tested to ensure the Update is compatible and that it will not degrade, interfere with, or otherwise compromise PSERN's functionality. Updates that impact the ability of the Dispatch Center to deliver dispatching services shall be loaded locally at the Dispatch Center. Other non-service impacting Updates may be loaded remotely or locally as determined by the Service Provider.

7.1.5 The Service Provider will routinely install Updates, but may defer or decline to install an Update or roll back one or more Updates if the Service Provider in its sole discretion determines that the Update would be detrimental to the Dispatch Center.

7.1.6 The Service Provider will notify Dispatch Centers in accordance with the change management program as detailed in Section 5.4 in advance of routine Updates and will provide applicable release notes with each Update. In the case of Updates installed under Section 7.1.3, notice will be provided to the Dispatch Center with as much lead time as practicable.

7.2 Upgrades

7.2.1 During the Warranty Period, the Contractor shall provide and install Updates. Thereafter, the Contractor will provide Upgrades that will be installed by the Service Provider. The cost of Upgrades shall be included in the Monthly Fee.

7.2.2 The most recent available Upgrades of the Equipment software and hardware shall be provided at the following points in time: (1) no more than ninety (90) days prior to the start

of the FSA testing period; (2) no more than ninety (90) days prior to the end of the Warranty Period; (3) after the Warranty Period, every other year beginning with 2023 subject to availability from the Contractor. The Service Provider may defer or suspend an Upgrade if it determines in its sole discretion that the Upgrade would be detrimental to the Dispatch Center.

- 7.2.3 Each Upgrade will include the latest versions of Contractor software and the latest versions of third party software certified for the system and shall include all Updates available at the time of the Upgrade if not already installed under Section 7.1. The Service Provider shall provide training to the Dispatch Center for all Upgrades that result in operational changes for Dispatch Center personnel.
- 7.2.4 Prior to installation of an Upgrade, the Service Provider shall confirm that the Upgrade has been successfully tested to ensure the Upgrade is compatible and that it will not degrade, interfere with, or otherwise compromise PSERN's functionality. Upgrades that impact the ability of the Dispatch Center to deliver dispatching services shall be loaded locally. Other non-service impacting Upgrades may be loaded remotely or locally as determined by the Service Provider.
- 7.2.5 If an Upgrade requires additional or different Equipment, the Service Provider (by and through the Contractor during the Warranty Period) shall provide and install the necessary Equipment. The cost of the software and Equipment required for the Upgrade, if any, shall be included in the Monthly Fee.
- 7.2.6 The Service Provider will notify Dispatch Centers in accordance with the change management program as detailed in Section 5.4

8. MONTHLY FEE AND PAYMENT

- 8.1 The Dispatch Center agrees to pay the PSERN Operator a Monthly Fee for the Dispatch Center's use of PSERN and the PSERN Operator's operation and maintenance of the Equipment and network. The Monthly Fee shall be calculated using a formula determined by the Governing Body.
- 8.2 The Monthly Fee will be assessed beginning immediately after FSA. The PSERN Operator shall provide an invoice the Dispatch Center. The first payment will be due on the first day of the first full month after FSA, and shall equal the amount due for that month and any pro-rated amount for the first month of service
- 8.3 Monthly Fee payments will be due on the first day of each month, except that at the Dispatch Center's sole option it may make annual advance payments in lieu of monthly installments. Payments made will be applied first to charges that are in arrears and then to the payment due for that coming month.
- 8.4 The first payments after FSA may be reduced based on the Governing Body's disbursement of the Rate Stabilization Allocation for those PSERN Users that will see a rate increase as a result of PSERN operations.

- 8.5 The PSERN Operator shall provide the Dispatch Center with the address for payment of Fees not less than sixty (60) days prior to when the first payment is due. All payments shall be accompanied by a reference to this Agreement, or an invoice number.
- 8.6 If the Dispatch Center does not pay its Fee or pays only a part of the Fee more than twice in any single calendar year, the PSERN Operator may charge the Dispatch Center a reasonable late or special handling charge.
- 8.7 Acceptance of any payment or partial payment after the date it is due shall not be deemed a waiver regarding the obligations to make future payments on time. And no partial payment shall act as an accord and satisfaction unless approved by the Governing Body.

9. TERM

This Agreement shall take effect when executed by an authorized representatives of the Parties, and shall remain in effect unless one of the following events occurs:

- The Governing Body adopts a superseding agreement;
- The Dispatch Center withdraws from the Agreement as provided in Section 16.1; or
- The Governing Body terminates the Agreement as provided in Section 16.2.

10. COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS, AGREEMENTS, POLICIES, PROCEDURES, AND PERMITS

The Parties acknowledge: 1) that they are required to comply with various laws, regulations, agreements, policies, procedures, and permits, including those contained in 47 CFR §90, the Implementation Period ILA, Operations Period ILA, and those developed by the Governing Body and the Service Provider; and 2) that the County is subject to a Vendor Contract's terms and conditions in the performance of this Agreement. The Parties agree to comply with the applicable laws, regulations, agreements, policies, procedures, and permits.

11. REPRESENTATIONS AND WARRANTIES

11.1 The Dispatch Center represents, warrants, and agrees that:

- It will work cooperatively, fully, and promptly with the Service Provider;
- It solely owns the Premises as a legal lot in fee simple, or controls the Premises by lease or license;
- It has the full right, power, and authority to enter into this Agreement; and
- It does not know any reason why its execution and performance of this Agreement would violate any laws, covenants, or the provisions of any mortgage, lease or other binding agreement.

11.2 The Service Provider represents, warrants, and agrees that:

- It will work cooperatively, fully, and promptly with the Dispatch Center;
- It has the full right, power and authority to enter into this Agreement;
- It will not encumber the Premises by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or other agreements of record or not of record, which would adversely affect the Dispatch Center's title; and

- It does not know any reason why its execution and performance of this Agreement would violate any laws, covenants or the provisions of any mortgage, lease or other binding agreement.

12. DISPATCH CENTER PERMISSIONS FOR THE SERVICE PROVIDER TO ENTER AND USE DISPATCH CENTER PROPERTY

As part of the consideration for benefits to the Dispatch Center provided through this Agreement, the Dispatch Center hereby grants the Service Provider the following:

- 12.1 A license for ingress and egress between the public right of way and the Premises adequate to install, operate, maintain, and remove the Equipment. This grant shall not include matters covered in the lease between the Dispatch Center and the PSERN Project for the Backhaul equipment, and any agreement for tenant improvements at the Dispatch Center.
 - 12.1.1 The Service Provider shall have the right to access the Premises, 24-hours a day, 7 days a week, 365 days a year via the route shown on the Site Plan in Exhibit 3. The Service Provider need not give the Dispatch Center advanced notice in an Emergency, but shall endeavor to notify the Dispatch Center at least ten (10) business days in advance to perform routine Work, such as routine maintenance, Updates, and Upgrades.
 - 12.1.2 Any person accessing the Premises on behalf of Service Provider (and prior to such access) shall be required to (a) pass a Washington State Patrol, or substantially similar, background check, (b) comply with the Dispatch Center's security vetting procedures, including, but not limited to, the procedures set forth in Exhibit 4, and (c) execute and comply with the "Consent for Criminal Background Check, CJIS On-line Security Awareness Training and Fingerprinting Authorization/Waiver" attached hereto at Exhibit 5.
 - 12.1.3 The Dispatch Center may change the routes from time-to-time at its sole discretion. The Dispatch Center shall provide the Service Provider with an amended Site Plan at least ten (10) business days prior to the change going into effect or if they are changed on an Emergency basis, as soon as practicable thereafter.
- 12.2 A license to deliver and temporarily store Equipment in and near the Dispatch Center for staging purposes during the construction, installation, and testing activities in the locations shown on Exhibit 3, and as may be changed from time-to-time at the mutual agreement of the Parties. This license shall expire thirty (30) days after all Equipment is installed, and when all Equipment and Network testing and tuning is complete.
- 12.3 A permit to house PSERN's Equipment, other than Backhaul equipment, in the Dispatch Center in the locations shown on Exhibit 3, and as may be changed from time-to-time by the mutual agreement of the Parties.
- 12.4 In addition, as part of the consideration for this Agreement, the Dispatch Center hereby grants the Service Provider the following rights at no charge and without limitation:

- Use of the Dispatch Center's commercial electrical service necessary for the Service Provider to fulfill its responsibilities under this agreement ;
- Use of the Dispatch Center's emergency backup generator necessary for the Service Provider to fulfill its responsibilities under this agreement; and

12.5 In addition the Dispatch Center shall complete the work shown in Exhibit 7 prior to Contractor's delivery of Equipment.

12.6 Unless otherwise provided, the grants in this Section 12.0 shall remain in force until thirty (30) days after the term of this Agreement unless by extended by the mutual agreement of the Parties.

13 INDEPENDENT CONTRACTORS AND NO THIRD PARTY BENEFICIARIES

13.1 Each Party is an independent contractor with respect to this Agreement. No joint venture or partnership is formed as a result of this Agreement.

13.2 Nothing in this Agreement shall make any employee of one Party an employee of another Party. Neither 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, except as contained in the Implementation Period ILA. No employee of one Party shall be deemed, or represent themselves to be, employees of another Party.

13.3 This Agreement is solely for the benefit of the Parties, and gives no right or remedy to any other person or entity.

14 ASSIGNMENTS

14.1 By Service Provider

The County may assign this Agreement and all of the County's rights, duties, and obligations set forth herein, to the PSERN Operator without the Dispatch Center's approval. However, such assignment shall require approval by the Governing Body.

14.2 By the Dispatch Center

14.2.1 The Dispatch Center may assign this Agreement to any other dispatch center already using PSERN, pursuant to appropriate ILAs and an existing Dispatch Center Service Level Agreement, without the Service Provider's approval, if the assignee dispatch center is not in default on any of the conditions of its agreement with the Service Provider and if the assignee agrees in writing to be bound by all the terms of this Agreement, including all obligations of the Dispatch Center not fully performed at the time of assignment. If the Dispatch Center makes such an assignment, it shall provide the Service Provider and the Governing Body with written notice of the assignment and with a copy of all assignment-related documents within fifteen (15) days of the assignment.

14.2.2 The Dispatch Center may assign or transfer this Agreement to a dispatch center not already using PSERN with the Governing Body's prior written approval. The Governing Body may establish reasonable conditions for its approval.

14.2.3 Any transfer and installation of Equipment necessary for an assignment under Section 14.2.1 or 14.2.2 above shall be performed by the Service Provider. The cost of such transfer and installation shall be paid by the assignee dispatch center unless otherwise agreed to by the Dispatch Center and the Service Provider.

15 INTELLECTUAL PROPERTY, CONFIDENTIAL INFORMATION AND RECORDS

15.1 Intellectual Property

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

15.2 Confidential Information

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

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

15.3 Records.

Each Party shall keep records as required by state law. To the extent permitted by law, all records, accounts and documents relating to matters covered by this Agreement shall be subject to inspection, copying, review or audit by the Washington State Auditor or any Party. Upon reasonable notice, during normal working hours, each Party shall provide auditors from the Washington State Auditor or the other Party with access to its facilities for copying said records at their expense. Each Party shall be responsible for responding to public disclosure requests addressed to in accordance with the Washington Public Records Act, Chapter 42.56 RCW. If the requested records include any Confidential Information, the Party receiving the request shall promptly notify the Party or other person or entity that designated the information as Confidential Information. Any Party receiving a public records request that includes Confidential

Information shall not disclose the Confidential Information for ten (10) business days in order to give the affected Party or third party the opportunity to take whatever action it deems necessary to protect its interests before disclosure of the Confidential Information. A Party receiving a public disclosure request shall not be required to take any legal action in order to prevent disclosure of Confidential Information, nor shall a Party incur any liability to the other Party for disclosing Confidential Information in response to a public disclosure request so long as the disclosing Party has complied with the provisions of this Section 15.

16. ENDING SERVICE

- 16.1 Dispatch Center may apply for withdrawal from this Agreement with at least one year's written notice of its intent to withdraw. Such applications shall be handled in accordance with the Governing Body's rules.
- 16.2 The Governing Body may terminate this Agreement only for a Major Violation of the Agreement. The Dispatch Center shall ordinarily have the right and a reasonable period of time to cure any other default. Such actions shall be handled in accordance with the Governing Body's rules.

17. INDEMNIFICATION

Each Party shall protect, defend, indemnify and save harmless the other Party, its officers, officials, employees and agents while acting within the scope of their employment as such, from any and all suits, costs, claims, actions, losses, penalties, judgments, and/or awards of damages, of whatsoever kind arising out of, or in connection with, or incident to the services associated with this Agreement caused by or resulting from each Party's own negligent acts or omissions. Each Party agrees that it is fully responsible for the acts and omissions of its own contractors, subcontractors, their employees and agents, acting within the scope of their employment as such, as it is for the acts and omissions of its own employees and agents. Each Party agrees that its obligations under this provision extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees, or agents. The foregoing indemnity is specifically and expressly intended to constitute a waiver of each Party's immunity under Washington's Industrial Insurance act, RCW Title 51, as respects the other Party only, and only to the extent necessary to provide the indemnified Party with a full and complete indemnity of claims made by the indemnitor's employees. The Parties acknowledge that these provisions were specifically negotiated and agreed upon by them.

18. INSURANCE

18.1 King County Insurance

The County maintains a self-insurance program for the protection and handling of its liabilities including injuries to persons and damage to property. The Dispatch Center acknowledges, agrees and understand that the County is self-funded for all of its liability exposures for this Agreement. The County agrees to provide the Dispatch Center with at least thirty (30) days prior written notice of any material change in the County's self-funded insurance program and will

provide the Dispatch Center with a letter of self-insurance as adequate proof of coverage, if the Dispatch Center so requests. The Dispatch Center further acknowledges, agrees and understands that the County does not purchase Commercial General Liability insurance and is a self-insured governmental entity; therefore the County does not have the ability to name the Dispatch Center as an additional insured.

18.2 The PSERN Operator

Upon the transfer of PSERN to the PSERN Operator, the PSERN Operator shall either maintain a fully funded self-insurance program in accordance with applicable law or acquire and maintain commercial general liability insurance in the amount of Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) general aggregate, based on ISO Form CG 00 01 or equivalent, and will include the Dispatch Center as an additional insured with respect to claims arising out of or related to this Agreement.

18.3 Contractors and Subcontractors Insurance

The County and PSERN Operator shall require their contractors and subcontractors to maintain general liability insurance for all activities related to installation and servicing of the equipment at the Centers, and to require that contractors name the Center as an additional insured on that CGL policy.

18.4 Dispatch Center's Insurance

The Dispatch Center agrees to maintain a self-insurance program or to procure and maintain the following minimum insurance coverage areas and limits, or comparable program(s) of self-insurance, responsive to its liability and property exposures under this Agreement:

18.4.1 General Liability: Insurance Services "occurrence" form CG 00 01 (current edition).

Commercial General Liability coverage shall be no less than ONE MILLION DOLLARS (\$1,000,000) per combined single limit per occurrence, and TWO MILLION DOLLARS (\$2,000,000) in the aggregate for bodily injury and property damage. King County, its officers, officials, employees, and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of Dispatch Center in connection with this Agreement. Upon transfer of County's obligations under this Agreement to the PSERN Operator, the PSERN Operator shall be covered as additional insured as respects liability arising out of activities performed by or on behalf of Dispatch Center in connection with this Agreement.

18.4.2 Workers' Compensation/Stop Gap/Employers Liability: Statutory Workers Compensation coverage and Stop Gap Liability for a limit no less than ONE MILLION DOLLARS (\$1,000,000) per occurrence.

18.4.3 All Risk Property insurance coverage: Dispatch Center shall maintain "All Risk" property insurance in an amount equal to the full replacement value of the Dispatch Center and all of its improvements and personal property located therein or shall self-insure the Dispatch Center and its improvements and personal property located therein. Dispatch Center shall also maintain "All Risk" property insurance, or a comparable program of self-

insurance, covering Equipment owned by the County (or PSERN Operator, as applicable) located in the Dispatch Center, and shall name the County (or PSERN Operator, as applicable) as additional loss payee on such insurance.

18.4.4 Waiver of Subrogation: Notwithstanding any language to the contrary contained in this Agreement, Dispatch Center agrees that it shall not make a claim against or seek recovery from County or the PSERN Project for any loss or damage to property, resulting from fire or other hazards covered by fire insurance or required to be covered under this Agreement, and Dispatch Center hereby releases County and the PSERN Project from any such claim or liability regardless of the cause of such loss.

All Policies: Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, except by the reduction of the applicable aggregate limit by claims paid, until after thirty (30) days prior written notice has been given to the County (or PSERN Operator, as applicable).

19 NOTICES

Except as otherwise specified in this Agreement, all formal written notices must be either delivered by courier or sent by certified mail, return receipt requested, to the address listed below. Notices shall be deemed effective upon the earlier of receipt when delivered, or, if mailed, upon signature on the return receipt. A Party may change the address for notices from time to time by providing the other Party(ies) the replacement name and contact information. Notice shall not be effective unless and until the other Party(ies) has (have) received this information.

To the Dispatch Center:
Ron Tiedeman
NORCOM IT Director
P.O. Box 50911
Bellevue, WA 98015-0911

To the County or PSERN Operator:
Hai Phung, Project Manager
King County Department of Information Technology
401 5th Avenue
Seattle, WA 98104

20 AMENDMENT

This Agreement may be amended upon mutual agreement of the Parties and approval of the Governing Body.

21 FORCE MAJEURE

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

22 CONFLICT WITH OTHER AGREEMENTS

If any provision of this Agreement conflicts with a provision of the Implementation Period ILA, the Operations Period ILA, or the lease between the Dispatch Center and King County (or Service Provider as applicable), if any, such that the provisions cannot be harmonized, then the provisions of the applicable ILA or lease shall control.

23 DISPUTE RESOLUTION

If a dispute arises out of or relates to this Agreement, the Parties shall endeavor to resolve the dispute through direct negotiations between them. If the Parties are unable to resolve the dispute within sixty (60) days of its occurrence, either Party may refer the dispute to the Governing Body for resolution and shall provide the other Party with notice of such referral. If the dispute is not resolved by the Governing Body within sixty (60) days of referral to it, either Party may refer the dispute to the executive officers of the Parties and the Dispatch Center with notice to the other Party. If the dispute is not resolved by the executives within 60 days of referral, either Party may refer the dispute to non-binding meditation. Referral of the dispute to the Governing Body, the executives, and mediation shall be a condition precedent to a Party's pursuit of other available legal remedies.

24 CHOICE OF LAW AND 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 King County Superior Court, Washington shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.

25 NO WAIVER

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

26 EXECUTION AND COUNTERPARTS

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

27 SURVIVAL PROVISIONS

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

Section 15 Intellectual Property, Confidential Information and Records

Section 17 Indemnification

Section 19 Notices

Section 24 Choice of Law and Venue

28 SEVERABILITY

The invalidity of any provision of this Agreement shall not affect the validity of the remaining provisions.

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

King County


NORCOM



David Mendel, PSERN Project
Director

11/14/19

Date



Thomas R. Orr, NORCOM Executive
Director

1-11-19

Date

DAVID MENDEL

Print Name

THOMAS R. ORR

Print Name