



Combined Communications Network
Enterprise



Pierce County / Pierce Transit Combined Communications Network System Access Agreement

Version 1.0 Dated 9/15/2015

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NAME	DATE	REASON FOR CHANGES	VERSION
Tim Lenk	9/15/2015	Original	1.0

**PIERCE TRANSIT-PIERCE COUNTY
COMBINED COMMUNICATIONS NETWORK (CCN)
SYSTEM ACCESS AND USER AGREEMENT**

This System Access and User Agreement (hereinafter, "Agreement") is made and entered into on this day of _____, 20____, by and between the Pierce Transit / Pierce County Combined Communications Network (hereinafter "CCN"), and Pierce Transit (hereinafter "Subscriber Agency"), (each a "Party", and collectively, the "Parties"), pursuant to which the Subscriber Agency will be provided access to the Single County-Wide Communication System, (hereinafter "SCWCS"), for use of its approved mobile and portable radios and associated approved equipment.

OVERVIEW

The SCWCS consists of but is not limited to the following Subsystems:

P25 Master Site	Microwave	Fiber
Networking	Radio Infrastructure	Recording
Key Management	Wireless Data	Spectrum Assets

The fundamental objective of the CCN is to provide reliable and secure communications for public safety agencies that have access to the SCWCS.

1. RECITALS

- 1.1 The Subscriber Agency and the Subscriber Agency customers desire to access the SCWCS for public safety, first responder, and public service communications using its approved mobile and portable radios and associated approved equipment, on a non-exclusive shared basis with Pierce Transit and Pierce County (the "CCN Parties"), and other Subscribers of the system;
- 1.2 The CCN desires to provide the Subscriber Agency and the Subscriber Agency customers access to the SCWCS for such use under the terms and conditions provided herein; and
- 1.3 The Subscriber Agency agrees to compensate the CCN for its share of access to and use of the SCWCS through payment of an annual Subscriber Agency Fee, as determined by CCN.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, to be kept, performed, and fulfilled by the respective parties hereto, and other good consideration, it is mutually agreed as follows:

2. CCN RESPONSIBILITIES

- 2.1 The SCWCS coverage reliability target area is designed to deliver a high Digital Audio Quality (DAQ) and will be maintained with current industry standards as established by manufacturers certified design, but 100 percent coverage is not guaranteed and will vary from location to location as described more fully in Section 2.4.
- 2.2 CCN will supply Subscriber Agency with a radio frequency propagation map for that portion of the SCWCS that will be used by Subscriber Agency and the Subscriber Agency's customers. Such map is attached to this Agreement as Exhibit "C". Subscriber Agency acknowledges that such map is provided to indicate general parameters of expected coverage of the SCWCS, subject to previously mentioned conditions, and is not binding as an exact representation of coverage. Subscriber Agency and the Subscriber Agency's customers further acknowledges that CCN is not providing a warranty of coverage and that the inability of CCN to provide such coverage will be subject to the limitation of liability set forth in Section 8.
- 2.3 The SCWCS coverage is designed for P-25 Phase 2 voice services only. All other voice and data services are provided "as is".
- 2.4 The CCN cannot guarantee voice and data performance:
 - (a) The CCN has had to make some assumptions based on the Subscriber Agency and the Subscriber Agency customers' coverage information.
 - (b) The SCWCS does not provide coverage outside of the design of the SCWCS.
 - (c) The SCWCS performance may vary due to operating behaviors of the dispatch consoles, and associated equipment connecting the dispatch consoles to the SCWCS and/or Subscriber Agency and the Subscriber Agency customers accessing the SCWCS.
 - (d) Subscriber Agency and the Subscriber Agency customers acknowledge that one hundred percent (100%) portable on-street coverage of any area at all times is improbable. Testing and experience with actual field conditions indicate adverse propagation conditions, such as short-term unpredictable meteorological effects and sky wave interference from distant stations, can interrupt service at any time. Such events are beyond the reasonable control of CCN. Other causes beyond the reasonable control of CCN are motor ignition and other electrical noise that could be minimized by corrective devices at Subscriber Agency's expense. Satisfactory communication performance is generally viewed as intelligible reception over rolling terrain approximately ninety percent (90%) of the time.

- 2.5 The CCN will provide, install, maintain, replace, upgrade and test the SCWCS, and perform its System Administrator responsibilities, and take reasonable steps to meet Original Equipment Manufacturer (OEM) design and maintenance requirements, and security requirements. CCN operation and administration of the SCWCS will be in compliance with the FCC Rules.
- 2.6 **Annual Projected Access Cost:** The CCN will provide estimated annual costs to the Subscriber Agency for Subscriber Agency's following year budget preparation by August of the preceding calendar year (the "Annual Projected Cost"). Subscriber Agency acknowledges that the Annual Projected Access Cost is solely an estimate prepared by CCN for Subscriber Agency convenience, and that the actual Subscriber Agency Fee charged for any year may vary from the Annual Projected Cost, and is determined in accordance with Section 1. Notwithstanding anything herein to the contrary, the amounts payable to CCN by Subscriber Agency shall be in accordance with the Subscriber Agency Fee charged pursuant to Section 1, without regard to the Annual Projected Cost provided to Subscriber Agency pursuant to this Section 2.6.
- 2.7 **Template and Other Design Changes:** If requested by the Subscriber Agency, CCN will work with and prepare needs assessment for the Subscriber Agency, based on the Subscriber Agency current and ongoing communication needs.
- 2.8 **Coverage Area Response:** The CCN will respond to the Subscriber Agency within 72 hours/ 3 days if the Subscriber Agency and/or Subscriber Agency customers report a change within the SCWCS designed coverage area.
- 2.9 **Performance Standards, Monitoring, and Maintenance:** The CCN utilizes monitored, automated performance standards in order to facilitate its timely response to System component outages or other System deficiencies. CCN provides monitoring, inspection, and maintenance for all SCWCS tower sites and System infrastructure that meets or exceeds manufacturers' recommendations. The CCN also maintains a preventative maintenance system for all major components.
- 2.10 **Infrastructure Upgrades and Enhancements:** The CCN will provide the Subscriber Agency notice of any planned upgrades or enhancements of the SCWCS. As a part of this notice, the CCN will advise Subscriber Agency of potential system outages and/or impacts that will affect the Subscriber Agency's access to and use of the system.
- 2.11 **Subscriber Unit Monitoring:** The CCN has the capability of monitoring certain subscriber equipment performances using automated diagnostics. If the CCN identifies a subscriber issue through its automated diagnostics, the CCN will notify the Subscriber Agency, such as:
- (a) **Frequency Error:** Provides the difference between the licensed channel center frequency and the center frequency of the received signal (in Hz)

- (e) **Frequency Deviation:** Reports the difference between the center frequency of the received signal and the modulated frequency
- (f) **Frequency (Error) Variation:** Provides an indication of how stable the frequency is throughout the entire message
- (g) **Maximum Frequency Deviation:** Measures of how far the maximum modulated frequency component is from the center of the licensed channel (in Hz)
- (h) **Probable Emission Mask Non-Compliance:** Determines which subscribers are likely to exceed the FCC Emission Mask by monitoring the frequency error, frequency deviation and maximum frequency deviation

2.12 Interconnection: Services will not be interconnected with the public switched telephone network (PSTN) for the purpose or capability of making calls to or terminating from the PSTN.

3. SUBSCRIBER AGENCY RESPONSIBILITIES

- 3.1 Subscriber Agency agrees to abide by the policy, rules, and procedures of the CCN. Subscriber Agency acknowledges and agrees that its access to and use of the SCWCS is on a non-exclusive, shared basis with other Subscriber Agencies of the system, including the CCN Parties. Subscriber Agency agrees that it will operate its equipment so as not to cause undue interference with any other Subscriber Agency of the SCWCS.
- 3.2 It is the responsibility of the Subscriber Agency to perform its own communications coverage study to ensure that the Subscriber Agency is fully aware of the coverage within its operational area. Therefore, the Subscriber Agency is accepting the SCWCS coverage "as is".
- 3.3 Subscriber Agency shall assume responsibility for all Subscriber Agency employees, contractors, subcontractors, customers and or agents having access to and use of the SCWCS.
- 3.4 Subscriber Agency agrees that its access to and use of the system shall at all times comply with the rules and regulations set forth by Part 90 of the Federal Communication Commission Rules and Regulations for public safety, first responder, and public service Subscriber Agency communications, 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 SCWCS and Subscriber's access to and use thereof, including all FCC technical requirements applicable to its use of the system; and the

Communications Act of 1934, as amended ("FCC Rules"). Subscriber Agency will immediately cease any operation that is contrary to the FCC Rules.

- 3.5 Subscriber Agency understands that discretion, control over and responsibility for the SCWCS shall remain vested in the respective CCN Parties, as the FCC licensees of the particular radio facilities comprising the SCWCS (collectively, the "SCWCS Licenses"), each of which will retain control over their respective aspects of the SCWCS as required of a licensee under applicable FCC Rules, will exercise control thereof and over all aspects of the operation of the SCWCS, and be responsible therefore as required under applicable FCC Rules. It is expressly agreed and understood that nothing in this Agreement is intended to or will constitute a transfer of "control" as defined in the FCC Rules to Subscriber Agency or any other person.
- 3.6 Subscriber Agency represents and warrants that it is a governmental entity and / or Regional Emergency Responders eligible to access and use the SCWCS.
- 3.7 Subscriber Agency will provide notice to CCN of any FCC correspondence or inquiries on matters that relate to its access to or use of the SCWCS within five (5) business days of Subscriber Agency's receipt thereof.
- 3.8 Subscriber Agency shall notify the CCN, per Exhibit A, within twenty-four hours of any outages, malfunctions, and/or errors and/or any other functional problems that impact its ability to communicate or operate its services using the SCWCS.
- 3.9 Subscriber Agency shall provide access to Subscriber Agency premises for CCN personnel and its approved subcontractors at any necessary time and with reasonable prior notice by the CCN, if any error has been identified as outlined in Section 2.11, for the purpose of inspection and testing of the equipment used in providing SCWCS services to Subscriber Agency.
- 3.10 Subscriber Agency shall provide for the training of Subscriber Agency's personnel and the Subscriber Agency customer personnel in the handling and use of equipment and/or any program that is used on the SCWCS which the Subscriber Agency deems necessary for the operations that are used to access the SCWCS.
 - (a) Subscriber Agency will not permit any employee or other personnel, including volunteers, to access the SCWCS until such individual(s) have received user training.
 - (b) The number of approved Subscriber Agency, and Subscriber Agency customer units that will have access to the SCWCS is set forth in Exhibit D, hereto, as may be changed from time-to-time in accordance with this section. Subscriber Agency will give the CCN at least thirty calendar days prior written notice of its intent to increase, decrease, or otherwise change the number of Subscriber Agency or Subscriber Agency customer units that have access to the SCWCS, provided that any increase in the number

of Subscriber Agency or Subscriber Agency customer units beyond the approved number of units in Exhibit D, shall be subject to CCN's approval. Subscriber Agency further acknowledges that in the event of any increase in the number of authorized units, the Subscriber Agency Fee will increase in the following period.

- (a) CCN reserves that right, in its sole discretion on 60-days' notice to Subscriber Agency, to reduce the number of approved Subscriber Agency subscriber units loaded on the system on the basis of capacity or similar constraints where the number of Subscriber Agency units loaded on the SCWCS has the potential to degrade the use of the CCN Parties or other third party units on the system. In such event, the Subscriber Agency Fee will decrease in the following period.

3.11 Subscriber Agency shall notify the CCN if one or more of its subscriber units have been lost or stolen within twenty-four (24) hours of determining that the subscriber units have been lost or stolen.

3.12 Subscriber Agency will identify and appoint in Exhibit A, one primary and one alternate individual as a central Point of Contact (POC) to serve as its liaison to the CCN office that shall be responsible for:

- (a) Authorization of template modifications;
- (b) Providing fleet mapping data for record-keeping purposes;
- (c) Providing after hour emergency telephone numbers; and
- (d) Attend Subscriber Agency Advisory Committee and other meetings necessary for the safe and efficient operation of SCWCS.
- (e) Meet with the CCN annually to discuss Subscriber Agency cost allocation and services

3.13 **Subscriber Equipment:** Subscriber Agency assumes all costs or responsibility for providing the Subscriber Agency subscriber units (portables, mobiles, base stations, and consolettes) that will have access to the SCWCS. Subscriber Agency may only use subscriber equipment that is compatible with and does not impact the capability and daily operations of the SCWCS, and has been approved by CCN.

- (a) Subscriber Agencies are responsible for acquiring their own subscriber equipment.
- (b) Subscriber Agency must provide the CCN with a list of its subscriber equipment, to be attached to this Agreement as Exhibit D, Subscriber Agency Inventory Form, which when so attached, shall be deemed approved equipment for use on the SCWCS. The Subscriber Agency

Inventory Form shall include, but not be limited to, manufacturer, model number, serial number and flash or firmware software version. Subscriber Agency shall notify CCN at least thirty (30) days prior to replacing any equipment with a different model, which shall be deemed approved equipment unless otherwise notified by CCN within such 30-day period. Subscriber Agency will provide CCN with an updated Subscriber Agency Inventory Form within sixty (60) days of the installation of replacement or upgraded equipment.

- (c) Each Subscriber Agency is responsible for proper Preventive Maintenance (PM) and repair of their Subscriber Agency's equipment. This assures that the Subscriber Agency subscriber equipment is in optimal operating order and will not have an adverse impact on other Subscriber Agency's use of the SCWCS.

3.14 **Template Modifications:** Subscriber Agency or the Subscriber Agency customer wanting to make Template modifications must go through its Subscriber Agency POC, and the Subscriber Agency POC must receive CCN approval prior to any template modifications, to ensure that modification do not adversely impact the operation and integrity of the SCWCS.

3.15 **SCWCS Prohibited Use:** No commercial or personal-related business may be conducted through the SCWCS by the Subscriber Agency(s), its employees, or authorized agents, including volunteers and the Subscriber Agency's service provider.

3.16 **SCWCS Subscriber Agency Customer Use:** The Subscriber Agency is responsible for ensuring the Subscriber Agency's customers comply with CCN System Access and User Agreement.

3.17 **Compliance with Policies, Rules and Procedures:** The Subscriber Agency will comply with all policies, rules and procedures of the SCWCS as established by the CCN.

- (a) Copies of policy, rules, and procedures are available to Subscriber Agencies through the CCN office when published. In order to protect the integrity, security, safety, and efficient operation of the SCWCS for all its Subscriber Agencies, upon notice by the CCN Subscriber Agency will take all appropriate corrective action regarding violation of any CCN policy, rules, and procedures.

4. SUBSCRIBER FEE

- 4.1 The Subscriber Agency SCWCS fee, as listed on Exhibit B hereto (“Subscriber Agency Fee”), is intended to recover the Subscriber Agency’s proportionate costs for administrative services provided by the CCN, and for SCWCS operations, maintenance, and replacement costs. The Subscriber Agency annual cost is governed by the CCN Executive Board on an annual basis. Changes to fees are at the sole discretion of the CCN Executive Board, which will be reviewed annually.
- 4.2 All fees payable under this Agreement shall be paid in annual installments, unless otherwise agreed, without setoff or deduction. All fees shall be paid in immediately-available funds to the CCN at the address for the CCN set forth in Exhibit B hereof, or such other address the CCN may designate in writing from time to time.
- 4.3 In the event of any increase in the Subscriber Agency Fee as determined by the CCN Executive Board, CCN shall provide Subscriber Agency written notice of the amount of such new Subscriber Agency Fee at least thirty (30) days in advance of the date on which the increased fee is to become effective. Subscriber Agency may terminate this Agreement upon written notice within thirty (30) days of the provision by CCN of the written notice of the new Subscriber Agency Fee amount; otherwise, the new fee shall become effective on the date specified in any such notice. In the event of termination as herein provided, all accrued and unpaid charges shall be immediately due and payable.

5. EVENTS OF DEFAULT; REMEDIES

- 5.1 Subject to the limitations set forth in Section 7 and Section 8, the occurrence of any of the following shall, at the option of the Party harmed thereby, constitute default under this Agreement:
 - (a) The failure of the Subscriber Agency to pay any Fee with respect to access to the SCWCS when due and payable, provided such failure continues for a period of forty-five (45) days following written notice from CCN;
 - (b) Breach of any obligation of a Party under this Agreement for which a cure period is specified herein (excluding the payment of the Subscriber Agency Fee pursuant to Exhibit B), the failure of the Party to cure such breach within the time period specified; and
 - (c) Breach of any obligation of a Party under this Agreement for which no cure period is specified herein, the failure of such Party to promptly commence to cure such breach and thereafter diligently pursue the cure of such breach to completion within sixty (60) days following written notice of such breach from the other Party; provided, however, if such breach not reasonably susceptible of being cured in said sixty (60) day period (provided that the lack of funds, or the failure or refusal to spend funds, shall not be an excuse

for a failure to timely cure), then, so long as the Party in breach has commenced and is diligently pursuing such cure, the Party in breach shall have such additional period of time as is reasonably necessary to diligently complete the cure of such breach.

- 5.2 Upon the occurrence of default by Subscriber Agency, the CCN shall have the option to terminate this Agreement, retain all payments made hereunder, deny Subscriber Agency any service provided by the SCWCS, impose a separate charge for disconnect and a separate charge for reconnect expenses each in the same amount stated as the initial activation charge on Service Activation, and seek any other remedies and/or damages set forth in this Agreement or otherwise available at law or equity, including equitable relief. If disconnect takes place, Subscriber Agency may also be subjected to additional costs for reprogramming its equipment.
- 5.3 Upon the occurrence of default by CCN, Subscriber Agency shall have the option to terminate this Agreement, and seek any other remedies and/or damages set forth in this Agreement or otherwise available at law or equity, including equitable relief.
- 5.4 Each and all of the rights and remedies hereunder are cumulative to and not in lieu of each and every other such right and remedy and every other right and remedy afforded by law and equity.

6. DURATION, CANCELLATION & TERMINATION

- 6.1 The duration of this Agreement shall be annual and the Agreement shall continue from year to year until terminated by notice in writing given by either Party on or before November 30th of the year preceding the final full year of participation, or until terminated otherwise in accordance with this Agreement. A Subscriber Agency may withdraw on such terms as the CCN decides, consistent with any conditions the CCN may have approved when such Subscriber Agency signed the Agreement. This Agreement shall terminate automatically if any SCWCS License applicable to Subscriber Agency use of the system is terminated, is revoked, or expires without renewal.
- 6.2 If this System Access and Use Agreement is cancelled or terminated for any reason, CCN will provide reasonable assistance, to the extent requested by Subscriber Agency, to facilitate the transfer of services to another system or provider.

7. DISCLAIMER OF WARRANTIES AND LIMITATION OF REMEDIES

- 7.1 SUBSCRIBER AGENCY ACKNOWLEDGES AND AGREES THAT CCN (WHICH SHALL INCLUDE FOR PURPOSES OF THIS SECTION 7, SECTIONS 17. , AND SECTION 2, THE CCN PARTIES) IS NOT THE

MANUFACTURER OF EQUIPMENT. CCN TO THE EXTENT PERMITTED BY LAW ASSIGNS TO SUBSCRIBER ANY AND ALL MANUFACTURERS' WARRANTIES RELATING TO EQUIPMENT PURCHASED BY SUBSCRIBER, IF ANY, AND SUBSCRIBER ACKNOWLEDGES RECEIPT OF ANY AND ALL SUCH MANUFACTURERS' WARRANTIES.

- 7.2 CCN HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, DIRECT OR INDIRECT, EXPRESS OR IMPLIED, WRITTEN OR ORAL, IN CONNECTION WITH ANY EQUIPMENT (WHETHER PURCHASED OR LEASED BY SUBSCRIBER AGENCY FROM CCN OR ANOTHER) AND THE SERVICES PROVIDED HEREUNDER, INCLUDING BUT NOT LIMITED TO ANY AND ALL EXPRESS AND IMPLIED WARRANTIES OF SUITABILITY, DURABILITY, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.
- 7.3 SUBSCRIBER AGENCY ACKNOWLEDGES AND AGREES THAT ITS SOLE AND EXCLUSIVE REMEDY IN CONNECTION WITH ANY DEFECTS IN ANY EQUIPMENT, INCLUDING MANUFACTURE OR DESIGN, SHALL BE AGAINST THE MANUFACTURER OF THE EQUIPMENT UNDER THE MANUFACTURERS' WARRANTIES AND THAT CCN SHALL HAVE NO LIABILITY TO SUBSCRIBER AGENCY OR TO SUBSCRIBER AGENCY CUSTOMERS IN ANY EVENT FOR ANY LOSS, DAMAGE, INJURY, OR EXPENSE OF ANY KIND OR NATURE RELATED DIRECTLY OR INDIRECTLY TO ANY EQUIPMENT OR SERVICE PROVIDED HEREUNDER.
- 7.4 WITHOUT LIMITING THE FOREGOING, CCN SHALL HAVE NO LIABILITY OR OBLIGATION TO SUBSCRIBER AGENCY OR SUBSCRIBER AGENCY CUSTOMERS, IN EITHER CONTRACT OR TORT, FOR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND INCURRED BY SUBSCRIBER AGENCY OR SUBSCRIBER AGENCY CUSTOMERS, SUCH AS, BUT NOT LIMITED TO, CLAIMS OR DAMAGES FOR PERSONAL INJURY, WRONGFUL DEATH, LOSS OF USE, LOSS OF ANTICIPATED PROFITS, OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES OR ECONOMIC LOSSES OF ANY KIND INCURRED BY SUBSCRIBER AGENCY OR SUBSCRIBER AGENCY CUSTOMERS DIRECTLY OR INDIRECTLY RESULTING FROM OR RELATED TO ANY EQUIPMENT OR SERVICE DESCRIBED AND PROVIDED HEREUNDER, WHETHER OR NOT CAUSED BY CCN'S NEGLIGENCE, TO THE FULL EXTENT SAME MAY BE DISCLAIMED BY LAW. ANY REFERENCES TO EQUIPMENT IN THIS PARAGRAPH SHALL BE DEEMED TO APPLY TO ALL EQUIPMENT PURCHASED BY SUBSCRIBER AGENCY OR LEASED BY SUBSCRIBER AGENCY FROM CCN, IF ANY, OR ANOTHER LESSOR.

8. INTERRUPTION OF SERVICE; FORCE MAJEURE

8.1 Except for its own acts, CCN shall not be liable to Subscriber Agency or any other person for any loss or damage, regardless of cause. CCN does not assume and shall have no liability under this Agreement for failure to provide, or delay in providing, service due directly or indirectly to causes beyond the control of CCN or its subcontractors, including but not restricted to, acts of God, or governmental entities, or of the public enemy, strikes, or unusually severe weather conditions. In the event of any failure or delay attributable to the fault of CCN or its subcontractors, Subscriber Agency's sole remedy shall be limited to the pro rata portion of the Subscriber Agency Fee for services for the time of such failure or delay as is more fully described herein. Notwithstanding any other provision contained in this Agreement, Subscriber Agency agrees, that no allowance will be given if such single failure or delay does not exceed forty-eight (48) hours.

9. LIMITATIONS OF LIABILITY; INDEMNIFICATION

9.1 SUBSCRIBER AGENCY UNDERSTANDS THAT (A) ALTERNATIVE MEANS OF COMMUNICATION ARE AVAILABLE TO SUBSCRIBER AGENCY; (B) OCCASIONAL INTERRUPTION OR IRREGULARITIES IN THE SERVICE MAY OCCUR; AND (C) ANY POTENTIAL HARM FROM INTERRUPTIONS OR IRREGULARITIES IN THE SERVICE IS SPECULATIVE IN NATURE. CCN CANNOT OFFER THE SERVICE AT RATES WHICH REFLECT ITS VALUE TO EACH SUBSCRIBER AGENCY, AND CCN ASSUMES NO RESPONSIBILITY OTHER THAN THAT CONTAINED IN THIS AGREEMENT. ACCORDINGLY, SUBSCRIBER AGENCY AGREES THAT EXCEPT AS LIMITED BY LAW CCN'S SOLE LIABILITY FOR LOSS OR DAMAGE ARISING OUT OF MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, ERRORS, OR DEFECTS IN THE SERVICE OR TRANSMISSION OF SERVICE PROVIDED BY CCN OR ANY CARRIER OR PROVIDER, OR FOR LOSSES OR DAMAGES ARISING OUT OF THE FAILURE OF CCN OR ANY CARRIER OR PROVIDER TO MAINTAIN PROPER STANDARDS OR MAINTENANCE AND OPERATION SHALL BE LIMITED AS FOLLOWS:

- (a) A CREDIT ALLOWANCE, AS DESCRIBED IN SUBSECTION 9.19.
- (b) BELOW, WILL BE MADE AT SUBSCRIBER AGENCY'S REQUEST IN THE FORM OF A PRO-RATA ADJUSTMENT OF THE ANNUAL SUBSCRIBER AGENCY FEE BILLED TO SUBSCRIBER AGENCY, HEREUNDER.

- (b) SUCH CREDIT ALLOWANCE WILL BE BASED UPON THE PERIOD OF TIME WHICH SUCH MISTAKES, OMISSIONS, DELAYS, ERRORS AND DEFECTS IN THE SERVICE OR ITS TRANSMISSIONS CAUSED INTERRUPTIONS IN THE RENDERING OF THE SERVICE. ANY SUCH PERIOD OF TIME AN INTERRUPTION OCCURS WILL BE MEASURED FROM THE TIME IT IS REPORTED TO OR

DETECTED BY CCN, WHICHEVER OCCURS FIRST. IN THE EVENT SUBSCRIBER AGENCY IS AFFECTED BY SUCH INTERRUPTION FOR A PERIOD OF LESS THAN 48 HOURS, NO SUCH ADJUSTMENT SHALL BE MADE. WHEN AN INTERRUPTION EXCEEDS 48 HOURS, THE LENGTH OF THE INTERRUPTION WILL BE MEASURED IN 24 HOUR DAYS. A FRACTION OF A DAY CONSISTING OF LESS THAN 12 HOURS WILL NOT BE CREDITED, BUT A PERIOD OF 12 HOURS OR MORE WILL BE CONSIDERED AN ADDITIONAL DAY.

- (c) A CREDIT ALLOWANCE WILL NOT BE GIVEN FOR MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, ERRORS OR DEFECTS, OR CURTAILMENTS IN THE SERVICE CAUSED BY THE NEGLIGENCE OR WILLFUL ACT OF SUBSCRIBER AGENCY, OR OTHER PARTIES OR MISTAKES, OMISSIONS INTERRUPTIONS, DELAYS, ERRORS, OR DEFECTS CAUSED BY FAILURE OF EQUIPMENT OR SERVICE NOT PROVIDED BY CCN.

- 9.2 THE SERVICE FURNISHED BY CCN, IN ADDITION TO THE LIMITATIONS SET FORTH PRECEDING, IS ALSO SUBJECT TO THE FOLLOWING LIMITATION: THE LIABILITY OF CCN FOR LOSS OR DAMAGES ARISING OUT OF MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, ERRORS OR DEFECTS IN THE SERVICE, ITS TRANSMISSION OR FAILURES OR DEFECTS IN FACILITIES OF ANY UNDERLYING CARRIER OR PROVIDER, OCCURRING IN THE COURSE OF FURNISHING SERVICE AND NOT CAUSED BY THE NEGLIGENCE OF THE AUTHORIZED SUBSCRIBER AGENCY, OR AN UNDERLYING CARRIER OR PROVIDER IN FAILING TO MAINTAIN PROPER STANDARDS OF MAINTENANCE AND OPERATION AND TO EXERCISE REASONABLE SUPERVISION, SHALL IN NO EVENT EXCEED AN AMOUNT EQUIVALENT TO THE PROPORTIONATE SUBSCRIBER AGENCY FEE AS DETERMINED IN EXHIBIT B FOR SERVICE DURING THE PERIOD OF TIME IN WHICH SUCH MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, ERRORS, OR DEFECTS IN SERVICE, ITS TRANSMISSION OR FAILURES OR DEFECTS IN FACILITIES FURNISHED BY CCN OR THE UNDERLYING CARRIER OR PROVIDER OCCURRED.
- 9.3 CCN shall in no event be liable for service or equipment interruptions or delays in transmission, errors or defects in service or equipment when caused by acts of God, fire, war, riots, government authorities, default of supplier or other causes beyond CCN'S or any carrier's control.
- 9.4 SUBSCRIBER AGENCY ACKNOWLEDGES THAT THE RADIO SERVICE PROVIDED HEREUNDER USES RADIO CHANNELS TO TRANSMIT VOICE AND DATA COMMUNICATIONS AND THAT THE SERVICE MAY NOT BE COMPLETELY PRIVATE. CCN IS NOT LIABLE TO SUBSCRIBER

AGENCY OR THE SUBSCRIBER AGENCY CUSTOMER FOR ANY CLAIMS, LOSS, DAMAGES OR COST WHICH MAY RESULT FROM LACK OF PRIVACY ON THE SYSTEM.

- 9.5 Subscriber Agency hereby agrees to indemnify and save CCN harmless against claims for libel, slander, infringement or copyright from the material, in any form, transmitted over the radio system by Subscriber Agency, Subscribing Agency customers or those using Subscriber Agency's equipment; against claims for infringement of patents arising from combining or using apparatus or systems of the Subscriber Agency with the facilities of CCN or any carrier; and against all other claims arising out of any act or omission of Subscriber Agency in connection with the facilities or service provided by CCN.
- 9.6 CCN is not liable for any damage, accident, injury or the like occasioned by the use of service or the presence of equipment, including radio handsets and other devices, facsimile units, and ancillary equipment of Subscriber Agency, Subscriber Agency customers or CCN except as provided herein.
- 9.7 CCN is not liable for any defacement or damage to Subscriber Agency's, Subscriber Agency customers' motor vehicles or any personal or real property resulting from the presence of radios and ancillary equipment.
- 9.8 THE LIABILITY OF CCN IN CONNECTION WITH THE SERVICE PROVIDED IS SUBJECT TO THE FOREGOING LIMITATIONS AND CCN MAKES NO WARRANTIES OF ANY KIND, EXPRESSED OR IMPLIED, AS TO THE PROVISION OF SUCH SERVICE.
- 9.9 The Parties to this System Access and Use Agreement verify their represented agencies and customers accept responsibility for any property damage, injury or death, caused by the acts or omissions of their respective employees acting within the scope of their employment under this Agreement to the fullest extent permitted by law. Signatories shall not be held personally liable for financial or any other obligations, clauses, or responsibilities regarding this system or its affects.
- 9.10 Subscriber Agency agrees to release, defend, indemnify and hold harmless CCN, its officers and employees, to the full extent permitted by law from and against any and all claims, damages, liabilities and expenses, including legal and attorney fees, of any nature arising directly or indirectly out of this Agreement, including without limitation, claims for personal injury or wrongful death to Subscriber Agency or other Subscriber Agency customers of the equipment, products or services provided by CCN or used in conjunction with such equipment, products or services provided by CCN and arising out of the manufacture, purchase, operation, conditions, maintenance, installation, return or use of the equipment or service or arising by operation of law.

10. NOTICES

- 10.1 All notices given under this System Access and Use Agreement, except for emergency service requests, will be made in writing. All notices must be sent to the CCN and Subscriber Agency POC at the addresses provided in Exhibit A.

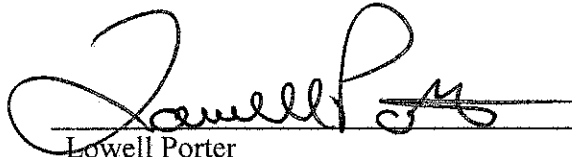
11. MISCELLANEOUS

- 11.1 **Waiver:** The failure of a party to insist upon strict adherence to any term of this System Access and Use Agreement shall not be considered a waiver or deprive the party of the right thereafter to insist upon the strict adherence to that term of the System Access and Use Agreement.
- 11.2 **Modification:** The CCN, upon ninety days' advance written notice to Subscriber Agency, may modify the System Access and Use Agreement terms. Terms in this System Access and Use Agreement that are specific to a Subscriber Agency may be modified by a written amendment signed by both parties.
- 11.3 **Governing Law:** This System Access and Use Agreement shall be governed by, and construed in accordance with the laws of the State of Washington.
- 11.4 **Subject to Budgetary Approval:** Each Party to this Agreement acknowledges that the other Party is a municipal or government entity or instrumentality and, therefore, must act in the public's best interest and within its annual budgetary and contracting limitations. Each Party further acknowledges each other Party has appropriated sufficient funds to pay all sums presently due and payable under this Agreement. Although each Party presently intends to seek an appropriation of funds in its applicable budget Appropriation period for amounts to be paid in subsequent fiscal period(s) covered by this Agreement, notwithstanding any other provision of this Agreement, if a Party's budgetary approving authority shall elect, fail or refuse, to appropriate funds to pay all amounts due under this Agreement in any future fiscal period, this Agreement shall automatically terminate and such Party shall not be obligated to pay any amounts due after the fiscal period for which funds have been appropriated, provided that nothing herein shall limit the obligations of any Party to remove its equipment and improvements as required pursuant to Section 6. Any such nonpayment by a Party shall not constitute a default by such Party under this Agreement and shall not form the basis of any liability by such Party hereunder. Each Party agrees to immediately notify the other Party in writing of any election, failure or refusal of the applicable budgetary approving authority to appropriate funds for any future fiscal period under this Agreement.
- 11.5 **Authority to Contract:** Each Party represents that it has the requisite power to enter into this System Access and Use Agreement and that the person signing the System Access and Use Agreement has the authority to bind Subscriber Agency.

- 11.6 **Change of Law:** Subscriber Agency and the Subscriber Agency customers recognizes that applicable FCC Rules and other statutes, laws, ordinances, rules and regulations may change from time to time and that, accordingly, CCN in its sole discretion has the right without liability to modify this contract to comply with any such changes.
- 11.7 **Assignment:** This Agreement is a privilege for the personal benefit of Subscriber Agency and the Subscriber Agency customer and may not be assigned in whole or in part by Subscriber Agency to any other person or entity, without CCN's prior express consent, which shall not be unreasonably withheld. CCN reserves the right to assign this Agreement or subcontract any of its obligations hereunder.
- 11.8 **Effective Date:** This Agreement is effective as of the date of the last signature.
- 11.9 **Entire Agreement; Amendment; Invalidity:**
- (a) This System Access and Use Agreement contains all of the agreements of the Parties with respect to **any matter covered or mentioned in this System Access and Use Agreement, and no prior agreement, whether written or oral, formal or informal, between the Parties related to the subject matter hereof shall be effective for any purpose.**
 - (b) This System Access and Use Agreement constitute the entire understanding of the Parties and supersede any oral representations that are inconsistent with or modify its terms and conditions.
 - (c) No provision of this System Access and Use Agreement may be amended or modified except by written agreement signed by all Parties.
 - (d) Any provision of this System Access and Use Agreement that is declared invalid or illegal shall in no way effect or invalidate any other provision hereof and such other provisions shall remain in full force and effect. In the event that the FCC determines that any provision of this Agreement, or the relationship between CCN and Subscriber Agency created hereby, violates any applicable FCC Rules, the Parties shall immediately make good faith and diligent efforts to bring this Agreement or such relationship into compliance with such FCC Rules, and any applicable FCC order relating thereto, subject to the provisions of Section 7.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement on the day and year written below.

**COMBINED COMMUNICATIONS PIERCE TRANSIT
NETWORK**



Lowell Porter
CCN Executive Director

8-10-16

Date



[TITLE] CEO
WF

8/10/16

Date

EXHIBIT B: CCN SYSTEM ACCESS COST STRUCTURE AND SUBSCRIBER AGENCY FEE

The CCN shall determine the System Access Fee to the Single County Wide Communications System [SCWCS] Network and for related services, as set forth in this Agreement. There will be an annual charge as set forth for the system access as shown below:

Agency	Annual System Access Cost
Pierce Transit- First Transit	\$150,093
Pierce Transit- Pierce Transit	726,763
Pierce Transit- Sound Transit	234,391
Pierce Transit- Public Safety	8,280
Operating and Maintenance Cost Total	\$1,119,527
Infrastructure Replacement UHF	134,056
Infrastructure Replacement 700	333,984
Replacement Cost Total	468,040
SUBSCRIBER AGENCY FEE	\$1,587,567

Additional Costs

The CCN may incorporate available additional programs, functionality, or data. The costs for such access shall be set at the time such access is offered by the CCN to the customer agency, and thereafter invoiced with System Access Cost on an annual basis, if the customer agency chooses to accept the available additional programs, functionality, or data. During the term of this Agreement, any such offering of additional programs, functionality or data may only be to enhance the existing SCWCS, and the CCN will not offer any additional program, functionality, or data for additional charge that would be necessary to maintain the then-existing status and standards of the SCWCS.

Service Fees

The fees chargeable for services provided hereunder are set forth on Exhibit B. Service fees related to future expansion of the System and its programs and functionality and data available via access will be determined at the time of such expansion.

Template and Database Modifications:

Service fee for **EXISTING SCWCS customers** who want to add new subscribers or change subscriber information.

Customer subscriber changes on the SCWCS

- Software Patches/Firmware updates ***\$31.00***
- Minor template/code plug revisions ***\$10.00***
- Major template/code plug revisions ***[Cost will be determined at time of service]***
- Alias changes Database ***\$10.00***
- Updating database with new/revised information (adding a new talk group) ***\$31.00***
- Encryption changes ***\$10.00***

- If the customer agency requests a Subscriber unit be removed from the SCWCS and later the customer agency requests the Subscriber unit be reactivated onto the SCWCS. \$5.00

Customers adding new subscribers on the SCWCS [\$113 per subscriber]

- Radio Alignment \$31.00
- Preventive maintenance/checking operations for the radio \$31.00
- Programming Customer profile and subscriber template/Code plug [EA,OTAP,OTAR] \$10.00
- Software patches/firmware updates \$31.00
- Updating database with new/revised information \$10.00

New Template and Database Development:

NEW SCWCS customers to build new templates that conform to their operational requirements.

CCN administrative tasks for customers joining the SCWCS [\$2000 per initial setup]

- Develop and test customer's talk group, template and code plug configurations to meet their operational requirements.
- Alias development
- Encryption development
- Database configuration
- IP Address (UKEK)

CCN technical tasks for customer subscribers coming on to the SCWCS [\$113 per subscriber]

- Radio alignment \$31.00
- Preventive maintenance/checking operations for the radio \$31.00
- Programming Customer profile and subscriber template/Code plug [EA,OTAP,OTAR] \$10.00
- Software patches/firmware updates \$31.00
- Updating database with new/revised information \$10.00

Subscriber Patch Updates

- OTAR/OTAP Capable / Enabled [\$0.00 per subscriber]
- OTAR / OTAP Non-Capable / Disabled [\$10.00 per subscriber unit]

Billing / Payments

The System Access Cost will be invoiced on an annual basis, payable within 30 days of invoice date. New Customers requesting SCWCS access between invoice periods shall be prorated.

The Subscriber Service Fees will be invoiced within 30 days of service completion.

There is no charge to terminate the account for a Subscriber.

Subscriber counts will not be adjusted mid-period. Subscriber counts will be set using year-end inventory counts, Example; December 31, 2016 subscriber counts; will be used to set rates for 2018.

Responsible Party: Questions regarding invoices should be directed to the CCN billing clerk. The contact information for billing questions is:

Combined Communication Network Enterprise
C/O Pierce County Department of Emergency Management
2501 S. 35th St. Suite D
Tacoma, WA 98409
253-798-6595