

RESOLUTION NO. 885

**A RESOLUTION OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, APPROVING
A SYSTEM ACCESS AND USE AGREEMENT WITH PIERCE TRANSIT-PIERCE
COUNTY COMBINED COMMUNICATIONS NETWORK ("CNN")**

WHEREAS, Pierce Transit – Pierce County Combined Communications Network ("CNN") provides a communication system for the purposes of public safety, first responder, and public service communications, called the Single County-Wide Communication System ("SCWCS"); and

WHEREAS, the City desires to subscribe to and utilize this system with the City's approved mobile and portable radios and associated approved equipment on a non-exclusive shared basis with CNN and other subscribers of the SCWCS; and

WHEREAS, the City has negotiated with CNN the terms of a System Access and Use Agreement and the subscriber fees associated with said Agreement, and has determined that entering into this Agreement is in the best interests of the health, welfare and safety of the City and its residents;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, AS FOLLOWS:

Section 1. Incorporation of Recitals. The recitals are hereby incorporated herein as if set forth in full.

Section 2. Approval of Form of Document. The City Council authorizes the City Manager or designee to execute in substantially the form attached hereto as Exhibit A, the System Access and Use Agreement with Pierce Transit – Pierce County Combined Communications Network.

Section 3. Completion of Transaction. The City Manager or designee is authorized to take and execute any additional measures or documents that may be necessary to complete this transaction, which are consistent with the approved form of documents attached to this Resolution, and this Resolution.

Section 4. Effective Date. This Resolution shall be effective immediately upon adoption by the City Council.

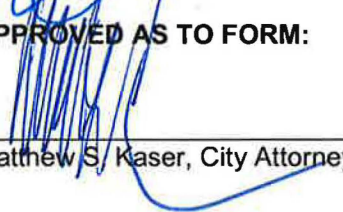
ADOPTED BY THE CITY COUNCIL ON JANUARY 22, 2019.


Kent Keel, Mayor

ATTEST:


Emelita Genetia, City Clerk

APPROVED AS TO FORM:


Matthew S. Kaser, City Attorney

SYSTEM ACCESS AND USE AGREEMENT (SAA)

Between

**PIERCE TRANSIT-PIERCE COUNTY COMBINED COMMUNICATIONS NETWORK
(CCN)**

And

CITY OF UNIVERSITY PLACE

This System Access and Use Agreement ("Agreement") is made by and between the joint venture of Pierce Transit-Pierce County Combined Communications Network ("CCN") and "City of University Place" ("Subscriber Agency") for access by Subscriber Agency's approved mobile and portable radios and associated approved equipment to the CCN Single County-Wide Communication System ("SCWCS"), .

1. OVERVIEW

The SCWCS consists of, but is not limited to, the following Subsystems associated to the 700, 410 VHF, and UHF systems:

P25 Master Site
Networking
Key Management

Microwave
Radio Infrastructure
Wireless Data

Fiber
Recording
Spectrum Assets

2. RECITALS

- 2.1 Subscriber Agency desires 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 CCN and other Subscribers of the SCWCS.
- 2.2 CCN desires to provide Subscriber Agency access to the SCWCS for such use under the terms and conditions provided herein.
- 2.3 Subscriber Agency agrees to compensate CCN for its share of access to and use of the SCWCS through payment of a Subscriber Agency Fee as provided herein.

3. AGREEMENT

In consideration of the mutual promises and covenants contained herein, to be kept, performed, and fulfilled by the Parties, and other good consideration, it is mutually agreed as follows:

4. CCN RESPONSIBILITIES

- 4.1 CCN represents that the SCWCS coverage reliability target area is designed to deliver a high Digital Audio Quality. CCN will maintain the SCWCS in accordance with current industry standards as established by manufacturer's certified design. Subscriber Agency acknowledges that coverage will vary from location to location because CCN cannot guarantee one hundred percent (100%) coverage.
- 4.2 CCN will provide, install, test, maintain, upgrade and replace the SCWCS, perform CCN's System Administrator responsibilities, and will take reasonable steps to meet the Original Equipment Manufacturer design, maintenance and security requirements. CCN will operate and administer the SCWCS in compliance with applicable FCC Rules.
- 4.3 CCN will provide to Subscriber Agency notice of any SCWCS planned upgrades, maintenance or enhancements. As a part of this notice, CCN will advise Subscriber Agency of potential SCWCS outages or impacts that will affect Subscriber Agency's access to and use of the SCWCS.

5. SUBSCRIBER AGENCY RESPONSIBILITIES

- 5.1 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 SCWCS, including Pierce County Public Transportation Benefit Area Corporation ("Pierce Transit") and Pierce County (collectively, "CCN Parties" or "CCN"). Subscriber Agency agrees that it will operate its equipment so as not to cause undue interference with any other Subscriber Agency of the SCWCS.
- 5.2 Subscriber Agency shall perform its own communications coverage study to ensure that it is fully aware of the coverage within its operational area. Therefore, Subscriber Agency accepts the SCWCS coverage "as is".
- 5.3 Subscriber Agency shall assume responsibility for all Subscriber Agency employees, contractors, subcontractors and agents having access to and use of the SCWCS.
- 5.4 Subscriber Agency agrees that its access to and use of the SCWCS shall at all times comply with the rules and regulations of 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; all decisions and orders of the FCC applicable to the SCWCS and Subscriber Agency'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.

- 5.5 Subscriber Agency shall notify 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.
- 5.6 Subscriber Agency shall notify the CCN Point of Contact individuals on Exhibit A, attached hereto and incorporated herein, within twenty-four (24) hours of any outages, malfunctions, errors or any other functional problems that impact Subscriber Agency's ability to communicate or operate its services using the SCWCS.
- 5.7 Subscriber Agency shall notify CCN Point of Contact individuals on Exhibit A within twenty-four (24) hours of the loss or theft of any subscriber units.
- 5.8 Subscriber Agency shall appoint and identify on Exhibit A a primary and secondary contact as the Subscriber Agency's Point of Contact individuals to serve as its liaison to CCN. These Point of Contact individuals shall be responsible for:
 - (a) Authorizing template modifications;
 - (b) Providing fleet mapping data for record-keeping purposes;
 - (c) Providing after hour emergency telephone numbers; and
 - (d) Attending Customer Advisory Committee and other meetings necessary for the safe and efficient operation of SCWCS.
- 5.9 Subscriber Agency assumes all costs and responsibilities for providing Subscriber Agency subscriber units (portables, mobiles, base stations, and consolettes) that access 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 Agency is responsible for acquiring its own Subscriber equipment.
 - (b) Subscriber Agency is responsible for proper Preventive Maintenance ("PM") and repair of its equipment. Proper PM and repair will assure that Subscriber Agency's equipment is in optimal operating order and will not

have an adverse impact on the use of the SCWCS by other Subscriber Agencies.

6. SUBSCRIBER FEE

- 6.1 Subscriber Agency's SCWCS fee for 2019, which is based on an annual per unit cost of \$1,404, shall be as follows ("Subscriber Fee"):

Subscriber Count	Annual System Access Cost
22	\$30,888

- 6.2 This annual fee shall be paid on or before February 28, 2019, without setoff or deduction, based on Subscriber counts from 2018.

7. DURATION, CANCELLATION & TERMINATION

- 7.1 The term of this Agreement shall be one (1) year, from January 1, 2019 through December 31, 2019. This Agreement may be terminated by CCN or Subscriber Agency with ninety (90) days advance written notice.
- 7.2 If this Agreement is 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.

8. INTERRUPTION OF SERVICE; FORCE MAJEURE

- 8.1 Except as provided in this Section 8.1, 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 limited to acts of God, governmental entities or public enemies, 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 Fee during the time of such failure or delay. Notwithstanding any other provision contained in this Agreement, Subscriber Agency agrees that no pro rata reduction of the Subscriber Fee shall be made for a single failure or delay of forty-eight (48) hours or less.

9. LIMITATIONS OF LIABILITY; INDEMNIFICATION

- 9.1 In no event shall CCN's liability under, arising out of or relating to this Agreement exceed the amount paid by Subscribing Agency to CCN for access to and use of the SCWCS. In no event will CCN be liable for lost profits, loss of use, loss of data, cost of procurement of substitute services, or any other special, incidental, indirect or consequential damages, however caused, and on any theory

of liability, whether for breach of contract, tort (including negligence and strict liability) or otherwise.

- 9.2 Subscriber Agency acknowledges that the radio service of this Agreement uses radio channels to transmit voice and data communications and that the service may not be completely private. CCN shall not be liable to Subscriber Agency for any claims, losses, damages or costs which may result from lack of privacy on the SCWCS.

- 9.3 Subscriber Agency agrees to indemnify and save CCN harmless against claims for libel, slander, infringement or copyright from the material, in any form, transmitted over the SCWCS by Subscriber Agency 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.

- 9.4 The Parties to this Agreement verify that they and their 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 the SCWCS or its affects.

- 9.5 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's fees, of any nature arising directly or indirectly out of this Agreement, the SCWCS or the services provided by CCN under this Agreement, including without limitation, claims for personal injury or wrongful death.

10. NOTICES

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

11. MISCELLANEOUS

- 11.1 **Modification:** CCN, upon ninety (90) days advance written notice to Subscriber Agency, may modify this Agreement. Terms in this Agreement that are specific to a Subscriber Agency may be modified by a written amendment signed by both Parties.
- 11.2 **Governing Law:** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Washington.

11.3 **Change of Law:** Subscriber Agency 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 Agreement to comply with any such changes.

11.4 **Assignment:** This Agreement is for the Subscriber Agency 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.

12. Optional Upgrades, Repair, Maintenance and Installation

12.1 Maintenance, repair, upgrade and installation of radio communications subscriber equipment, upon notice from Subscriber Agency, will be supported through the Pierce County Radio Shop.

**COMBINED COMMUNICATIONS NETWORK
CONTRACT SIGNATURE PAGE**

Contract # _____

IN WITNESS WHEREOF, the parties have executed this Agreement this ____ day of _____, 20____.

CITY OF UNIVERSITY PLACE:

Signature Date

Title of Signatory

Name: _____

**COMBINED COMMUNICATIONS
NETWORK:**

Counsel Date

Approved:

CCN Board Chair Date

EXHIBIT A: CONTACT INFORMATION**CCN SUBSCRIBER AGENCY POINT OF CONTACT INFORMATION
FOR 24 X 7, AFTER-HOURS EMERGENCY CONTACT PURPOSES**

PRIMARY CONTACT NAME	
WORK PHONE	
MOBILE PHONE	
PRIMARY EMAIL	

SECONDARY CONTACT NAME	
WORK PHONE	
MOBILE PHONE	
PRIMARY EMAIL	

**CCN POINT OF CONTACT INFORMATION
FOR 24 X 7, AFTER-HOURS EMERGENCY CONTACT PURPOSES
(INCLUDE THE EMERGENCY MANAGEMENT DUTY OFFICER)**

PRIMARY CONTACT NAME	CCN On Call Technician
WORK PHONE	(253) 798-7111

SECONDARY CONTACT NAME	Pierce County Emergency Management Duty Officer
WORK PHONE	(253) 798-7470