

**FUNDING AGREEMENT AMONG
KING COUNTY, THE CITY OF SEATTLE, THE CITY OF TACOMA, THE
EASTSIDE PUBLIC SAFETY COMMUNICATIONS AGENCY, PIERCE COUNTY,
THE PORT OF SEATTLE, SNOHOMISH COUNTY, THE VALLEY
COMMUNICATIONS CENTER, AND THE WASHINGTON STATE PATROL
FOR JOINT FUNDING OF TWO CONSULTANT REPORTS REGARDING THE
FUTURE OF THE EMERGENCY PUBLIC SAFETY COMMUNICATIONS SYSTEMS
IN SNOHOMISH, KING, AND PIERCE COUNTIES.**

This Agreement is entered into between King County (KC), The City of Seattle (Seattle), The City of Tacoma (Tacoma), The Eastside Public Safety Communications Agency (EPSCA), Pierce County (PC), The Port of Seattle (Port), Snohomish County (SC), The Valley Communications Center (ValleyCom), and the Washington State Patrol (WSP) (hereinafter "Party" or "Parties").

I. PURPOSE

The purpose of this Agreement is to permit the named local governmental units and local entities formed by an agreement authorized by the Interlocal Cooperation Act, RCW 39.34, to cooperate on the funding of and provide a project governance structure for a Consultant to perform a contract that includes a study of a variety of questions related to the technical, governance, and operational planning for the Next Generation Emergency Public Safety Communications Network (Next Generation Communications Network or Network) for Snohomish County, King County, and Pierce County, Washington (collectively Region). Agencies throughout the Region regularly engage in joint operations and provide mutual assistance necessitating effective interagency communication. Funding the study jointly will make the most efficient use of the agencies' powers and resources by enabling them to cooperate with other localities on a basis of mutual advantage and ensure that our Next Generation Networks will enable effective, seamless communication throughout the Region.

II. PROJECT STEERING COMMITTEE (PSC)

1. A Project Steering Committee consisting of one representative from each Party signing this Agreement and committing to help fund the Consultant is hereby established.
2. The Project Steering Committee shall provide guidance to the Project Manager on all material decisions concerning the work and shall review and take final action on the following specific items:
 - a. Selection of the Chair of the PSC
 - b. Establishing a schedule for completion of the Work, including time limits within which the PSC will review and comment on the Consultant's draft deliverables, with this schedule included in the consultant contract.

- c. Approval of the Scope of Work for the Consultant;
 - d. Approval of the Consultant Contract prior to signature;
 - e. Approval of the Consultant's contract deliverables and recommendations;
 - f. Approval of the Consultant's invoices;
 - g. Approve any change orders or changes to the Scope of Work; and
 - h. Recommendations by the Project Steering Committee to the Radio Executive Policy Committee (REPC) formed by the Parties on July 7, 2008 when the consultant's deliverables present options for consideration.
3. Each member of the Project Steering Committee may appoint an alternate representative to the PSC who shall be empowered to act on behalf of the member agency when the appointed representative is not able to attend a PSC meeting.
 4. PSC members may change their named representative and alternate representative at any time by providing written notice to the other Parties of any such change and contact information.
 5. The Project Steering Committee shall report to the REPC through the REPC's appointed liaison.
 6. Meetings of the Project Steering Committee shall be held on an as-needed basis. Meetings may be scheduled at the request of the Chair of the PSC, at the request of the Project Manager, or at the request of a majority of the PSC members. The Project Manager shall be responsible for the logistics of scheduling.
 7. The Project Steering Committee shall act by consensus when possible. Where unanimous consent cannot be reached on any particular review of decision, the Project Steering Committee shall make decisions by voting. Each member agency shall be entitled to one (1) vote and all decisions shall require the affirmative vote of a majority plus two of the whole membership of the Project Steering Committee
 8. By signing this Agreement and by having the authority to approve the consultant contract prior to signing (Section II.2.d above), all parties agree to abide by all terms of the consultant contract.

III. FISCAL AGENT

1. King County shall act as fiscal agent for the Project and shall:
 - a. Enter in a consultant contract with the most advantageous proposer subject to the Project Steering Committee's approval.

- b. Collect funds from PSC members in accordance with this agreement.
 - c. Maintain funds collected from PSC members in a separate account or fund to be disbursed as provided in this agreement. In the event that interest is earned on such funds, the interest shall be used solely for the Project.
 - d. Pay consultant invoices signed by the Project Manager.
 - e. Maintain project financial reports.
 - f. Refund contributions to Parties upon PSC's instructions.
2. King County shall perform and maintain an accounting of payments received from itself and other PSC Members, billings received by the Consultant, payments made to the Consultant, and unspent remaining funds. King County shall provide a statement of the accounting to the PSC Members in email or writing quarterly and, upon the written request of a PSC Member, at any time within thirty (30) business days of such a request.
 3. Any PSC Member may examine King County's recordkeeping regarding the receipt of payments by itself and the PSC Members and payments to the Consultant at any time during normal business hours.
 4. Upon receipt of a notice of dispute, King County shall notify all of the PSC Members and meet jointly with all interested PSC Members within two (2) weeks to resolve any recordkeeping dispute.

IV. PROJECT MANAGER

1. King County shall appoint a Project Manager to manage the Consultant Contract on a day-to-day basis and to report to and make recommendations to the PSC on the matters described in paragraph II.2 above, and shall notify the Parties in writing of the contact information for the initial Project Manager. The Project Manager shall remain an employee of King County at all times and King County shall retain the right and duty to supervise the Project Manager at all times.
2. The PSC may request that King County replace the Project Manager at any time in the event that the PSC determines that replacement is in the best interests of the Project. In the event that the PSC requests that the Project Manager be replaced, King County agrees to review the request in good faith and to replace the Project Manager if determined to be in the best interests of the Project.
3. King County may replace the Project Manager by giving written notice to the Parties at any time and providing contact information for the replacement Project Manager.
4. The duties of the Project Manager shall include:

- a. Establishing a work plan for managing the Consultant Contract;
 - b. Drafting and negotiating a contract with the Consultant, based on the scope of work approved by the PSC, and presenting the Consultant Contract for PSC approval;
 - c. Managing the Consultant Contract on a day-to-day basis and providing direction and guidance to the Consultant based on the guidance established by the PSC;
 - d. Consulting with the PSC on a frequent basis regarding direction to be given to the Consultant in accomplishing the Scope of Work;
 - e. Reporting to the PSC on the Consultant's progress;
 - f. Reviewing project deliverables from the Consultant and providing recommendations to the PSC on acceptance of the deliverables;
 - g. Submitting Consultant invoices to the PSC and authorizing payment of such invoices upon acceptance of the deliverables and approval of the invoices by the PSC;
 - h. Forming project subcommittees and work groups as needed by the Project and as directed by the PSC; and
 - i. Scheduling Project meetings.
5. The Project Manager will provide staff support to and participate in PSC meetings, but shall not be a voting member of the PSC.

V. CONTRIBUTIONS BY PARTIES

1. Each Party agrees to pay the following amounts as that Party's contribution toward payment of the Consultant's services:

King County	up to \$300,000.00
City of Seattle	up to \$300,000.00
City of Tacoma	\$80,000.00
EPSCA	\$80,000.00
Washington State Patrol (IEGCP Grant)	\$86,750.00
Valley Communications Center	\$20,000.00
Port of Seattle	\$20,000.00
Snohomish County	\$10,000.00
Pierce County	\$5,000.00
King County Grant Funds (\$140,000.00 UASI and \$90,000.00 IEGP)	\$230,000.00
Total Project Funding Commitments	\$1,131,750.00

2. The actual contributions to be made by King County and the City of Seattle (exclusive of grant funds) shall be determined once the Consultant Contract price is set, provided that

- a. The contributions of King County and the City of Seattle (exclusive of grant funds) shall be equal to each other, and
 - b. The contributions of King County and the City of Seattle (exclusive of grant funds) shall not be less than \$155,000.00 each unless the total Consultant Contract price is reduced below \$805,000 (the total of all contributions set forth in paragraph V.1 above, excluding grant funding, if King County's and Seattle's contributions are reduced to \$155,000 each and every other Party's contribution remains the same), in which case the contributions of all Parties that have contributed at least \$50,000.00 shall be reduced on a pro rata basis using the funding commitments of the Parties set forth above and commitments of \$155,000.00 from King County and the City of Seattle.
3. King County shall not collect funds in excess of the Consultant Contract Price unless the Contract Price has been amended due to a change order that has been approved by the PSC. All funds collected by King County shall be used solely to pay the Consultant for work completed under the Consultant Contract. King County shall not collect, receive or retain any of these funds for project management, administrative fees, or other actions it performs under this agreement.
4. Each Party shall pay its contribution to King County according to the following schedule:
 - a. Valley Communications Center, the Port of Seattle, and Pierce County shall each pay their total contribution amount set forth in paragraph V.1 to King County within 45 days of the date this Agreement is signed by the last Party signing it.
 - b. The City of Tacoma and EPSCA will each pay their total contribution amount set forth in paragraph V.1 in two equal installments according to the following schedule:
 1. One-half of the Party's contribution set forth in paragraph V.1 shall be paid to the County within 45 days of the date this Agreement is executed by the last Party signing it;
 2. The other one-half of the Party's contribution set forth in paragraph V.1 shall be paid to the County within 45 days after the PSC accepts the Consultant's required deliverables for Phase III of the Project; and
 - c. King County and the City of Seattle will each pay \$140,000.00 of their total contribution amounts set forth in paragraph V.1 above within 45 days of the date this Agreement is signed by

the last Party signing it. Any additional contributions required from King County and the City of Seattle under V(2) shall be paid within 45 days after King County invoices Seattle for its additional contribution.

- d. King County will provide grant funds received on behalf of the Washington State Patrol and Snohomish County for this project as set forth in paragraph V.1 and these Parties have no further financial obligations.
5. If a PSC member's contribution is made up in whole or in part of grant funds it has received, the member agrees to provide King County with a copy of the contract between itself and the grant funding agency in order to assist King County and the PSC member in complying with the requirements of any such grant. The copy shall be provided when the PSC member deposits its funds with King County.
6. If, at the end of the Project, King County has collected contributions in an amount greater than the amount it paid under the Contract, King County shall refund the excess to the Parties that have contributed at least \$50,000 on a pro rated basis according to the amount that each Party has actually paid to King County. Refunds shall be made by King County no later than 45 days after the final payment under Consultant Contract has been totally concluded.

VI. ADDITION OF PARTIES

1. The Parties hereby grant the Radio Executive Policy Committee (REPC) the authority to add additional Public Agencies to this Agreement if the Agency makes application in writing to the Radio Executive Policy Committee (REPC) and the REPC approves the application.
2. An agency added to this Agreement shall become a Party only when its application has been approved by the REPC and it has signed this Agreement and committed to help fund the Consultant.
3. A Party added to this Agreement shall make its initial payment to the King County fiscal agent within thirty (30) days of receiving an invoice from King County.

VII. PROCESSING OF DELIVERABLES

1. The Parties agree to provide comments on and to decide whether to accept, reject, or require modifications to any draft deliverable of the Consultant in accordance with the schedule approved by the PSC pursuant to paragraph II.2.b above.

2. The decision of the Parties on any draft deliverable will be made by the PSC using the decision-making process set forth in paragraph II.7 above.

VIII. OWNERSHIP OF WORK PRODUCTS.

In consideration of the Parties' financial contributions for the two consultant reports funded with this Agreement, all work products, including draft and final deliverables, prepared by the Consultant, shall be owned jointly and severally by the Parties.

IX. INDEPENDENT CONTRACTOR

The services provided by King County under this Agreement are those of an independent contractor. Employees of King County are and will remain employees of King County. Employees of the other Parties are and will remain employees of their respective Parties. Nothing in this Agreement shall be construed to render the Parties partners or joint venturers.

X. INDEMNIFICATION

Each Party shall defend, protect and hold harmless the other Parties from and against all claims, suits and/or other actions arising from any negligent or intentional act or omission of that Party's employees, agents and/or authorized subcontractor(s) while performing this Agreement.

XI. AMENDMENT

The Parties may amend this Agreement. Such amendments shall not be binding unless in writing and signed by personnel authorized to bind each of the Parties.

XII. CHOICE OF LAW AND VENUE

This Agreement shall be governed by the laws of the State of Washington, both as to interpretation and performance. Any action at law, suit in equity or other judicial proceeding for the enforcement of this Agreement shall be instituted only in a court of competent jurisdiction in King County.

XIII. INTEGRATION CLAUSE

This instrument embodies the entire agreement of the Parties with respect to funding of the Consultant Contract. There are no promises, terms, conditions or obligations other than those contained in this Agreement. This Agreement supersedes all previous communications, representations or agreements, either oral or written, among the Parties.

XIV. TERMINATION CLAUSE

Any Party may terminate its participation in this Agreement by giving the other Parties at least thirty (30) days advance written notice. If a Party terminates its participation prior to execution of the Consultant Contract, the terminating Party shall be liable only for its performance rendered in accordance with the terms of this Agreement for performance rendered prior to the effective date of termination. A Party that terminates its participation after the Consultant Contract has been executed shall remain obligated to make the entire contribution required by this Agreement and King County may invoice the terminating Party for such contribution and retain and use its contribution to make payments under the Consultant Contract as if the terminating Party were still a Party to this Agreement. If the Party terminates its participation after the Consultant Contract has been executed that Party shall continue to be entitled to refunds as provided for in paragraph V.4 and to copies of all deliverables under the Consultant Contract.

XV. NO ASSIGNMENT

The Parties shall not subcontract, assign, or delegate any of their rights, duties or obligations under this Agreement without the express prior written approval of the other Parties.

XVI. DISPUTES

In the event that a dispute arises under this Agreement, the Parties shall endeavor to resolve the dispute in an amicable manner by direct discussions. The Parties may elevate the dispute to the Project Steering Committee. The Parties may engage in alternative dispute resolution by mutual agreement. No party waives its rights to seek legal remedy in the jurisdiction and venue stated in paragraph XII.

XVII. NOTICES

All notices and other communications shall be given to the Project Manager and all notices and other communications to the other Parties shall be given to the PSC member for each Party. Notices shall be given in writing and shall be sufficiently given and shall be deemed given three (3) calendar days after the date by which the same has been (a) mailed by certified mail, return receipt requested, postage prepaid, to the mailing address shown adjacent to the signatures of the Party to whom it is addressed or (b) sent by email, with adequate proof of receipt retained by the sender, to the email address shown adjacent to the signatures of the Party to whom it is addressed. Any of the Parties may, by notice to all other Parties, designate any further or different addresses to which subsequent notices or other communications shall be sent.

XVIII. EFFECTIVE DATE; TERM

- A. Notwithstanding when this Funding Agreement is signed, this Agreement shall take effect following its execution by Parties whose combined funding commitments as set forth in paragraph V.1 above equal \$760,000 (the total of all contributions greater than \$50,000 and excluding grant funding).. This Agreement shall expire five (5) years after its effective date unless terminated sooner or extended as provided herein.

- B. The term of this Agreement may be extended for up to an additional two (2) years by written amendment if the Amendment is signed by personnel authorized to bind all of the Parties of record at that time.

XIX. COUNTERPARTS

This Agreement may be signed in several counterparts, each of which shall be an original, but all of which together shall constitute the same instrument.

KING COUNTY

By _____	Approved as to Form Only: By _____
Name _____	Name _____
Title _____	Title _____
Address _____	Address _____
Date _____	Date _____
Project Steering Committee Representative:	
Name _____	
Title _____	
Address _____	
E-Mail _____	
Phone _____	

CITY OF SEATTLE

By _____	Approved as to Form Only: By _____
Name _____	Name _____
Title _____	Title _____
Address _____	Address _____
Date _____	Date _____
Project Steering Committee Representative:	
Name _____	
Title _____	
Address _____	
E-Mail _____	
Phone _____	

CITY OF TACOMA

By _____	Approved as to Form Only: By _____
Name _____	Name _____
Title _____	Title _____
Address _____	Address _____
Date _____	Date _____
Project Steering Committee Representative:	
Name _____	
Title _____	
Address _____	
E-Mail _____	
Phone _____	

EASTSIDE PUBLIC SAFETY COMMUNICATIONS AGENCY (EPSCA)

By _____	Approved as to Form Only: By _____
Name _____	Name _____
Title _____	Title _____
Address _____	Address _____
Date _____	Date _____
Project Steering Committee Representative:	
Name _____	
Title _____	
Address _____	
E-Mail _____	
Phone _____	

PIERCE COUNTY

By _____	Approved as to Form Only: By _____
Name _____	Name _____
Title _____	Title _____
Address _____	Address _____
Date _____	Date _____
Project Steering Committee Representative:	
Name _____	
Title _____	
Address _____	
E-Mail _____	
Phone _____	

THE PORT OF SEATTLE

By _____	Approved as to Form Only: By _____
Name _____	Name _____
Title _____	Title _____
Address _____	Address _____
Date _____	Date _____
Project Steering Committee Representative:	
Name _____	
Title _____	
Address _____	
E-Mail _____	
Phone _____	

SNOHOMISH COUNTY

By _____	Approved as to Form Only: By _____
Name _____	Name _____
Title _____	Title _____
Address _____	Address _____
Date _____	Date _____
Project Steering Committee Representative:	
Name _____	
Title _____	
Address _____	
E-Mail _____	
Phone _____	

THE VALLEY COMMUNICATIONS CENTER

By _____	Approved as to Form Only: By _____
Name _____	Name _____
Title _____	Title _____
Address _____	Address _____
Date _____	Date _____
Project Steering Committee Representative:	
Name _____	
Title _____	
Address _____	
E-Mail _____	
Phone _____	

WASHINGTON STATE PATROL

By _____	Approved as to Form Only: By _____
Name _____	Name _____
Title _____	Title _____
Address _____	Address _____
Date _____	Date _____
Project Steering Committee Representative:	
Name _____	
Title _____	
Address _____	
E-Mail _____	
Phone _____	