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SNOHOMISH COUNTY  
EMERGENCY RADIO SYSTEM (ERS)  
INTERLOCAL COOPERATION AGREEMENT

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SNOHOMISH COUNTY  
EMERGENCY RADIO SYSTEM (ERS)  
INTERLOCAL COOPERATION AGREEMENT

119 This Interlocal Cooperation Agreement is entered into by the Cities of Brier, Edmonds,  
120 Everett, Lynnwood, Marysville, Mill Creek, Mountlake Terrace, Mukilteo and Woodway,  
121 Snohomish County, and the interlocal associations of SNOPAC and SNOCOM.

122 In consideration of the mutual promises, benefits and covenants contained herein, the  
123 parties hereto agree as follows:

124

125 ARTICLE 1  
126  
127 RECITALS

128 1.1 Public Interest. The parties agree that it is in the public interest to design,  
129 develop, finance, acquire, install, operate, maintain and repair and replace as necessary a  
130 uniformly high-quality, public safety communications service for public safety and other  
131 agencies on a county-wide basis within Snohomish County. The system shall be integrated with  
132 neighboring county systems, and shall have the flexibility to be expanded in phases throughout  
133 Snohomish County.

134 1.2 New Entity – ERS. The parties agree that it is in the public interest to form a new  
135 entity, the Snohomish County Emergency Radio System (“ERS”), and execute this Agreement

136 defining the powers and obligations of ERS in order to achieve these objectives, and to provide  
137 for oversight and management of the system.

138 1.3 Capital Costs. It is the intent of the parties that the Cities of Brier, Edmonds,  
139 Everett, Lynnwood, Marysville, Mill Creek, Mountlake Terrace, Mukilteo and Woodway and  
140 Snohomish County shall pay the capital costs of the emergency radio communication system,  
141 including reasonable formation costs thereof.

142 1.4 Operation and Maintenance. Members and Users shall pay for the operation and  
143 maintenance of the System through assessments levied by the Dispatch Centers.

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145

## ARTICLE 2

146

### DEFINITIONS

147

148 2.1 Agreement means this Interlocal Cooperation Agreement.

149 2.2 Capital Record means the record established pursuant to Section 3.5.

150 2.3 Cost Allocation Model means the model attached to this Agreement as Exhibit B  
151 and by this reference incorporated herein, by which each Member's share of financial obligations  
152 and voting weight is determined from time to time. The 1999 cost allocation is attached to this  
153 Agreement as Exhibit C and by this reference incorporated herein.

154 2.4 Cities means the Cities of Brier, Edmonds, Everett, Lynnwood, Marysville, Mill  
155 Creek, Mountlake Terrace, Mukilteo and Woodway.

156 2.5 County means Snohomish County.

157 2.6 Complaint means the definition given that term in Section 12.1.

158 2.7 Director means a member of the Governing Board.

159           2.8    Dispatch Center means a communication dispatch center established and operated  
160 by representatives of one or more Members.

161           2.9    ERS means Emergency Radio System, the entity created by this Agreement.

162           2.10 Governing Board means the Governing Board of Directors of ERS, a board  
163 established pursuant to this Agreement.

164           2.11 Majority Vote means a decision of the Governing Board by a simple majority of  
165 Directors present and voting.

166           2.12 Members means, initially, the Cities and the County, and from time to time  
167 includes entities that are permitted to join ERS as Members and excludes entities that withdraw  
168 from ERS as Members.

169           2.13 Microwave Path means channel capacity on one or more microwave links  
170 established in the System to provide redundant access from Repeater Sites and the Dispatch  
171 Centers to the Network Controller Equipment.

172           2.14 Network Controller or Network Controller Equipment means both the active zone  
173 controller and audio switch and, if such exists in the approved design, the redundant backup zone  
174 controller and audio switch, and related equipment.

175           2.15 Phase means each phase of the System's development, as described in Exhibit A.  
176 "Phase II" includes any Phase subsequent to Phase I.

177           2.16 Project means all authorized costs and activities relating to the design,  
178 development, acquisition and installation of the System. "Project" also includes authorized costs  
179 and activities relating to the design, development, acquisition and installation of equipment that  
180 interfaces with the System.

181           2.17 Project Expenditures means the cost of Phase I of the System, as set forth in  
182 Exhibit D to this Agreement and by this reference incorporated herein.

183           2.18 Repeater means a radio transmitter (base station) which is part of the System and  
184 which is capable of receiving transmissions from Subscriber Units and re-transmitting the signal  
185 over a wide area to other Subscriber Units.

186           2.19 Repeater Site means locations defined in the System design that will operate one  
187 or more Repeaters or a group of simulcast Repeaters that are part of the System.

188           2.20 SNOCOM means the Southwest Snohomish County Public Safety  
189 Communications Agency, an interlocal association of Snohomish County municipalities and  
190 special purpose districts.

191           2.21 SNOPAC means the Snohomish County Police Staff and Auxiliary Services  
192 Center, an interlocal association of Snohomish County municipalities and special purpose  
193 districts.

194           2.22 Subscriber Unit means a mobile (vehicular), portable (handheld) or control station  
195 (desktop) radio which has been authorized and programmed to operate on the System.

196           2.23 Supermajority Vote means a decision of the Governing Board approved by  
197 Directors representing at least (a) 70% of all Members and (b) 66.6% of all Members by weight,  
198 with the weight of each Member's vote based on the Cost Allocation Model.

199           2.24 System means a system to provide for voice, data, and other methods of  
200 communication consisting of: (a) an 800 MHz trunked radio communication system with  
201 compatible mobile, portable and control station radios; (b) a VHF paging system; (c) VHF  
202 interoperability systems; (d) a 900 MHz mobile data system; (e) a microwave transmission



203 network; (f) network controllers; (g) other related real property, vehicles, equipment and  
204 appurtenances; and (h) associated administrative expenses. The description of the System is  
205 attached to this Agreement as Exhibit A and by this reference incorporated herein.

206 2.25 Talk Group means a software-controlled identification system that allows a  
207 trunked radio system to provide Repeater access to groups of Subscriber Units. A Talk Group is  
208 essentially equal to a single channel in a conventional radio system.

209 2.26 Technical Committee means the committee of that name appointed by the  
210 Governing Board.

211 2.27 User means an entity other than a Member using the System pursuant to a contract  
212 with a Dispatch Center.

213 2.28 Weighted Vote means a decision of the Governing Board approved by Directors  
214 representing at least (a) 30% of all Members and (b) 60% of all Members by weight, with the  
215 weight of each Member's vote based on the Cost Allocation Model.

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### ARTICLE 3

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#### FORMATION, PURPOSE AND POWERS

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220 3.1 Formation. The Cities and the County hereby create ERS, the Emergency Radio  
221 System.

222 3.2 Incorporation.

223 3.2.1 The Members shall incorporate ERS as a public nonprofit corporation and  
224 instrumentality of its Members pursuant to Chapter 24.06 RCW and as a tax-exempt organization  
225 pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. The Members

226 may reorganize the form of ERS in such other manner as may be permitted by law by  
227 amendment of this Agreement in accordance with Article 18.

228           3.2.2 The Articles of Incorporation attached to this Agreement as Exhibit E and  
229 by this reference incorporated herein shall be executed at the time of execution of this  
230 Agreement by the Members, who shall serve as the incorporators.

231           3.3 Purpose. The purposes of ERS shall be to design, develop, finance, acquire,  
232 install, operate, maintain and repair and replace as necessary the System.

233           3.4 Powers. In furtherance of its purposes, ERS shall have the power:

234                   (a) to acquire, construct, receive, own, manage, lease and sell real  
235 property, personal property and intangible property;

236                   (b) to operate and maintain the System and facilities;

237                   (c) to enter into contracts with public and private entities;

238                   (d) to employ and terminate personnel, with or without cause, and  
239 contract for personnel and services with public and private entities;

240                   (e) to sue and be sued;

241                   (f) to exercise the power of eminent domain (through its Members,  
242 unless and until ERS has such power under applicable law);

243                   (g) to establish and collect rates, fees, charges and assessments in  
244 accordance with the Cost Allocation Model; provided, that rates, fees, charges and assessments  
245 and manner of payment within areas financed solely by the County in Phase II shall be  
246 established by the County;

247 (h) to establish policies, guidelines or regulations to carry out its  
248 powers and responsibilities; and

249 (i) to exercise all other powers that are within the statutory authority  
250 of and may be exercised by its Members with respect to emergency radio communications.

251 3.5 System Assets. System assets shall be held in the name of ERS. ERS may  
252 acquire, construct, receive, own, manage, lease or sell System assets and other assets. The  
253 Governing Board shall maintain a Capital Record that reflects each Member's cumulative  
254 payment of capital costs. A Member may transfer to ERS its title to, or operational control of,  
255 emergency radio communication assets. ERS may control and manage both the assets it owns  
256 and the assets that are owned by Members that have transferred control of those assets to ERS.  
257 This Agreement does not vest in ERS any authority with respect to Members' other facilities or  
258 assets. Members shall be deemed to have an ownership interest in any assets owned by ERS,  
259 whether those assets have been developed by, purchased by, or transferred to ERS. Such interest  
260 shall be exercisable only pursuant to Section 4.4 or 5.4. The fact that title to an asset has been  
261 transferred to ERS by a Member shall create no special rights of that Member with respect to that  
262 asset.

263  
264 ARTICLE 4

265 TERM AND TERMINATION OF AGREEMENT

267 4.1 Term. This Agreement shall be effective, as set forth in Section 21.3, when  
268 executed by all the Cities, the County and the Dispatch Centers. This Agreement shall continue

269 in effect for twenty-five years unless earlier terminated in accordance with the provisions of this  
270 Agreement.

271 4.2 Renewal. This Agreement shall be automatically renewed for successive terms of  
272 five years unless earlier terminated in accordance with the provisions of this Agreement.

273 4.3 Termination – Supermajority Vote. This Agreement shall terminate effective  
274 upon any date specified by Supermajority Vote.

275 4.4 Assets – Distribution. Upon termination of this Agreement, the Governing Board  
276 shall establish a procedure for realizing the fair market value of ERS assets, which may include  
277 offering assets for sale to Members or Users. The proceeds of ERS assets shall be distributed to  
278 Members according to their share of ownership as determined by the Capital Record at the time  
279 of termination; provided that: (a) a Member shall have the right of first refusal to purchase from  
280 ERS at fair market value any ERS assets acquired in Phase I located within the Member’s  
281 jurisdiction; and (b) ERS assets acquired in Phase II and paid for entirely by the County upon  
282 County request shall be distributed to the County.

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## ARTICLE 5

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### WITHDRAWAL OF MEMBERS

287 5.1 Notice. Any Member may voluntarily withdraw from ERS effective  
288 December 31 of any year by providing at least three years’ written notice to the Governing Board  
289 containing evidence of approval of such action by the Member’s legislative authority.

290           5.2    Payments Prior to Withdrawal.  Members shall be responsible for paying the  
291 following rates, fees, charges and assessments imposed by ERS after notice of withdrawal has  
292 been given but before withdrawal has become effective:

- 293                   (a)    System operation and maintenance costs;
- 294                   (b)    capital costs for System assets placed in service before withdrawal  
295 has become effective; and
- 296                   (c)    reserves allocable to System assets placed in service before  
297 withdrawal has become effective.

298           5.3    Obligations Upon Withdrawal.  A withdrawing Member shall relinquish all  
299 System equipment which the Governing Board determines is necessary to maintain the System at  
300 an effective level of service that all remaining Members enjoyed prior to the withdrawal,  
301 provided that ERS assets acquired in Phase II and paid for entirely by the County upon County  
302 request shall be distributed to the County.

303           5.4    Rights Upon Withdrawal.  A withdrawing Member shall be entitled to have that  
304 Member's interest in ERS assets equitably determined as set forth in this Section.

305                   5.4.1   Process.  The Members shall use reasonable efforts to determine the value  
306 of and method of payment for a withdrawing Member's interest in ERS assets.  If after such  
307 reasonable efforts, the value of and payment for a withdrawing Member's interest in ERS assets  
308 has not been determined, the issue may be treated as a Complaint under Article 12, including  
309 Binding Arbitration under Section 12.5.

310                   5.4.2   Equitable Factors.  In determining the value of and method of payment for  
311 a withdrawing Member's interest in ERS assets, equitable factors, including without limitation

31 2 the following, shall be considered. The Members acknowledge that the results of this process  
31 3 and application of such equitable factors may result in the realization of less than fair value for a  
31 4 Member's interest in ERS assets.

31 5 (a) The continuing, effective operation of the System;

31 6 (b) The withdrawing Member's interest in ERS assets based on the  
31 7 Capital Record, including payments made prior to withdrawal under Section 5.2 and amounts  
31 8 paid by the withdrawing Member and held in reserves under Section 10.11;

31 9 (c) Amounts owed to the System by the withdrawing Member;

32 0 (d) To the extent radio frequencies licensed to ERS may be available  
32 1 for use other than for the System, and such frequencies are not necessary for the continuing,  
32 2 effective operation of the System, transfer of such frequencies to the withdrawing Member may  
32 3 be considered;

32 4 (e) The impact on the budgets of remaining Members and the ability  
32 5 of remaining Members to provide services to the public; and

32 6 (f) The value of the System.

32 7 5.4.3 Radios. Radios purchased by the withdrawing Member shall be retained  
32 8 by the withdrawing Member.

32 9 5.4.4 Other.

33 0 (a) Where practicable, and subject to Section 5.4.2(a), the withdrawing  
33 1 Member may be provided access to System facilities upon the payment to ERS of the reasonable  
33 2 cost of access to and use of ERS facilities; and

333 (b) A withdrawing Member may become a User, subject to all  
334 obligations imposed by a Dispatch Center upon a User.

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## ARTICLE 6

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338

### TERMINATION OF MEMBERS

339 6.1 Notice. A Member may be terminated effective December 31 of any year upon  
340 the Governing Board's written determination approved by Supermajority Vote at least 180 days  
341 in advance that the Member has not complied with ERS policies, guidelines or regulations,  
342 including without limitation Federal Communication Commission regulations.

343 6.2 Obligations and Rights Upon Termination. Following termination, a Member that  
344 has been terminated shall be subject to the same obligations and entitled to the same rights as a  
345 withdrawing Member under Sections 5.2 through 5.4.

346

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## ARTICLE 7

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349

### ADDITION OF MEMBERS

350 The Cities and the County constitute the original Members of ERS. Additional Members  
351 may be added by Supermajority Vote. The Governing Board in its sole discretion shall  
352 determine the appropriate payment required of additional Members. Such required payment may  
353 take into account past investment and formation costs. The Governing Board shall not approve  
354 the addition of any Member within the area financed solely by the County without the County's  
355 prior written approval.

356

3 57 ARTICLE 8

3 58 GOVERNING BOARD OF DIRECTORS

3 59  
3 60 8.1 Governing Board – Membership. A Governing Board of Directors shall govern  
3 61 ERS and shall have the powers and obligations set forth in this Agreement. The Governing  
3 62 Board shall consist of ten (10) Directors, one (1) Director to be appointed by each Member.

3 63 8.1.1 The Governing Board shall continue to consist of ten Directors until  
3 64 amendment of this Agreement.

3 65 8.1.2 Each Member may designate alternate representatives to the Governing  
3 66 Board.

3 67 8.2 Voting.

3 68 8.2.1 Unless otherwise provided in this Agreement, decisions of the Governing  
3 69 Board shall be made by Majority Vote; however, any Director may require that any decision of  
3 70 the Governing Board be made by Weighted Vote. In that event, the decision made by Weighted  
3 71 Vote shall prevail notwithstanding the result of the Majority Vote. No Weighted Vote or  
3 72 Supermajority Vote may be taken unless reasonable notice of the Weighted Vote or  
3 73 Supermajority Vote has been given to all Directors and Members.

3 74 8.2.2 The following actions shall require approval by Supermajority Vote:

- 3 75 (a) addition of any Member;
- 3 76 (b) addition of any Dispatch Center to the System;
- 3 77 (c) approval of the System design;
- 3 78 (d) Project Expenditures in excess of the total set forth in Exhibit D;



- 3 19 (e) adoption of the annual budget if the increase from the prior year's  
3 20 budget exceeds 10%;
- 3 21 (f) amendments to this Agreement, including modifications to the  
3 22 makeup of the Governing Board or manner of appointments to the Governing Board;
- 3 23 (g) amendments to the Articles of Incorporation;
- 3 24 (h) adoption of or amendment to any bylaws;
- 3 25 (i) termination of any Member;
- 3 26 (j) termination of this Agreement; and
- 3 27 (k) corporate dissolution.

3 28 8.2.3 For Majority Votes, only those Directors present and voting shall be  
3 29 counted. No proxies are permitted. A quorum shall consist of a majority of Directors.

3 30 8.2.4 For Weighted Votes and Supermajority Votes, each Member shall have  
3 31 the right to be represented either by a Director who directly represents that Member or by the  
3 32 grant of that Member's proxy in writing to a Director who may also represent that Member.

3 33 8.3 Powers. The Governing Board shall have the power to take all actions on behalf  
3 34 of ERS.

3 35 8.4 Meetings. The Governing Board shall meet as necessary, but at a minimum on a  
3 36 quarterly basis.

3 37 8.5 ERS Insurance. The Governing Board shall procure insurance including without  
3 38 limitation general liability, officers and public officials errors and omissions, property, casualty  
3 39 and fire. The Governing Board may authorize contracts with insurance and/or risk pools, or

40) other agencies to provide the insurance coverages deemed by the Governing Board to be  
40| reasonable and appropriate for ERS.

40|       8.6   Officers. The officers of ERS shall be a President, a Vice-President, a Secretary  
40| and a Treasurer. The President shall serve as chair of the Governing Board and shall perform  
40| such other duties as may be determined by the Governing Board. The Vice-President shall  
40| perform the duties of the President in the President's absence and shall perform such other duties  
40| as may be determined by the Governing Board. The Secretary and Treasurer shall be responsible  
40| for the books and records of ERS and shall perform such other duties as may be determined by  
40| the Governing Board. Additional officers may be approved by the Governing Board. Two or  
40| more offices may be held by the same person, except for the offices of President and Secretary.

41|       8.7   System Manager. The Governing Board may appoint a System Manager of ERS  
41| and establish such other positions as it may deem advisable. The Governing Board may also  
41| provide that administrative, technical or professional services be performed by contract.

41|       8.8   Budget. The Governing Board shall approve an annual budget determining the  
41| revenues and expenditures of ERS by July 1 of the calendar year prior to that in which that  
41| budget will be in effect. The Governing Board may amend the budget. If approved by the  
41| County, the Governing Board may establish an operating fund to be administered by the County  
41| from which all Governing Board costs and obligations may be paid. All ERS books and records  
41| shall be open to inspection by any Member and the Washington State Auditor.

41 8.9 Project Oversight. The Governing Board shall oversee Project implementation,  
42 and shall coordinate with and ensure accountability of Members in their continuing operation of  
43 the System following full implementation of the Project.

42 8.10 Governing Board Actions. The Governing Board shall:

- 42 (a) approve the System design and modifications to the System  
43 design;
- 44 (b) approve System operation and maintenance standards;
- 45 (c) approve the Project implementation schedule;
- 46 (d) receive and review quarterly reports on Project implementation  
47 progress and modifications to the Project implementation schedule;
- 48 (e) approve the recalculation of the Cost Allocation Model;
- 49 (f) establish appropriate financial policies for ERS;
- 50 (g) maintain books and records for ERS in accordance with applicable  
51 generally accepted accounting principles;
- 52 (h) approve repair and/or replacement of System equipment;
- 53 (i) allocate the cost of repair and/or replacement through the Dispatch  
54 Centers, provided that allocation of such costs to Members shall be in accordance with the Cost  
55 Allocation Model;
- 56 (j) establish procedures for the operations and meetings of the  
57 Governing Board;
- 58 (k) appoint such committees as it deems appropriate; and

440 (l) manage the dispute resolution process and investigate any  
441 allegation of breach of this Agreement.

442

443

## ARTICLE 9

444

445

### TECHNICAL COMMITTEE

446 9.1 Technical Committee – Membership. The Governing Board shall appoint a  
447 Technical Committee, which shall consist of such committee members as may be determined in  
448 writing by the Governing Board. The Technical Committee shall have only such authority as  
449 determined in writing by the Governing Board. If so requested by the Governing Board, the  
450 System Manager and Dispatch Centers shall provide technical support to the Technical  
451 Committee.

452 9.2 System Design. The Governing Board shall approve the System design by  
453 Supermajority Vote. The Technical Committee shall submit to the Governing Board  
454 recommendations regarding System design. The System design at a minimum shall include:

- 455 (a) performance standards;
- 456 (b) a Project implementation schedule;
- 457 (c) the identification of Repeater Sites and their mobile and portable  
458 coverage areas;
- 459 (d) the identification of the capacity, functioning and location of the  
460 Network Controller Equipment; and
- 461 (e) the identification of Microwave Paths used to link Repeater Sites  
462 and Communications Centers to the Network Controller Equipment.

463 9.2.1 The System design shall assure access to the System in the following  
464 access priority order:

465 Priority 1: public safety (police, fire and emergency medical services) Users;  
466 Users able to interact with control stations in public school districts and public hospitals within  
467 the County; and other public agencies served by compatible radio communication systems as of  
468 the effective date of this Agreement;

469 Priority 2: other public agencies with emergency response duties; and

470 Priority 3: other entities, as determined by the Governing Board.

471 Access to the System shall be reserved for Members, consistent with the priorities herein, and  
472 made available to Users only upon Governing Board approval and finding of available capacity.

473 9.2.2 The Technical Committee may submit to the Governing Board for its  
474 approval by Supermajority Vote recommendations regarding modifications to the System design.

475 9.3 Operation and Maintenance Standards. The Governing Board shall adopt  
476 operation and maintenance standards for the System. The Technical Committee shall submit to  
477 the Governing Board recommendations regarding operation and maintenance standards.  
478 Operation and maintenance standards at a minimum shall include:

479 (a) minimum technical standards for System equipment and  
480 Subscriber Units;

481 (b) protocols for the modification of Talk Group assignments and their  
482 usage and radio programming;

483 (c) procedures for installation of System equipment;

484 (d) minimum periodic maintenance standards for System equipment;

485 and

486 (e) problem reporting and resolution practices for System equipment.

487 9.4 Contracting. The Governing Board may delegate authority to the Technical  
488 Committee to authorize contracts if the Governing Board first establishes policies in writing that  
489 at a minimum provide for a maximum dollar amount and term of such contracts.

490 9.5 Authority Reserved. Nothing in this Agreement shall limit the Governing Board's  
491 authority to review, modify or reverse actions taken by the Technical Committee.

492

493 ARTICLE 10

494

495 FINANCES

496 10.1 Cost Allocation Model. The Cost Allocation Model shall be used to determine  
497 each Member's share of financial obligations and voting weight from time to time. The  
498 Governing Board shall cause the Cost Allocation Model to be recalculated annually to reflect  
499 population, area and calls for service from January 1 through December 31 of each year. The  
500 Cost Allocation Model may be modified only by amendment of this Agreement in accordance  
501 with Article 18.

502 10.2 Formation Costs. Reasonable formation costs incurred by Members and Dispatch  
503 Centers in forming ERS shall be allocated to Members in accordance with the Cost Allocation  
504 Model, and shall include without limitation staffing costs paid from the Emergency Services  
505 Communication System Fund administered by the Snohomish County Enhanced Emergency  
506 Services Communication Board (Enhanced 911 Board), legal costs and costs incurred pursuant

507 to the Memorandum of Understanding dated February 14, 1997, among the Cities of Everett and  
508 Marysville, SNOPAC and SNOCOM.

509 10.3 Phase I Financing.

510 10.3.1 The financing of System assets in Phase I shall be by cash payment by  
511 each Member or, upon approval by the County, by County financing. County financing on  
512 behalf of Members shall be subject to repayment pursuant to separate agreements. The County  
513 shall have no obligation to provide such financing for any Member unless and until a separate  
514 agreement providing for such financing is in effect with that Member.

515 10.3.2 Access to the System in Phase I, other than by Members, shall be by  
516 written agreement with Dispatch Centers. Any payment by a User of capital costs shall be  
517 calculated and allocated as set forth in Exhibit B. No payment by a User of capital costs shall  
518 entitle that User to any ownership of ERS assets. Any dispute over any allocation of a User  
519 payment for access to Phase I shall be treated as a Complaint.

520 10.3.3 Unless approved by Supermajority Vote, Project Expenditures shall not  
521 exceed the total set forth in Exhibit D.

522 10.4 Phase II Financing. The financing of System assets in Phase II shall be by County  
523 financing; provided that such financing may be deferred or terminated at the sole discretion of  
524 the County. The County shall determine the appropriate payment for Phase II capital costs  
525 required of each User pursuant to separate interlocal agreements. The Governing Board shall not  
526 allow any User access to the System in Phase II without prior County approval.

527 10.5 Annexation. If a Member or User city annexes territory during the term of this  
528 Agreement, unless otherwise agreed by that city and the County, the city shall assume and pay to

529 the County an equitable allocation of System capital costs incurred by the County. If the  
530 annexing City is a Member, any such payment shall be reflected for the Member and the County  
531 in the Capital Record. The failure of the annexing city and the County to reach any such  
532 agreement may be treated as a Complaint.

533 10.6 Limited Obligation. The Members assume no obligation to provide financial  
534 support in the future for the Project or the System except as specifically set forth in this  
535 Agreement or in the separate financing and User agreements hereafter entered into between the  
536 County and Members or Users.

537 10.7 Record Maintenance. Each Member and Dispatch Center agrees to establish and  
538 maintain accounts and records in accordance with applicable generally accepted accounting  
539 principles as may be deemed necessary by the Governing Board to ensure proper accounting for  
540 its Project costs and compliance with this Agreement.

541 10.8 County Services. If approved by the County, the County shall act as ERS's agent  
542 to procure System assets. Such procurement shall be:

- 543 (a) consistent with the approved System design;
- 544 (b) subject to Governing Board review;
- 545 (c) subject to the record-keeping, audit and reporting requirements of  
546 this Agreement; and
- 547 (d) in accordance with applicable County procurement statutes and  
548 regulations.



54 9           10.9 Integration. The Dispatch Centers shall act as ERS's agent to integrate the  
55 0 System into Member and User operations in accordance with approved standards of operation  
55 1 and maintenance.

55 2           10.10 ERS Expenses. System expenses, including operation and maintenance and  
55 3 reimbursement of County administrative costs, shall be identified in the ERS annual budget. By  
55 4 July 1 of each year, the Governing Board shall cause the allocable share of expenses to be billed  
55 5 to the Members through the Dispatch Centers in accordance with the Cost Allocation Model.  
55 6 The Dispatch Centers shall include such expenses in their following year's budget and pay ERS  
55 7 on a schedule approved by the Governing Board.

55 8           10.11 Reserves. ERS shall annually collect reserves adequate to provide for the repair  
55 9 and reasonable replacement of System equipment. Collection of reserves shall be included in the  
56 0 annual budget pursuant to a repair and replacement formula established by the Governing Board,  
56 1 provided that allocation of reserves collected from Members shall be in accordance with the Cost  
56 2 Allocation Model. "Reasonable replacement" of System equipment includes provision for (a)  
56 3 the replacement of malfunctioning System equipment; (b) reasonable spare System equipment;  
56 4 and (c) reasonable emergency System equipment. The Governing Board may establish a  
56 5 schedule for replacing a substantial portion or the entirety of the System only by amendment of  
56 6 this Agreement in accordance with Article 18.

56 7

ARTICLE 11

MEMBER AND USER OBLIGATIONS

11.1 System Use. Each Member and User shall use the System exclusively for approved System purposes and other Project purposes and in strict accordance with all applicable federal law and regulations.

11.2 Priority Access. Consistent with the approved System design, Members shall have priority access to the System. Upon approval by the Governing Board, Dispatch Centers may provide access by contract to Users in the following priority:

Priority 1: public safety (police, fire and emergency medical services) Users; Users able to interact with control stations in public school districts and public hospitals within the County; and other public agencies served by compatible radio communication systems as of the effective date of this Agreement;

Priority 2: other public agencies with emergency response duties; and

Priority 3: other entities, as determined by the Governing Board.

11.3 User Access. ERS may provide access to Users through a written agreement between a User and a Dispatch Center. Each such written agreement shall, at a minimum:

11.3.1 Require Users to use, operate, and maintain equipment in a manner which is consistent with the approved System design and approved operation and maintenance standards;

11.3.2 Require Users to pay such rates, fees, charges and assessments as deemed appropriate by the Governing Board for the System and its ongoing operations and maintenance;

590 provided, that rates, fees, charges and assessments and manner of payment within areas financed  
591 solely by the County in Phase II shall be established by the County;

592           11.3.3 Include the following provision: “Access to the radio communications  
593 system provided through this agreement is conditioned upon approval of the Emergency Radio  
594 System (“ERS”) and continued availability of radio system capacity in excess of that required to  
595 maintain an acceptable level of service for the Members of the ERS. Additional Users may be  
596 added to ERS at any time. The parties to this agreement acknowledge that the User being  
597 provided access to the radio communications system by this agreement is being added subject to  
598 service termination should a conflict arise concerning system capacity for Members or other  
599 Users of ERS. Such termination may be with 180 days’ written notice, in the absence of any  
600 imminent threat to essential radio system services for Members or other Users of ERS; or, it may  
601 be without notice, if the Governing Board of ERS determines that termination of service is  
602 required to preserve essential radio system services to the Members or other Users of ERS or to  
603 preserve performance standards. Users have limited recourse to the dispute resolution  
604 procedures set forth in the ERS Agreement, a copy of which is delivered together with this  
605 agreement. Users acknowledge participation in a non-profit, cost-shared government radio  
606 system. Users agree to abide by all FCC Rules and Regulations concerning the use of shared  
607 radio facilities. Violations of the FCC Rules and Regulations may constitute grounds for  
608 immediate termination of system access.”;

609           11.3.4 Include as an exhibit a copy of this Agreement; and

610           11.3.5 Include other provisions determined appropriate by the Governing Board.

611           11.4 User Dispute Resolution. Dispatch Centers may adopt reasonable dispute  
612 resolution procedures for Users, which the Dispatch Centers may require to be exhausted prior to  
613 recourse to the dispute resolution procedures set forth in Article 12. User recourse to the dispute  
614 resolution procedures set forth in Article 12 shall be limited to complaints alleging that a  
615 Dispatch Center is acting or has acted in a manner that is inconsistent with: the approved System  
616 design; the approved System implementation schedule; the approved operation and maintenance  
617 standards; this Agreement; or the written agreement between a Dispatch Center and a User  
618 pertaining to System use. A User whose complaint has gone through binding arbitration as part  
619 of the Dispatch Center's dispute resolution procedures shall not have recourse to the dispute  
620 resolution procedures set forth in Article 12.

621           11.5 Records. All records, accounts and documents relating to matters covered by this  
622 Agreement shall be subject to inspection, copying, review or audit by the Governing Board, and  
623 each Member and Dispatch Center shall provide to the Governing Board, at all reasonable times,  
624 right of access to its facilities for said purposes. The authority of the Governing Board to  
625 inspect, copy, review or audit records shall be limited to inspection, copying, review or audit  
626 directly related to evaluation of quarterly reports on Project implementation progress and  
627 modifications to the Project implementation schedule, and to allegations of breach of this  
628 Agreement.

629           11.6 Equipment. All equipment used in conjunction with the System shall be subject  
630 to inspection, technical review or analysis by ERS.

631           11.7 Reports. Each Dispatch Center shall provide the Governing Board with quarterly  
632 reports on Project implementation progress and modifications to the Project implementation

63} schedule. Each Dispatch Center agrees to cooperate with the Governing Board in the evaluation  
63+ of Dispatch Center performance under this Agreement and to make available all information  
63} reasonably required by the Governing Board's evaluation process.

## 63} ARTICLE 12

### 63} DISPUTE RESOLUTION, BREACH AND REMEDIES

63) 12.1 Complaint. If a complaint, dispute or controversy ("Complaint") arises between  
64) or among any of the Members, Dispatch Centers and ERS, or between ERS and a User, any  
64+ Director may refer the Complaint to the Governing Board. No Complaint may challenge a vote  
64- of the Governing Board except on the grounds that the vote was taken in violation of this  
64} Agreement or other applicable law. The recourse of Users to the dispute resolution procedures  
64+ set forth in this Article is limited as set forth in Section 11.4.

64} 12.2 Procedures. The Governing Board shall establish appropriate dispute resolution  
64+ procedures within four months of the effective date of this Agreement.

647 12.3 Mediation. The parties to the Complaint and the Governing Board shall submit to  
64} at least four hours of mediation with a mediator agreed upon by the parties to the Complaint and  
649 the Governing Board. As part of the mediation, the Governing Board shall develop a proposed  
650 remedy for the Complaint.

651 12.4 Review Panel. Complaints that remain unresolved by mediation shall be subject  
652 to review by a Review Panel comprised of the chief executive officer of each of the Members, or  
653 equivalent, or a designee who shall be organizationally senior to the Member's representative to  
654 the Governing Board.

65) 12.5 Binding Arbitration. If the Review Panel fails or declines to propose a remedy, or  
65) if a party to the Complaint contests a remedy proposed by the Review Panel, the dispute shall be  
65) subject to binding arbitration by a single arbitrator in accordance with Chapter 7.04 RCW.

65) 12.6 Limited Review. A party to a complaint may appeal the arbitrator's decision only  
65) through an internal appeal process established by the association providing the arbitrator.

66) 12.7 Settlement. Arbitration proceedings may be terminated by execution of a written  
66) settlement agreement by the parties to the Complaint.

66) 12.8 Governing Board Jurisdiction Retained. Notwithstanding any other provision in  
66) this Article, except as provided in Section 12.9 below, at any point in the dispute resolution  
66) process, the Governing Board may adopt and impose an interim emergency remedy to ensure  
66) maintenance of essential communications services until the Complaint is resolved.

66) 12.9 Interim Relief. Nothing in this Agreement shall prohibit any party from seeking  
66) injunctive relief for the preservation of property.

66) 12.10 Costs. All costs incurred by a complaining Member or User arising out of the  
66) dispute resolution process shall be borne by the complaining Member or User and shall not be  
67) recoverable from ERS. Costs incurred by ERS in the dispute resolution process shall be  
67) considered System operation and maintenance costs to be allocated to the Members and Users  
67) through the Dispatch Centers in accordance with Section 10.10.

67)

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ARTICLE 13  
FREQUENCIES

677         The Members agree that all 800 MHz frequencies used in the System shall be licensed  
678 exclusively in the name of ERS and used in accordance with the approved regional System  
679 design.

680

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683

ARTICLE 14  
HOLD HARMLESS AND INDEMNIFICATION

684         14.1 Indemnification. Each Member and Dispatch Center shall defend, indemnify and  
685 hold harmless the other Members, the Dispatch Centers, the Governing Board and the Technical  
686 Committee for losses attributed to that Member or Dispatch Center's own comparative  
687 negligence; provided, that except for acts or omissions that are dishonest, fraudulent, criminal or  
688 malicious, any such loss resulting from the acts or omissions of any Member, Dispatch Center or  
689 Director or Technical Committee member while acting within the scope of authority under this  
690 Agreement shall be considered System operation and maintenance costs to be allocated to the  
691 Members and Users through the Dispatch Centers in accordance with Section 10.10.



692         14.2 Costs. All costs, judgments, or awards of damages arising from the sole or  
693 comparative negligence of ERS shall be allocated to the Members in accordance with the Cost  
694 Allocation Model.

695         14.3 Corporate Liability. Upon the incorporation of ERS, Members shall not be liable  
696 for the obligations of ERS.

697

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700  
ARTICLE 15

DISPATCH CENTERS

701           15.1 ERS – Dispatch Center Relationship. This Agreement is intended, in part, to  
702 provide Members the services identified herein through regional Dispatch Centers. The current  
703 model of Dispatch Center organization functions well for the Members, and consolidating and  
704 coordinating dispatch service facilitates the provision of this governmental service. However,  
705 during the term of this Agreement, there may be revisions or changes to Dispatch Center  
706 membership or more or fewer Dispatch Centers.

707           15.2 Dispatch Centers. The initial Dispatch Centers are those established and operated  
708 by SNOCOM, SNOPAC and the City of Marysville. Dispatch Centers may withdraw from the  
709 System upon two years' notice to the Governing Board. Additional Dispatch Centers may be  
710 added to the System upon approval of the Governing Board by Supermajority Vote.

711  
712  
713  
ARTICLE 16

RIGHTS AND OBLIGATIONS RESERVED

714           This Agreement reserves to each Member and shall not be construed in derogation of any  
715 rights, powers, privileges, authority, liabilities, obligations and duties set forth in or provided by  
716 any previous agreement executed by a Member relating in any way to the design, development,  
717 acquisition, installation, operation, maintenance, repair or replacement of a radio communication  
718 system or any part or component thereof or property right therein.

719



720 ARTICLE 17

721 IMPASSE RESOLUTION

722 17.1 System Implementation. The Governing Board shall be declared at impasse in the  
723 event that the Governing Board is not able to approve a System design within six months of the  
724 effective date of this Agreement.

725 17.2 System Modification. The Governing Board shall be declared at impasse in the  
726 event that the Governing Board is not able to reach agreement on a recommended System design  
727 modification within three months of the submittal of such modification to the Governing Board.

728 17.3 Rules and Procedures. The Governing Board shall be declared at impasse if the  
729 Governing Board is not able to reach agreement on administrative rules and procedures,  
730 including dispute resolution procedures, within four months of the effective date of this  
731 Agreement.

732 17.4 Impasse Resolution. In the event that the Governing Board is at impasse,  
733 resolution of the impasse shall be treated in the same manner as a Complaint.

734

735

736 ARTICLE 18

737 AMENDMENTS

738 Any Member may request changes to this Agreement. This Agreement may be amended  
739 only in writing approved by Supermajority Vote.

ARTICLE 19

GENERAL TERMS

19.1 Agreement Complete. This Agreement is a complete expression of the terms herein and any oral or written representations or understandings not incorporated herein are excluded.

19.2 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement.

19.3 Survivability. Notwithstanding any provision in this Agreement to the contrary, the provisions of Sections 4.4, 5.3, 5.4, 6.2, 14.1 and 14.2 shall remain operative and in full force and effect, regardless of the withdrawal or termination of any Member or the termination of this Agreement.

19.4 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 Member claimed to have waived or consented.

19.5 Subsequent Breach. Waiver of any default 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 and shall not be construed to be a modification of the terms of the Agreement unless stated to be such through written approval of all Members.

19.6 Rights Reserved. Except as specifically provided herein, each Member retains all rights and claims that may exist now or in the future against another Member.

19.7 Notice. Any notice to the Governing Board shall be in writing and shall be addressed to the President and to the System Manager. In the absence of a System Manager,

765 notice shall be given to the managers of the Dispatch Centers. Any notice to a Director or  
766 Member shall be sent, respectively, to the address specified by the Director or the chief executive  
767 officer of the Member.

768 19.8 Partial Invalidity. If any of the provisions of this Agreement are held to be  
769 invalid, illegal or unenforceable, the remaining provisions shall remain in full force and effect.

770 19.9 Assignment. No Member may sell, transfer or assign any of its rights or benefits  
771 under this Agreement without Governing Board approval.

772

773 ARTICLE 20

774

775 RECORDING

776 This Agreement shall be recorded with the Snohomish County Auditor.

777

778 ARTICLE 21

779

780 EXECUTION

781 21.1 Multiple Counterparts. This Agreement may be executed in multiple  
782 counterparts.

783 21.2 Authority. The undersigned represent that this Agreement is duly authorized by  
784 the respective County, Cities and Dispatch Centers set forth below.

785 21.3 Effective Date. All of the undersigned having executed this Agreement, this  
786 Agreement is effective July 1, 1999.

787 SNOHOMISH COUNTY

APPROVED AS TO FORM:

788		
789		
790		
791	_____ County Executive	_____ Snohomish County Prosecuting Attorney
792	CITY OF BRIER	APPROVED AS TO FORM:
793		
794		
795		
796		
797	_____ Mayor	_____ Brier City Attorney
798		
799	CITY OF EDMONDS	APPROVED AS TO FORM:
800		
801		
802		
803		
804	_____ Mayor	_____ Edmonds City Attorney
805		
806	CITY OF EVERETT	APPROVED AS TO FORM:
807		
808		
809		
810		
811	_____ Mayor	_____ Everett City Attorney
812		
813	ATTEST:	
814		
815		
816		
817		
818	_____ City Clerk	
819		
820	CITY OF LYNNWOOD	APPROVED AS TO FORM:
821		
822		
823		
824		
825	_____ Mayor	_____ Lynnwood City Attorney
826		

82 1 CITY OF MARYSVILLE

APPROVED AS TO FORM:

82 1

82 3

83 1

83 1

83 1 City Manager

Marysville City Attorney

83 1

83 1 CITY OF MILL CREEK

APPROVED AS TO FORM:

83 1

83 1

83 1

83 1

83 3 City Manager

Mill Creek City Attorney

84 1

84 1 CITY OF MOUNTLAKE TERRACE

APPROVED AS TO FORM:

84 1

84 1

84 1

84 1

84 1 City Manager

Mountlake Terrace City Attorney

84 1

84 3 CITY OF MUKILTEO

APPROVED AS TO FORM:

84 3

85 1

85 1

85 1

85 1 City Manager

Mukilteo City Attorney

85 1

85 3 CITY OF WOODWAY

APPROVED AS TO FORM:

85 3

85 7

85 3

85 3

86 1 Mayor

City Attorney

86 1

86 2 SNOCOM

SNOPAC

86 3

86 4

86 5

86 6

86 7 Executive Director

Executive Director

86 8

86) EXHIBIT A

87) SYSTEM DESCRIPTION

87) A.1 Introduction.

87) The Emergency Radio System (the "System") will provide a significantly improved level  
87) of communications capability when compared to existing radio systems. The System will  
87) provide effective and coordinated public safety communications on a day-to-day basis, provide  
87) significant operational enhancements, increase user safety, and provide an increased level of  
87) interoperability and coordination among the four dispatch centers in Snohomish County (three  
87) city/county dispatch centers and one WSP dispatch center). The System will be developed in a  
87) manner that maximizes the price advantages realized in large-scale and long-term purchasing  
87) agreements. It is expected to demonstrate the wisest possible use of taxpayer dollars when  
88) compared to other communications systems, and to realize the benefits of improved public safety  
88) communications for all county residents.

88) A.2. System Elements.

88) The System will consist of the following tangible elements: (a) a county-wide 800 MHz  
88) trunked radio system with compatible mobile, portable, and control station radios; (b) a county-  
88) wide VHF paging system; (c) county-wide VHF radio interoperability systems (including  
88) enhancements to existing VHF infrastructure in the Phase II service area to improve back  
88) country and search and rescue operations); (d) an upgraded county-wide 900 MHz mobile data  
89) system; (e) a county-wide microwave transmission network to link system facilities; and (f)  
89) related real property, vehicles, equipment, and appurtenances.

89) A.3. System Design Features.

89) The System will be designed to provide the full range of available radio system features  
89) and to improve upon the overall area coverage offered by existing radio systems. The System  
89) will be designed to maximize performance and to eliminate or minimize radio system  
89) redundancies. The System will be designed on a county-wide basis and will function with equal  
89) effectiveness throughout populated areas of the County.

90) The System will be designed to provide participating agencies (Members and Users)  
90) effective communications in the event of a major disaster. Should a significant portion of the  
90) System fail, restoration of complete System operation will be the highest priority of the  
90) Governing Board, System Manager, and technical support staff.

90) The 800 MHz radio system will operate in simulcast mode from multiple sites, supported  
90) by new or upgraded towers and buildings. The system will also include separate low capacity  
90) trunked "filler" radio sites in difficult service areas. All conventional and filler sites will be

909 integrated into a single system at the system controller/audio switch, allowing radios that are in  
910 transit to automatically “roam” while maintaining effective communications.

911  
912 The VHF paging system will consist of a multiple site simulcast system. The paging  
913 system will be alpha-numeric. It will be designed to provide improved police, fire, and EMS  
914 paging.

915  
916 The VHF radio interoperability systems will link non-participating agencies (federal,  
917 state, and other local agencies) to the System, and will link participating agencies (Members and  
918 Users) during transition to full System operation. Interoperability with the King County  
919 Regional Radio System and the trunked radio system operated by the Boeing Company will be  
920 provided using 800 MHz radios compatible with the Motorola trunked radio technology used by  
921 those systems.

922  
923 The existing 900 MHz mobile data system owned by Snohomish County Public Utility  
924 District No. 1, which is used by participating agencies (Members and Users) under existing  
925 agreements with dispatch centers, will be upgraded pursuant to one or more agreements to be  
926 approved by ERS. The upgraded system will provide enhanced coverage and capacity required  
927 to support use of that system by participating agencies (Members and Users).

928  
929 The microwave transmission network will be loop-protected, except insofar as the  
930 County may determine that loop-protection is not possible in Phase II. The network will provide  
931 excess capacity for additional ERS radio systems, PSAP links, or other point-to-point  
932 government communication needs.

933  
934 The System will provide encrypted communications through an infrastructure design that  
935 supports digital communications, except that the County may determine that encrypted  
936 communications are not possible in Phase II. Two deployable encryption-capable repeaters will  
937 be available to participating agencies for specialized operations or for use outside of the  
938 System’s service areas.

939  
940 The three dispatch centers operated by SNOCOM, SNOPAC, and the City of Marysville  
941 will be upgraded with new console equipment required to operate the System. That equipment  
942 will be connected to the ERS microwave network via a protected spur microwave facility or,  
943 where possible, directly to the high capacity loop. All operational system features will be  
944 provided through participating dispatch centers.

945  
946 A.4. Phased Construction.

947  
948 The System will be designed as a county-wide entity, but will be constructed in two  
949 phases. ERS will proceed with construction of Phase I following approval of the final system  
950 design. Construction of Phase II is contingent upon funding by the County, and ERS will  
951 proceed with construction of Phase II only if authorized by the County.

952

953 A.4.1. Phase I Service Area.

954  
955 The Phase I service area is bounded to the North by the northerly boundary of the City of  
956 Marysville, to the South by the boundary of Snohomish and King Counties, to the West by Puget  
957 Sound, and to the East by SR 9. The 800 MHz system in this service area will include  
958 approximately nine channels operating from approximately eight sites. Stand alone filler sites  
959 will be provided for the Edmonds/Lynnwood waterfront areas and Everett rail tunnel.

960  
961 A.4.2. Phase II Service Area.

962  
963 The Phase II service area is the remainder of the County. Construction of Phase II is  
964 contingent upon funding by the County, and may be developed in stages or limited to particular  
965 features or parts of the Phase II service area as directed by the County. The 800 MHz radio  
966 system will consist of approximately seven channels operating from approximately seven  
967 simulcast sites. Low capacity trunked filler or conventional 800 MHz sites will provide back-  
968 country coverage as required for effective coverage. While the number of filler sites needed to  
969 serve the most rural portions of the County has not yet been determined, a stand alone filler site  
970 will serve the Darrington area and a stand alone filler site will serve the Index area. All trunked  
971 filler and conventional 800 MHz facilities will be fully integrated into the county-wide radio  
972 system. The infrastructure supporting VHF interoperability in the Phase II service area will be  
973 upgraded to ensure high-performance, county-wide interoperability. The VHF system  
974 supporting back country and search and rescue operations will be upgraded to provide for added  
975 voting receivers and simulcast operation and to comply with regulatory changes resulting from  
976 the FCC “refarming” rulemaking.

977  
978 A.5. User Benefits.

979  
980 The System will be engineered for enhanced reliability, redundancy, and survivability in  
981 the event of a disaster. Specific performance and capability enhancements for participating  
982 agencies (Members and Users) include the following:

- 983  
984 • Consistent and reliable portable and mobile radio coverage within each  
985 participating agency’s service area;
- 986  
987 • Increased radio system channel capacity and reduced channel congestion;
- 988  
989 • Capacity for emergency signaling of dispatchers by officers in trouble;
- 990  
991 • Ability to employ individual radio identifier codes for positive identification of  
992 users;
- 993  
994 • Ability to disable stolen or lost radios;
- 995  
996 • Highly survivable infrastructure designed to provide uninterrupted services;



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999  
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1001

- Newer, more reliable radio equipment and infrastructure;
- Enhanced trunked and conventional 800 MHz and VHF interoperability for all participating agencies.

1002

EXHIBIT B

1003

COST ALLOCATION MODEL

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1005  
1006  
1007  
1008

B.1. Formula. Except as otherwise provided in the Agreement or in this Exhibit B, the allocation of each Member’s capital costs, operation and maintenance costs, and voting weight for purposes of Weighted Votes and Supermajority Votes shall be calculated annually by percent based on the following formula:

1009

$$\text{Percent Allocation} = \left(0.25 \times \frac{P_x}{P_t}\right) + \left(0.25 \times \frac{A_x}{A_t}\right) + \left(0.50 \times \frac{C_x}{C_t}\right) \times 100$$

1010  
1011  
1012

where, for the prior calendar year:

1013  
1014  
1015  
1016  
1017  
1018  
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- $P_x$  = the population in the Member’s Service Area,
- $P_t$  = the total population in the Service Area of all Members,
- $A_x$  = the Member’s Service Area in square miles,
- $A_t$  = the total Service Area of all Members in square miles,
- $C_x$  = the calls for service provided by ERS in the Member’s Service Area,
- $C_t$  = the total calls for service provided by ERS in the Service Area of all Members, and

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“Service Area” means the geographic area within the boundaries of a Member actually served by ERS, with the County’s Service Area excluding incorporated areas.

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This formula is intended to produce a percent allocation of allocable capital costs, allocable operation and maintenance costs, and voting weight (with 100% representing all Members voting) to Members based 25% on that Member’s share of the total population of the Service Area of all Members, 25% on that Member’s share of the total Service Area of all Members, and 50% on that Member’s share of the total calls for service provided by ERS made by all Members.

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B.2 Phase I Capital Costs. The allocation for each Member in Phase I includes the population, Service Area, and calls for service (including fire and emergency medical service) of each Member. On the effective date of this Agreement, calls for fire and emergency medical service (collectively, “Fire Calls”) are provided by non-User fire protection districts in the Service Areas of the County, Marysville and Mill Creek. Therefore, Fire Calls are not included in the calls for service element in the cost allocation for 1999 ( $C_x$  in Exhibit C) for the County, Marysville and Mill Creek. In the event that a provider of fire or emergency medical services in the Service Area of the County, Marysville, or Mill Creek becomes a User in Phase I (“New

1039 User”), the New User shall make a Minimum Capital Payment, comprised of two components, as  
1040 follows:

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1042 Minimum Capital Payment = Population Component + Area Component + Call Component  
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1044 Population Component =  $\left(0.125 \times \frac{P_u}{P_t}\right) \times$  Phase I Capital Costs

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1046 Area Component =  $\left(0.125 \times \frac{A_u}{A_t}\right) \times$  Phase I Capital Costs

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1048 Call Component =  $\left(0.50 \times \frac{C_u}{C_u + C_t}\right) \times$  Phase I Capital Costs

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1050 where, for the prior calendar year:

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1052  $P_u$  = the population in the New User’s Service Area,

1053  $P_t$  = the total population in the Service Area of all Members,

1054  $A_u$  = the New User’s Service Area in square miles,

1055  $A_t$  = the total Service Area of all Members in square miles,

1056  $C_u$  = Fire Calls in the New User’s Service Area,

1057  $C_t$  = the total calls for service provided by ERS in the Service Area of all Members, and

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1059 “Service Area” means the geographic area within the boundaries of a Member or the New  
1060 User actually served by ERS, with the County’s Service Area excluding incorporated  
1061 areas.

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1063 The New User shall pay the Population and Area Components of the Minimum Capital  
1064 Payment to the Member whose Service Area overlaps that of the New User. If the Service Area  
1065 of the New User overlaps the Service Areas of more than one Member, the Population and Area  
1066 Components shall be prorated between or among the Members according to population and area.  
1067 Any Member entitled to payment of the Population and Area Components may waive its right to  
1068 receive all or any amount of such payments.

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1070 The New User shall pay the Call Component, and any amount determined by the  
1071 Governing Board in excess of the Minimum Capital Payment, to ERS. ERS shall allocate those  
1072 payments to the Members in accordance with [the Cost Allocation Model Formula set forth in  
1073 Section B.1] [Exhibit C].

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1075 The Governing Board may adjust the Phase I Capital Costs used in calculating the  
1076 Minimum Capital Payment to account for inflation. No payment by a New User of capital costs  
1077 (including the Minimum Capital Payment) shall entitle that User to any ownership of ERS assets.

107) Except as expressly set forth in this Section B.2, all other payments of capital costs by  
107) Users shall be determined by the Governing Board and allocated in accordance with [the Cost  
108) Allocation Model Formula set forth in Section B.1] [Exhibit C]. Payments of the Population and  
108) Area Components of the Minimum Capital Payment shall not be reflected in the Capital Record.  
108) All other payments of capital costs by Users allocated to Members shall be reflected in the  
108) Capital Record.

108) B.3. Phase II Costs. The financing of System assets in Phase II shall be by County  
108) financing, provided that such financing may be deferred or terminated at the sole discretion of  
108) the County. The County shall determine the appropriate payment for Phase II capital costs  
108) required of each User pursuant to separate interlocal agreements. Rates, fees, charges and  
109) assessments and manner of payment within areas financed solely by the County in Phase II shall  
109) be established by the County. Unless otherwise directed by the County, payments made by  
109) Users to the Dispatch Centers shall be credited to the account of the County. Upon termination  
109) of the Agreement, or voluntary or involuntary withdrawal by the County, ERS assets acquired in  
109) Phase II and paid for entirely by the County shall, upon County request, be distributed to the  
109) County.

109) B.4. Subscriber Units. Each Member and User shall bear the cost of its own  
109) Subscriber Units (radios), provided that the Governing Board may authorize the purchase of  
109) radios for Users deemed by the Governing Board to be integral to the System, the cost of which  
110) will be allocated among Members and/or Users as determined by the Governing Board.

EXHIBIT C

1999 COST ALLOCATION<sup>1</sup>

Member	Population (P <sub>x</sub> )	Area (A <sub>x</sub> )	Calls for Service (C <sub>x</sub> )
Brier	6,295	2.11	6,241
Edmonds	38,610	8.95	35,572
Everett	84,330	28.56	170,723
Lynnwood	33,110	7.67	56,634
Marysville <sup>2</sup>	19,740	8.63	33,477
Mill Creek <sup>2</sup>	10,692	3.56	10,177
Mountlake Terrace	20,360	4.11	25,728
Mukilteo	16,810	6.32	18,620
Woodway	990	1.11	612
County <sup>2</sup>	138,304	66.78	89,388

Total (P <sub>t</sub> , A <sub>t</sub> , C <sub>t</sub> ) <sup>3</sup>	369,241	137.80	447,172
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Member	$0.25 \times \frac{P_x}{P_t}$	$0.25 \times \frac{A_x}{A_t}$	$0.50 \times \frac{C_x}{C_t}$	Member Share	
				Percent	Dollars <sup>4</sup>
Brier	0.43	0.38	0.70	1.51%	\$ 266,562.65
Edmonds	2.61	1.62	3.98	8.22%	1,453,300.08
Everett	5.71	5.18	19.09	29.98%	5,303,555.57
Lynnwood	2.24	1.39	6.33	9.97%	1,762,951.90
Marysville	1.34	1.57	3.74	6.65%	1,175,578.82
Mill Creek	0.72	0.65	1.14	2.51%	443,617.37
Mountlake Terrace	1.38	0.75	2.88	5.00%	884,665.18
Mukilteo	1.14	1.15	2.08	4.37%	772,476.63
Woodway	0.07	0.20	0.07	0.34%	59,587.15
County	9.36	12.12	9.99	31.47%	5,567,841.86

Total <sup>5</sup>	25.00	25.00	50.00	100.00%	\$ 17,690,138.00
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<sup>1</sup> Based on data from January 1 to December 31, 1998.

<sup>2</sup> Fire Calls are excluded from calls for service. See Section B.2.

<sup>3</sup> Sources: Population: Puget Sound Regional Council, Population & Housing Estimates, 1998.  
 Calls for Service: Calendar year 1998 totals from SNOPAC (including Marysville) and SNOCOM.  
 Area: Snohomish County P.D.S./G.I.S. Cartography, May 1999.

<sup>4</sup> See Exhibit D.

<sup>5</sup> All figures are rounded to the nearest one hundredth.

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EXHIBIT D

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PROJECT EXPENDITURES

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(excluding formation costs)

*Phase I Capital Cost Summary (See Notes 1 & 2)*

Radio and Microwave Infrastructure	\$ 6,876,500
Facility Costs	4,554,000
Console Costs	879,750
Shared Resources (portable repeater, generator)	67,500
Services	4,310,000
Technical Support Capital Costs	<u>160,000</u>
Subtotal	\$ 16,847,750
5% Project Contingency	<u>842,388</u>
<b>Total Budget/Phase I</b>	<b><u>\$ 17,690,138</u></b>

*Phase II Capital Cost Summary (See Note 2)*

Radio and Microwave Infrastructure	\$ 4,955,500
Facility Costs	4,165,000
Console Costs (may be moved to Phase I)	136,000
Shared Resources (portable repeater, generator)	67,500
Services	2,560,000
Technical Support Capital Costs	<u>100,000</u>
Subtotal	\$ 11,984,000
5% Project Contingency	<u>599,200</u>
<b>Total Budget/Phase II</b>	<b><u>\$ 12,583,200</u></b>

Notes:

1. Phase I costs do not include the cost of the proposed deployable communications/command vehicle.
2. The costs for user/member agency pagers, mobile, portable, and control station radios are not included in the above figures.

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EXHIBIT E  
ARTICLES OF INCORPORATION  
OF  
SNOHOMISH COUNTY EMERGENCY RADIO SYSTEM

The undersigned Members, in order to form a not for profit corporation under Chapter 24.06 of the Revised Code of Washington (“RCW”), hereby sign and deliver the following Articles of Incorporation.

ARTICLE I — NAME

The name of this corporation is:

SNOHOMISH COUNTY EMERGENCY RADIO SYSTEM

ARTICLE II — DURATION

The period of duration of Snohomish County Emergency Radio System (“ERS”) shall be coextensive with the term of the Snohomish County Emergency Radio System Interlocal Corporation Agreement (“Agreement”). The Agreement is attached to these Articles of Incorporation as Exhibit A and by this reference incorporated herein.

ARTICLE III — PURPOSES

ERS is organized on behalf of and as an instrumentality of its governmental members exclusively for educational, charitable, religious, scientific and/or literary purposes, within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as it may be amended from time to time (the “Code”), and more particularly to exercise essential governmental functions within the meaning of Section 115 of the Code, including without limitation to design, develop, finance, acquire, install, operate, maintain and repair and replace as necessary a uniformly high-quality, public safety communications service for all county and city public safety agencies on a county-wide basis within Snohomish County, as set forth in the Agreement.

The purposes of ERS include only those related to emergency radio communications, as set forth above, and do not include the provision of other general services to the public.

## ARTICLE IV — PROHIBITED ACTIVITY

Notwithstanding any of the provisions of these Articles of Incorporation, ERS shall not conduct or carry on activities not permitted to be conducted or carried on by an organization exempt from federal income tax under Sections 115 and 501(c)(3) of the Code or by an organization, contributions to which are deductible under Section 170(c)(2). No part of the net earnings of ERS shall inure to the benefit of any director, officer or private individual. No substantial part of the activities of ERS shall be devoted to the carrying on of propaganda, or otherwise attempting to influence legislation except as may be permitted to Section 501(c)(3) organizations by the Code, and ERS shall not participate in, or intervene in (including the publication or distribution of statements regarding) any political campaign on behalf of or in opposition to any candidate for public office. ERS shall not have or issue shares of stock, shall not make any disbursement of income to its directors or officers, and shall not make loans to its officers or directors.

## ARTICLE V — POWERS

In general, and subject to such limitations and conditions as are or may be prescribed by law, or in the Agreement, these Articles of Incorporation or in the Bylaws of ERS, ERS shall have all powers which now or hereafter are conferred under Chapters 24.06 and 39.34 RCW and other applicable law and the Agreement upon a corporation organized for the purposes set forth above, or are necessary or incidental to the powers so conferred, or are conducive to the attainment of the purposes of ERS. In the event of a conflict, the Agreement shall be given priority over these Articles of Incorporation and these Articles of Incorporation shall be given priority over the Bylaws.

## ARTICLE VI — MEMBERS

Members must be parties to the Agreement. The rights and responsibilities of the Members and the manner of their election, appointment, or admission to membership and termination of membership shall be as provided for in the Agreement. ERS shall have one class of Members, except that each Member may be treated as a separate class for calculating weighted and supermajority voting as provided for in the Agreement.

## ARTICLE VII — DISTRIBUTIONS UPON DISSOLUTION

No director, trustee or officer of ERS, nor any private individual, shall be entitled to share in the distribution of any of the corporate assets upon dissolution of ERS or the winding up of its affairs. Upon dissolution of ERS, after paying, satisfying, and discharging, or making adequate provision therefor, of all liabilities and obligations of ERS, and after returning, transferring, or conveying assets held by ERS requiring return, transfer, or conveyance on condition of the dissolution, all remaining assets of ERS shall be distributed by the Governing Board (which shall be deemed a “board of directors” as that term is used in RCW 24.06.125), as provided for in the Agreement.



## ARTICLE VIII — DISSENTING MEMBERS

“Dissenting members,” as that term is used in RCW 24.06.245 through 255, will be entitled to the rights and allocation of assets set forth in the Agreement, but may be limited to “a return of less than the fair value” of their membership as that term is used in RCW 24.06.255.

## ARTICLE IX — BYLAWS

Provisions for the regulation of the internal affairs of ERS shall be as set forth in the Agreement or in the Bylaws of ERS.

## ARTICLE X — REGISTERED AGENT

The address of the initial registered office of ERS is 1111 Third Avenue, Suite 3400, Seattle, Washington 98101-3299. The name and address of its initial registered agent is FPS Corporate Services, Inc., 1111 Third Avenue, Suite 3400, Seattle, Washington 98101-3299.

## ARTICLE XI — DIRECTORS

The initial Governing Board shall consist of ten Directors. The names and addresses of the persons who are to serve as initial Directors are:

Bob Drewel, County Executive  
Snohomish County  
3000 Rockefeller Avenue  
Everett, Washington 98201

Wayne E. Kaske, Mayor  
City of Brier  
2901 – 228th Street SW  
Brier, Washington 98036

Barbara S. Fahey, Mayor  
City of Edmonds  
121 – 5th Avenue North  
Edmonds, Washington 98020

Ed Hansen, Mayor  
City of Everett  
3002 Wetmore  
Everett, Washington 98201

Tina Roberts, Mayor  
City of Lynnwood  
19100 – 44th Avenue West  
P.O. Box 5008  
Lynnwood, Washington 98046

David A. Weiser, Mayor  
City of Marysville  
4822 Grove Street  
Marysville, Washington 98270

Robert S. Stowe, City Manager  
City of Mill Creek  
15728 Mill Creek Boulevard  
Mill Creek, Washington 98012

Connie L. Fessler, City Manager  
City of Mountlake Terrace  
23204 – 58th Avenue West  
P.O. Box 72  
Mountlake Terrace, Washington 98043

Don Doran, Mayor  
City of Mukilteo  
4480 Chennault Beach Road  
Mukilteo, Washington 98275

Jan Taylor Drummond, Mayor  
City of Woodway  
23920 – 113th Place West  
Woodway, Washington 98020

Each Member shall appoint, remove or replace its Director in such manner as the Member deems appropriate, provided that such action is not inconsistent with the Agreement.

## ARTICLE XII — INCORPORATORS

The names and addresses of the incorporators are:

Snohomish County  
3000 Rockefeller Avenue  
Everett, Washington 98201

City of Brier  
2901 – 228th Street SW

Brier, Washington 98036

City of Edmonds  
121 – 5th Avenue North  
Edmonds, Washington 98020

City of Everett  
3002 Wetmore  
Everett, Washington 98201

City of Lynnwood  
19100 – 44th Avenue West  
P.O. Box 5008  
Lynnwood, Washington 98046

City of Marysville  
4822 Grove Street  
Marysville, Washington 98270

City of Mill Creek  
15728 Mill Creek Boulevard  
Mill Creek, Washington 98012

City of Mountlake Terrace  
23204 – 58th Avenue West  
P.O. Box 72  
Mountlake Terrace, Washington 98043

City of Mukilteo  
4480 Chennault Beach Road  
Mukilteo, Washington 98275

City of Woodway  
23920 – 113th Place West  
Woodway, Washington 98020

### ARTICLE XIII — LIMITATION OF DIRECTOR LIABILITY

Except to the extent otherwise required by applicable law (as it exists on the date of the adoption of this Article or may be amended from time to time), a director of ERS shall not be personally liable to ERS for monetary damages for conduct as a director, except for liability of the director (i) for acts or omissions which involve intentional misconduct by the director or a knowing violation of law by the director, (ii) for any transaction from which the director will personally receive a benefit in money, property or services to which the director is not legally entitled, or (iii) for any act or omission occurring before the date when this provision becomes effective.

If the Washington Nonprofit Miscellaneous and Mutual Corporation Act (the "Act") is hereafter amended to expand or increase the power of ERS to eliminate or limit the personal liability of directors, then, without any further requirement of action by the directors of ERS, the liability of a director shall be eliminated or limited to the full extent permitted by the Act. No amendment to or repeal of this Article shall adversely affect any right of protection of any director of ERS occurring after the date of the adoption of this Article and prior to such amendment or repeal.

#### ARTICLE XIV — INDEMNIFICATION

ERS shall indemnify any director (as that term is defined in RCW 23B.08.500, as presently in effect and as hereafter amended) or officer of ERS, who is involved in any capacity in a proceeding (as defined in RCW 23B.08.500, as presently in effect and as hereafter amended, a "Proceeding") by reason of the position held by such director or officer in ERS, to the full extent allowed by applicable law, as presently in effect and as hereafter amended, except in relation to matters as to which such director or officer shall be adjudged in such Proceeding to be liable for negligence or misconduct in the performance of duty; provided, however, that ERS shall only indemnify a director or officer seeking indemnification in connection with a Proceeding (or a part of a Proceeding) initiated by such director or officer if such Proceeding or part of a Proceeding was authorized by the Governing Board or if such Proceeding or part of a Proceeding was brought by a director or officer to enforce a claim for indemnification under this section and a court or an arbitrator determines that the director or officer is entitled to all of the relief claimed.

By means of a resolution or of a contract specifically approved by the Governing Board, ERS may indemnify an employee or agent to such degree as the Governing Board determines to be reasonable, appropriate, and consistent with applicable law and to be in the best interests of ERS.

The Governing Board shall have the right to designate the counsel who shall defend any person or entity who may be entitled to indemnification, to approve any settlement, and to approve in advance any expense.

Reasonable expenses incurred by a director or officer, who is involved in any capacity in a Proceeding by reason of the position held in ERS, shall be advanced by ERS to the full extent allowed by applicable law, as presently in effect and as hereafter amended. Reasonable expenses incurred by an employee or agent who is involved in any capacity in a Proceeding by reason of the position held by such person or entity in ERS may be, but is not required to be, advanced by ERS prior to the final disposition of such Proceeding to the full extent allowed by applicable law, as presently in effect and as hereafter amended. Expenses shall not be advanced to any director, officer, employee or agent unless that person first promises in a writing delivered to ERS to repay all amounts advanced by ERS in the event that it is later determined that such person is not entitled to be so indemnified.

ERS may purchase and maintain insurance on behalf of any person who is a director, officer, employee, or agent of ERS or is serving at the request or consent of ERS as an officer,

employee, or agent of another corporation, partnership, joint venture, trust, other enterprise, or employee benefit plan against any liability incurred by such person because of such person's status, whether or not ERS would have the power to indemnify such person against such liability under the provisions of this Article. In addition, ERS may enter into contracts with any director or officer of ERS in furtherance of the provisions of this Article and may create a trust fund, grant a security interest, or use other means (including without limitation a letter of credit) to ensure the payment of such amounts as may be necessary or desirable to effect the indemnification and advances contemplated in this Article.

The right to indemnification conferred by this Article shall be interpreted to conform with, and shall not create any right that is inconsistent with, applicable law, as presently in effect and as hereafter amended. To the full extent allowed by applicable law (as presently in effect and as hereafter amended), the right to indemnification conferred by this Article shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors, and administrators of such a person. The rights conferred in this Article shall not be exclusive of any other rights which any person may have or acquire under any applicable law (as presently in effect and as hereafter amended), the Articles of Incorporation, the Bylaws of ERS, a vote of the Governing Board, or otherwise.

If the Act is hereafter amended to expand or increase the power of ERS to indemnify, to pay expenses in advance of final disposition, to enter into contracts, or to expand or increase any similar or related power, then, without any further requirement of action by the directors of ERS, the powers described in this Article shall be expanded and increased to the fullest extent permitted by the Act.

Notwithstanding any other provision of this Article, no indemnification shall be provided to any person if in the opinion of counsel payment of such indemnification would cause ERS to lose its tax exempt status, if any, from federal income taxation.

No amendment to or repeal of this Article shall adversely affect any right of protection of any director, officer, employee or agent for events occurring after the date of the adoption of this Article and prior to such amendment or repeal.

#### ARTICLE XV — NOTICE OF MEETINGS

Notice of regular meetings other than annual may be made by providing each Member with the adopted schedule of regular meetings for the ensuing year at any time after the annual meeting and ten days prior to a regular meeting and at any time when requested by a Member or by such other notice as may be prescribed by the Agreement or the Bylaws.

DATED this \_\_\_\_ day of \_\_\_\_\_, 1999.

INCORPORATORS:

SNOHOMISH COUNTY

APPROVED AS TO FORM:

\_\_\_\_\_  
County Executive

CITY OF BRIER

\_\_\_\_\_  
Snohomish County Prosecuting Attorney

APPROVED AS TO FORM:

\_\_\_\_\_  
Mayor

CITY OF EDMONDS

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Mayor

CITY OF EVERETT

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Mayor

ATTEST:

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

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

CITY OF LYNNWOOD

APPROVED AS TO FORM:

\_\_\_\_\_  
Mayor

CITY OF MARYSVILLE

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

APPROVED AS TO FORM:

\_\_\_\_\_  
City Manager

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

CITY OF MILL CREEK

APPROVED AS TO FORM:

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Mill Creek City Attorney

CITY OF MOUNTLAKE TERRACE

APPROVED AS TO FORM:

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Mountlake Terrace City Attorney

CITY OF MUKILTEO

APPROVED AS TO FORM:

\_\_\_\_\_  
City Manager

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

CITY OF WOODWAY

APPROVED AS TO FORM:

\_\_\_\_\_  
Mayor

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

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CONSENT TO SERVE AS REGISTERED AGENT

FPS Corporate Services, Inc. ("FPS"), hereby consents to serve as Registered Agent in the State of Washington for **Snohomish County Emergency Radio System**, a Washington not for profit corporation, ("ERS"). FPS understands that as agent for ERS, it will be its responsibility to receive service of process in the name of ERS; to forward all mail to ERS; and to immediately notify the office of the Secretary of State in the event of its resignation, or of any changes in the registered office address of ERS for which it is agent.

FPS CORPORATE SERVICES, INC.

\_\_\_\_\_ (date)

By: \_\_\_\_\_  
Colleen M. Marcin, Vice President

NAME OF REGISTERED AGENT: FPS Corporate Services, Inc.

ADDRESS OF REGISTERED AGENT: 1111 Third Avenue, Suite 3400  
Seattle, Washington 98101-3299