## STAFF REPORT

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| **Agenda Item:** | 6 | **Name:** | Hiedi Popochock  Miranda Leskinen |
| **Proposed No**.: | 2016-0337 | **Date:** | September 14, 2016 |

**SUBJECT**

Proposed Ordinance 2016-0337 relates to a lease agreement for the Norway Hill radio tower site located in the city of Bothell to implement the Puget Sound Emergency Radio Network Project.

**SUMMARY**

The proposed ordinance would approve a lease agreement between King County and the city of Bothell to implement the Puget Sound Emergency Radio Network Project. The proposed lease agreement would have an initial term of 25 years and would include three automatic five-year extensions unless King County provides notice to terminate the lease. The lease would have a zero-dollar rent. Under the proposed lease, King County would transfer its ownership and property interest of the newly constructed radio tower to the city of Bothell. Once transferred, the city of Bothell would be responsible for all costs associated with the new radio tower. The one-time costs for the new radio tower is estimated at $540,000 and the ongoing costs are estimated at $7,000 for utilities and fuel.

At the Committee Chair’s direction, Council staff has prepared an amendment to the Proposed Ordinance 2016-0337. The amendment would substitute Attachment A for the transmitted Attachment A. The net effect of the amendment, if approved by the Council, is outlined below in this staff report.

**BACKGROUND**

Puget Sound Emergency Radio Network

On April 28, 2015, King County voters approved a nine-year, $273 million property tax levy to fund the Puget Sound Emergency Radio Network (PSERN), the replacement of the King County emergency radio communications system.

In late 2018, the vendor for the current countywide emergency radio network, King County Emergency Radio Communications System (KCERCS), will no longer provide system support. PSERN will replace and upgrade King County’s nearly 20-year old emergency radio communications system, which is used to dispatch responders to incidents and allow responders to communicate with each other at those incidents. Countywide, the current system consists of 26 transmitter sites and multiple interconnecting microwave and fiber systems, and it supports over 100 agencies and approximately 17,000 radio users, each with a portable radio handset and/or installed mobile radio in a vehicle. KCERCS is owned by King County, the city of Seattle, Valley Communications Center (ValleyCom), and the Eastside Public Safety Communications Agency (EPSCA).[[1]](#footnote-1)

Once completed, PSERN will replace the current countywide emergency radio network. PSERN will improve and upgrade the countywide emergency radio network by providing increased system reliability, increasing coverage capacity from 94 percent coverage to 97 percent coverage and providing better security on the network.

Vendor Contract and Project Management

On December 17, 2014, the Executive signed a $112 million, 20-year contract that made Motorola Solutions, Inc. (MSI), the vendor responsible for the design, development, implementation, testing and ongoing support and maintenance and upgrade of PSERN.[[2]](#footnote-2) As part of its radio communications system design, MSI identified approximately 52 radio tower sites[[3]](#footnote-3) that would meet the intended coverage areas of the PSERN Project. Per the contract, the PSERN system vendor must meet specific performance criteria, including coverage and signal strength.

Norway Hill Radio Tower Site

The Norway Hill radio tower site (“the Site”) – located in and owned by the city of Bothell – was identified by MSI as a site that would be suitable for the PSERN project. MSI chose the Site due to its existing coverage for the intended area in Bothell. The Site has approximately 2,500 square feet of land and space on the tower. There is an existing radio tower on the Site, which is also owned by the city of Bothell. The existing radio tower has been on the property since 1979 and currently serves King County Metro, North East King County Regional Public Safety Communication Agency (NORCOM) and EPSCA. The Site also has a water tower adjacent to the existing radio tower on the property.

**ANALYSIS**

Under King County Code, any lease for the use of real property by the county with a term longer than five years must be approved by the Council before execution by the Executive.[[4]](#footnote-4) Proposed Ordinance 2016-0337 would approve a lease between the county and the city of Bothell with an initial term of 25-years with three, automatic five-year extensions unless King County provides notice to terminate the lease. The commencement date of the initial term of the proposed lease agreement would be in effect when the county installs its shelter to store electronic equipment on the Site, which would be after the PSERN Project constructs a new 130 foot radio tower (“the Tower”) and the ownership of the Tower is transferred to the city of Bothell. The lease would be a zero-dollar rent lease agreement with the city of Bothell to implement the PSERN Project at the Site. PSERN Project staff indicate that King County would not be charged rent for PSERN’s use of the land during the initial term of the lease and all subsequent extension periods.

The Tower would replace the existing radio tower on the Site with no loss of service for the current tenants. PSERN Project staff indicate that the existing radio tower is planned to remain in operation through 2016, with the Tower and shelter to be completed in early 2017. The Tower would be at the same height as the existing radio tower. The proposed lease agreement further states that upon completion of the construction of the Tower, King County would transfer full-ownership and its property interest of the Tower to the city of Bothell. Once ownership is transferred, the city of Bothell would be responsible for all operations, maintenance, repair and replacement work and expenses associated with the Tower. PSERN Project staff state that in order to gain access and tenancy on the Site, the city of Bothell negotiated to have full-ownership of the Tower transferred. Although transferring ownership of the Tower to the city of Bothell is distinctive, PSERN Project staff indicate that other radio tower sites identified by MSI may have similar outcomes in result of negotiations.

PSERN Project staff estimates the total one-time costs of the Tower at approximately $540,000. The construction costs associated with the Tower at this location have been approved by Council.[[5]](#footnote-5)

Table 1 below provides the detailed costs of the Tower proposed in the transmitted fiscal note **(Attachment 4)**.

**Table 1: Project Costs for the Norway Hill Radio Tower Site**

|  |  |  |
| --- | --- | --- |
| **Description** | **2015/2016**  **One-time Costs** | **2017/2018**  **Ongoing Costs** |
| 130” Lattice Tower | $125,000 | $0 |
| Shelter & Generator | $110,000 | $0 |
| Construction | $305,000 | $0 |
| Utilities/Fuel | $0 | $7,000 |
| **TOTAL:** | **$540,000** | **$7,000** |

At the Budget and Fiscal Management Committee Chair’s direction, Council staff has prepared an amendment to Proposed Ordinance 2016-0337, Attachment A, which is **Attachment 2** of this staff report. In addition, Council staff has provided a redline version of the lease agreement including the changes proposed in the amendment, which is **Attachment 3** of this staff report.

**AMENDMENT**

Amendment 1 replaces the transmitted Attachment A, Lease Agreement, dated June 29, 2016 to the Proposed Ordinance 2016-0337 with Attachment A, Lease Agreement, dated September 14, 2016, in order to make the following changes in the lease agreement based on Council’s legal counsel’s review:

1. Delete undefined term “substantive expansions” as used in section 2 and 14 and add language that explicitly describes the degree of alterations to the Site that would require pre-approval from the city of Bothell;
2. Correct technical errors to ensure defined terms and the terms of the lease are internally consistent and to refine language in the lease to ensure clarity (§9, 21(C), 23, 32, 41(F));
3. Correct the tower height for the newly constructed tower from 120 feet to 130 feet (§9);
4. Delete “substantive expansions” and add language that explicitly describes the degree of alterations to the Site that would require pre-approval from the city of Bothell (§14);
5. Delete language that relates to pro rata refund of any rent paid or pre-paid monies since the lease agreement would be a zero-dollar rent lease and no services would be pre-paid (§19, 21(G), 22(B), 29);
6. Replace “commencement date” with “execution date” in section 22 in order to identify the existing users (or “Senior Lessees”) of the existing radio tower at the time the contract is executed and to clarify the process on how an interference issue would be rectified when it involves the county and a “Senior Lessee”, including if the “Senior Lessee” is a private communication carrier (§22(A), 22(B), 22(C));
7. Clarify parties’ intent that if the “Senior Lessee” is a private communication carrier and is causing the interference, the city of Bothell would require the private communication carrier to cease its use of the radio tower until the interference is eliminated (§22(B));
8. Add language relating to condemnation to clarify the county’s right to pursue an award for depreciation for the removal or relocation of structures and/or equipment on the Site (§30); and
9. Substitute the revised Exhibit 1 for the transmitted Exhibit 1, as requested by the Executive. The transmitted Exhibit 1 includes a three-leg radio tower and the revised Exhibit 1 includes a four-leg radio tower.

**ATTACHMENTS**

1. Proposed Ordinance 2016-0337, including Attachment A, Lease Agreement
2. Amendment 1, including Attachment A, Lease Agreement, dated September 14, 2016
3. Redline version of Attachment A, Lease Agreement, dated September 14, 2016
4. Transmittal Letter
5. Fiscal Note
6. Lease Property Summary

**INVITED**

1. Tony Wright, Director, Facilities Management Division, Department of Executive Services
2. David Mendel, PSERN Project Director, King County Information Technology
3. Don Woodworth, Senior Deputy Prosecuting Attorney, Prosecuting Attorney’s Office
4. Karen Manske, Legal Counsel Contractor, Busch Law Firm, PLLC

1. According to PSERN Project staff, King County owns just under 50 percent of KCERCS, the city of Seattle and Eastside Public Safety Communications Agency owns approximately 25 percent each and ValleyCom owns approximately 10 percent. [↑](#footnote-ref-1)
2. 2015-0016 [↑](#footnote-ref-2)
3. Of the 52 radio tower sites, Motorola is responsible for executing lease agreements with 10 privately-owned radio tower sites. King County is responsible for executing lease agreements with the remaining 42 government-owned radio tower sites. [↑](#footnote-ref-3)
4. K.C.C 4A.100.070D.4(a) [↑](#footnote-ref-4)
5. Ordinances 17993, 18074, 18075; PSERN Capital Fund 3361 [↑](#footnote-ref-5)