

## **AGREEMENT PROVIDING FOR CREATION, OPERATION AND GOVERNANCE OF A COMBINED COMMUNICATIONS NETWORK**

This Agreement, by and between Pierce County Public Transportation Benefit Area Corporation (hereinafter, "Pierce Transit") and Pierce County (hereinafter, "the County") (individually, "Party"; together, "the Parties"), creates a joint venture to own jointly and to provide for the maintenance, operation and governance of a joint venture which shall be called the Pierce Transit – Pierce County Combined Communications Network ("CCN") of shared radio and microwave systems to carry voice and data traffic.

This Agreement is authorized by the Interlocal Cooperation Act, RCW Ch. 39.34.

### **1. Purpose of Agreement and Effective Date**

Pierce Transit and the County form this joint venture in the public interest to support the development, operation, and maintenance of a combined 700 MHz radio communications interoperability network for purposes of ensuring communications for Pierce Transit's system and for the County's public safety programs as well as for the benefit of such other public agencies as may be approved by the Executive Board of the CCN.

The Parties intend for the CCN to utilize common best engineering technical standards, common radio systems linked with other regional public safety systems, and dispatch centers linked to a common network.

This Agreement, among other things, establishes the framework for the governance and management of the maintenance and operation of the CCN, the respective roles and responsibilities of the Parties, allocation of revenue collected from the CCN, and the Parties' commitments to share in the costs of operating, maintaining, and updating the CCN.

This Agreement shall become effective when signed by the Parties.

### **2. Previous Agreements**

Pierce Transit and the County have previously entered into a Communication Agreement dated February 22, 2011, and a Master Site Agreement dated January 16, 2013, as well as a Shared Communication System Policy Statement dated March 14, 2013, all of which remain in effect except to the extent either or both are inconsistent with this Agreement, in which case this Agreement shall control.

### **3. Definitions**

Certain terms used herein are defined as follows:

**Business Plan:** A detailed plan that defines the organizational structure, operational activities, and financing and budgeting structure of the overall business of the CCN.

**Executive Board:** The governing board of the CCN that is created pursuant to Article 8 of this Agreement. The CCN Executive Board is comprised of two representatives of each of the parties to this agreement or their designee. The Executive Board is responsible for overall management and administration of the CCN, and policy and strategic planning for the CCN.

**FCC Rules:** For purposes of this Agreement, the rules of the Federal Communications Commission (“FCC”), including but not limited to Part 90, Subpart R of the Rules of the FCC, 47 C.F.R. § 90.521, et seq.; Section 90.179 of the Rules of the FCC, 47 C.F.R. § 90.179 (shared use of radio stations); all other Rules of the FCC and all decisions and orders of the FCC, applicable to the FCC Licenses; and the Communications Act of 1934, as amended.

**Pierce Transit – Pierce County Combined Communications Network (CCN):** The joint venture formed by this interlocal agreement between Pierce County and Pierce Transit to engage in all activities relating to the administration, design, development, acquisition and installation of a single county wide communication system and that system’s operation, maintenance and management on behalf of the system’s owners, Pierce County and Pierce Transit.

**Operations Board:** A joint board consisting of the Chief Operating Officer of Pierce Transit and the Director of the Pierce County Department of Emergency Management, or their designee, formed to advise the Executive Board and charged with day-to-day monitoring of CCN operations.

**Shared Infrastructure:** Various components or assets of the CCN infrastructure, contributed by the parties as capital assets of the joint venture, as listed on Exhibit A.

**Single County Wide Communication System (SCWCS):** The communication system managed and operated by the CCN, consisting of all of the technical subsystems, including all of the following: Radio, Microwave, Fiber, Networking, Dispatch, Recording, Security, and Wireless; as well as Spectrum Assets and supporting Facilities. The SCWCS also includes VHF, UHF, 700 and 800 MHz and microwave system technologies.

**System Access Agreement (SAA):** An agreement between the CCN and a public agency customer or user of the SCWCS to allow for access to the SCWCS. All SAAs are conditioned upon the acceptance of the terms and conditions of access as established by the Executive Board.

**Total Cost of Ownership (TCO) Analysis:** An assessment and determination of the allocation of costs between the Parties relative to upgrades, replacement, maintenance, growth and expansion or contraction of the CCN and any Party’s property or assets used for the CCN. The TCO shall be utilized to account for a Party’s growth or expansion of its system or assets to avoid unfairly burdening the other Party with a disproportionate cost.

#### **4. Ownership of Shared Infrastructure Comprising CCN**

Pierce Transit and the County have each separately purchased or otherwise separately own various components or assets of the CCN infrastructure, such as microwave equipment, fiber optic cable, conduit, electronic equipment and other equipment used for the transportation

or transfer of voice and data signals, a general inventory of which is attached hereto as Exhibit A. For all items listed on Exhibit A, each party wishes to contribute its portion of such infrastructure to be used as capital assets by the joint venture to become “shared infrastructure”. Pierce Transit hereby conveys to Pierce County an undivided one-half interest in Pierce Transit’s ownership of the shared infrastructure, limited to those items inventoried on Exhibit A, and the County hereby conveys to the Pierce Transit an undivided one-half interest in Pierce County’s ownership of the shared infrastructure, limited to those items inventoried on Exhibit A.

Shared infrastructure shall not include, and the parties remain separate owners of: (1) the real estate, buildings, generators and towers identified on Exhibit B; (2) their respective licenses identified on Exhibit C; and (3) subscriber equipment such as end user radio units.

Pierce Transit and the County have each made significant contributions to date to the shared infrastructure such that their participation in the governance and operation of CCN joint venture should, in the best interests of each Party and the CCN project, be equal.

#### **5. Operation and Maintenance of CCN and Shared Infrastructure**

Pierce Transit and the County will cooperate in operation of the CCN and in providing maintenance of the Shared Infrastructure.

For that separately owned property that is listed on Exhibit B, including real estate, buildings, generators and towers, each party agrees to operate, maintain, manage, and replace such separate property if it is needed for continued operations of the CCN. Failure of either party to do so may constitute cause for the remaining party to terminate this Agreement.

#### **6. Shared Access to FCC Station Authorizations and Licensing**

Pierce Transit is the licensee of the FCC 700 MHz public safety radio station authorizations identified in Exhibit C (the “Pierce Transit Licenses” and together with the County Licenses, the “FCC Licenses”). Pierce Transit will permit the County to access such stations as a CCN party without further licensing or expense. Pierce Transit will permit certain public agencies approved by the Executive Board and eligible under FCC Rules to access such stations in accordance with conditions set by the Executive Board in a System Access Agreement. Pierce Transit will take commercially reasonable steps to maintain, renew and/or obtain substitute FCC licensing necessary for the CCN to function.

The County is the licensee of the FCC 700 MHz public safety radio station authorizations identified in Exhibit C. (the “Pierce County Licenses” and together with the Pierce Transit Licenses, the “FCC Licenses”). The County will permit Pierce Transit to access such stations as a CCN party without further licensing or expense. The County will permit certain public agencies approved by the Executive Board and eligible under FCC Rules to access such stations in accordance with conditions set by the Executive Board in a System Access Agreement. The County will take commercially reasonable steps to maintain, renew and/or obtain substitute FCC licensing necessary for the CCN to function.

The Pierce Transit Licenses shall remain owned by Pierce Transit subject to FCC Rules and this Agreement and the Pierce County Licenses shall remain owned by Pierce County subject to FCC rules and this Agreement. In accordance with the FCC Rules, the Parties' respective FCC Licenses and the CCN are being made available to each other and to eligible approved public agency system users on a nonprofit, cost shared basis. Each Party agrees that its use of the other Party's FCC Licenses will at all times be in compliance with applicable FCC Rules and all applicable FCC technical requirements, and each Party will immediately correct any condition that is contrary to such Rules and requirements.

The Parties agree that the conditions established by the Executive Board governing access by public agency users or customers to the CCN and/or each Party's stations will provide for the limitation of such access on the basis of capacity or similar constraints where such access could degrade the SCWCS, or a Party's use of the system or its use by other third party users. In addition, in the event that a Party determines that additional or modified access by the other Party to the CCN and/or each Party's stations in accordance with the foregoing provisions of this Section could, due to capacity or similar constraints, degrade the providing Party's use of the system, the providing Party reserves the right to limit such additional or modified access pending consultation and conclusion of a mutually agreeable resolution of the requesting Party's access and potential degradation of the providing Party's use of the system.

#### **7. Staffing**

Unless the Executive Board of the CCN determines otherwise, the Operations Board or its designee(s) shall oversee the operation and maintenance of the shared infrastructure and to perform other responsibilities as needed. The Operations Board or its designee(s) shall regularly advise the Executive Board concerning the status of CCN operations and issues relating thereto, and shall have day to day responsibility for management, administration and oversight of the CCN.

With the approval of the Executive Board, additional employees may be hired to perform work for the joint venture.

Pierce Transit employees and employees of Pierce County who perform work for the CCN shall maintain records of time spent by County and Pierce Transit employees on joint venture business and the billings of such time shall be credited against each Party's obligation for funding the CCN pursuant to a payment reimbursement schedule to be worked out in the Finance section within the Business Plan.

Except for reimbursement and other express obligations under this Agreement, no Party by reason of this Agreement assumes any responsibility for direction, supervision, employment, or the payment of any compensation, fees, wages, benefits or taxes to or on behalf of the employees of any other Party, including its employees, representatives agents, contractors or suppliers.

## **8. CCN Executive Board**

The CCN is governed by an Executive Board, a joint board under RCW 39.34.030(4)(a). The Executive Board shall serve as the governing and policy-setting body to oversee the activities, operation, maintenance of the CCN, and shall act in the best interests of the CCN.

Membership on the Executive Board shall consist of the County Executive or designee, the Chair of the Pierce County Council or designee, the chair of the Pierce Transit Board of Commissioners or designee, and the Chief Executive Officer of Pierce Transit or designee, each of whom shall attend meetings of the Executive Board, each of whom shall be required for a quorum, and each of whom shall have equal voice and one vote. The County Executive or designee and the Chair of the County Council or designee may only be members of the CCN Executive Board if that person is not contemporaneously serving on the Pierce Transit Board of Commissioners. In the event of a tied vote on any item, no action is approved.

The Executive Board shall adopt the Business Plan within one hundred eighty (180) days of the effective date of this Agreement. Annually, the Executive Board shall establish and maintain a budget for the CCN.

Meetings of the Executive Board are subject to the Open Public Meetings Act, RCW Ch. 42.30. At any meeting, attendance by one member may be telephonic so long as that member, the member attending in person and those members of the public attending can hear. There shall be at least one meeting of the Board per year, and the Executive Board may conduct other regular and special meetings. Fifteen days' notice to each member shall be given prior to any meeting.

The Executive Board has authority on behalf of the joint venture:

1. to purchase or otherwise acquire and to sell or otherwise dispose of property or assets or shared infrastructure in accordance with the terms of this Agreement;
2. to authorize the Director of Pierce County Emergency Management or designee to enter contracts, obtain services, issue licenses, and procure resources necessary for the operations, maintenance, and sustainment of the joint venture through the Procurement Division of the Pierce County Budget and Finance Department, in compliance with Pierce County, Pierce Transit rules and regulations regarding such activities as further established in the CCN Business Plan on behalf of the joint venture;
3. to authorize the allocation of staff hours to be contributed by Pierce Transit or the County for joint venture business;
4. to set security and other standards for the operation of the shared infrastructure, and for the conduct of customers of the CCN;
5. to adopt budgets of the joint venture and set reserves;

6. to establish and operate an enterprise fund or special funds as authorized by RCW Ch. 39.34;
7. to provide for the employment of staff by the joint venture;
8. to authorize application(s) for federal, state or local funding and to use the proceeds thereof;
9. to set the proportionate annual financial participation of joint venture parties for operating, maintenance, capital and other expenses, which initially shall be ½ the responsibility of Pierce Transit and ½ the responsibility of the County. The Executive Board shall ensure that the expense of authorized staff of Pierce Transit or the County attributable to time spent on joint venture business shall apply toward each party's annual financial participation. The Executive Board shall also proportionately adjust any party's annual financial participation to give credit for any party's greater initial contribution to the shared infrastructure as listed on Exhibit A, though such credit may be spread over the first five years of the project;
10. to exercise the joint powers set out in RCW 39.34.030;
11. to establish policies and bylaws for the Executive Board;
12. to set rates and charges for services and access to the SCWCS;
13. to adopt or change the name of the Pierce Transit-Pierce County Combined Communications Network ("CCN");
14. to make recommendations to the parties' governing bodies;
15. to determine the services to be offered and the terms and rates for such services;
16. to enter into agreements with third parties for goods, services, and/or insurance;
17. to sue, be sued, complain, and defend in all courts of competent jurisdiction;
18. to amend, dissolve or terminate this Agreement in part or in its entirety, which shall require a unanimous vote and approval of each parties' respective governing boards; and
19. to take any other lawful action in the interest of the joint venture or in furtherance of its purposes.

**9. System Access Agreements**

On behalf of the joint venture and using standards and formats approved by the Executive Board, the Operations Board may authorize CCN System Access Agreements (SAA) permitting specified

use of the shared infrastructure by third parties. The Executive Board may provide for a customer advisory committee or other means for encouraging customer input. The Parties agree that the SAAs will include provisions to ensure all such users' ongoing compliance with FCC Rules and FCC technical requirements.

#### **10. Revenue and Expenses**

Revenue from shared infrastructure and from CCN activities shall be the property of the joint venture. Expenses of shared infrastructure and CCN activities shall be the obligation of the joint venture.

#### **11. Support Services**

Unless the Board determines otherwise, Pierce County will act as fiscal agent of the CCN for banking purposes. The Board may make provision for staffing or contract as appropriate for staff and auxiliary services including, but not limited to, personnel, legal, records, payroll, accounting, purchasing and data processing.

#### **12. Responsibility Of The Parties**

In addition to the Responsibility of the Parties listed as Exhibit A to the Parties' February 22 2011 Communication Agreement, the Parties agree to assume the following responsibilities.

The Parties agree to sustain the SCWCS as a Certified Engineered Designed System, in accordance with OEM standards, and engineering best practices.

The Parties agree to follow GASB financial standards and procedures, thereby demonstrating accountability and stewardship over public resources by providing clear, consistent and transparent financial reports. The Parties will comply with the methods prescribed by the Washington State Auditor and all business rules established by the Executive Board in accounting for assets, liabilities, resources and expenditures related to the joint venture.

Each party shall preserve and maintain its separate property and respective licenses and subscriber equipment as listed on Exhibit B to allow for the continued operation of the CCN and SCWCS unless otherwise approved by the Executive Board.

The County shall be required to receive written approval from Pierce Transit should the County desire to change or upgrade the SCWCS. Prior to granting approval, Pierce Transit may request information it deems necessary to make an informed decision and the County agrees to provide such information to mitigate impacts to Pierce Transit's operational requirements, risks to the SCWCS capabilities, or financial risks resulting from the requested change.

Pierce Transit shall be required to receive written approval from the County should Pierce Transit desire to change or upgrade the SCWCS. Prior to granting approval, the County may request information it deems necessary to make an informed decision and Pierce Transit agrees

to provide such information to mitigate impacts to the County's operational requirements, risk to the SCWCS capabilities, or financial risks resulting from the requested change.

As part of any SCWCS change or upgrade request, the Parties agree to perform a Total Cost of Ownership (TCO) Analysis to gauge the cost benefit and viability of any capital investment or SCWCS design change or upgrade to quantify the operational and financial impacts to the County or Pierce Transit over the lifecycle of the various communication technologies being requested.

### **13. Dispute Resolution, Venue**

The Parties shall make good faith attempts to resolve any disputes, including disputes regarding system change requests, informally. Otherwise, the Parties shall engage in mediation within thirty days of a Party's request for mediation prior to pursuit of any other legal remedy. This Agreement shall be interpreted and construed according to and enforced under the laws of the State of Washington, and the Superior Court of Pierce County shall have exclusive jurisdiction and venue over any legal action arising under this Agreement, unless jurisdiction lies exclusively in federal court. In any dispute over the interpretation or application of this Agreement, each party shall bear its own costs and attorneys' fees.

### **14. Duration and Termination of Agreement**

The duration of this Agreement shall be indefinite and the Agreement shall continue until terminated by notice in writing given by either Pierce Transit or the County to the other board member(s) on or before November 30th of the year preceding the final full year of participation, or until terminated otherwise in accordance with this Agreement. Both Parties must continue to fulfill their obligations under this Agreement until the effective date of the termination.

If before April 30th of any fiscal year a Party shall fail to appropriate funds for its financial participation that year as established by the Board, or shall fail to pay such participation by the deadline(s) established by the Board, its vote on the Board shall be reduced to ½ its usual vote until such participation has been fully paid. If such participation by either Pierce Transit or the County remains unpaid on July 1st of that fiscal year, the Agreement shall be deemed terminated effective December 31st of that year unless the Board decides otherwise. The fiscal year of the joint venture shall be the calendar year.

In the event that a Party seeks to terminate this Agreement, it shall give written notice to the Executive Board, which notice shall include the following information, at a minimum:

- a. An explanation of the circumstances causing the Party to believe withdrawal is necessary;
- b. A description of the probable impacts on the remaining Party as a result of the withdrawal, including to the budget of the CCN Program;
- c. A description of the alternatives to withdrawal that have been evaluated by the party;  
and
- d. A proposed withdrawal work plan.



Other than in the instance in which a Party does not appropriate funds resulting in termination, within thirty days of any notice of intent to terminate this Agreement, the Parties shall engage in mediation to attempt to resolve any differences and shall make all good faith efforts to preserve this Agreement and the joint venture.

If this Agreement is terminated by action or inaction of either party, the terminating party shall be liable to the remaining party for actual damages proximately caused by the termination.

Upon termination by either Party without cause or upon mutual termination, ownership of each asset, including upgrades and improvements thereto, shall revert to the Party that contributed the same to the Shared Infrastructure, and the remaining joint venture assets shall be owned in common and distributed proportionately to the former Party(s). Should either of such former Parties elect to sell an interest in such remaining joint venture assets, the other Party shall have the first right to purchase such for the depreciated value. Termination shall not impact the separately owned property that is listed on Exhibit B which shall, at all times, remain the property of the original owner.

In the event that any Party fails to perform an obligation under this Agreement, the other Party shall have the right to bring an action for specific performance, damages, and any other remedies available under this Agreement in law or in equity.

#### **15. No Assignment Permitted**

Pierce Transit and the County shall not subcontract, assign or delegate their rights or duties under this Agreement without the prior approval of the Executive Board.

#### **16. No Third Party Beneficiaries**

Neither Pierce Transit nor the County intend for any third-party to acquire any rights under this Agreement. There are no third-party beneficiaries hereto.

#### **17. Claims and Litigation**

In the event a Party receives a claim or suit by a third party which may involve the joint venture and/or shared infrastructure, it should refer the same to the Executive Board, which will determine whether the joint venture is involved and may authorize hiring of counsel, or request that the legal department of one of the Parties voluntarily handle the matter, or otherwise provide for the protection of the interests of the joint venture. The Parties shall consider entering into a joint defense plan, and will cooperate with each other as needed to respond to and defend against any such claims or actions. Any settlement or final judgment involving the joint venture and/or shared infrastructure shall first be paid by the joint venture with any contribution by the Parties as approved by Executive Board.

**18. Indemnity**

Each Party shall defend, indemnify, and hold harmless the other and all of their elected officials, employees, principals and agents from and against all claims, demands, suits, actions and liability of any kind, including injuries to person or damages to property, which arise out of or are connected with the intentional or negligent acts or omissions of the indemnifying Party, its contractors, and/or employees, agents and representatives related to the indemnifying Party's responsibilities and other work referred to in this Agreement; provided, however that if such claims, damages and injuries to persons or property are caused by or result from the proportionate or concurrent negligence of the Parties, this indemnification obligation applies only to the extent of the negligence of each Party, its contractor or employees, agents or representatives.

**19. Filing**

The County shall attend to filing this Agreement with the County Auditor pursuant to RCW 39.34.040.

**20. Notices**

Any notice given by either party to the other hereunder shall be served, if delivery in person, to the office of the representative authorized and designated in this section to receive notice for the respective party, or if deposited in the mail, properly stamped with the required postage and addressed to the office of such representative as indicated in this Agreement. Either party hereto shall have the right to change any representative or address it may have given to the other party by giving such other party due notice in writing of such change.

To Pierce County:  
Director of Emergency Management  
South 35th Street, Suite D  
Tacoma, WA 98409

To Pierce Transit:  
Chief Operations Officer  
3701 96th Street SW  
Lakewood, WA 98499

**21. General Provisions**


This Agreement contains all of the undertakings of the parties with respect to any matter covered or mentioned herein. No provision of the Agreement may be amended or modified except by written agreement signed by the parties and adopted by each party's governing board. Any provision of the Agreement that is declared invalid or illegal will in no way affect or invalidate any other provision hereof and such other provisions will remain in full force and effect. Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach, and no term or condition of this Agreement shall be held to be waived, modified or deleted except by a writing signed by the parties and adopted by each party's governing board. The Parties represent that they have the legal authority to bind their

respective agencies and have specific authority from their governing Boards to enter into this Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the day and year last written below.

**PIERCE TRANSIT**


Approved as to legal form:

By   
Legal Counsel Date 1/5/15  
Chief Executive Officer

By  1/5/15  
James Walton Date  
Chief Executive Officer

**PIERCE COUNTY**

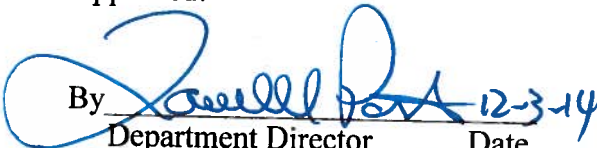
Approved as to legal form:

By   
Deputy Prosecutor 12.9.14

Recommended:

By  12/15/14  
Budget & Finance Date

Approved:

By  12-3-14  
Department Director Date

By  12/22/14  
Pierce County Executive Date