



King County

Metropolitan King County Council

STAFF REPORT

Proposed No.:	2020-0213	Name:	Miranda Leskinen
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SUBJECT

An Ordinance relating to the ownership, governance and management of the Puget Sound Emergency Radio Network (PSERN) following full system acceptance.

SUMMARY

The Puget Sound Emergency Radio Network (PSERN) project, once completed, will replace and upgrade the County's current emergency radio network. King County is responsible for leading and implementing the PSERN project through completion.

In 2015, King County and the cities of Auburn, Bellevue, Federal Way, Issaquah, Kent, Kirkland, Mercer Island, Redmond, Renton, Seattle and Tukwila (the "Parties") entered into memorandum of agreement (MOA) relating to the ownership, governance and management of PSERN following full system acceptance.¹ The MOA set out the basic terms under which the Parties would establish a new, nonprofit entity (PSERN Operator) to own, operate and govern PSERN once completed. It was intended by the Parties that the MOA would be superseded by an Interlocal agreement, which would establish the PSERN Operator and detail the future PSERN governance and operations structure with more specificity.

Proposed Ordinance 2020-0213 would authorize the Executive to execute the PSERN Operator ILA with the cities of Auburn, Bellevue, Federal Way, Issaquah, Kent, Kirkland, Mercer Island, Redmond, Renton, Seattle, and Tukwila. The ILA would create the PSERN Operator as a new separate governmental agency under RCW 39.34.030(3)(b) that is organized as a nonprofit corporation under RCW chapter 24.06 to assume ownership and control of PSERN following project full system acceptance (FSA is currently estimated for December 2022). The ILA would also establish the terms for governance and terms under which the PSERN Operator will undertake responsibility for the ownership, operations, maintenance, management and ongoing upgrading and replacing of the PSERN system during its useful life. As of early September 2020, the ILA has been approved by the cities of Kent, Auburn, Federal Way, Renton, Redmond, Issaquah and Kirkland.

BACKGROUND

¹ Ordinance 18074.

In March 2015, Council, approved Ordinance 17993, authorizing a ballot measure for the capital, transition, and financing costs for PSERN to be funded through a nine-year property tax levy at a rate of not more than \$0.07 per one thousand dollars of assessed valuation. Voters approved that ballot measure, which is currently estimated to generate approximately \$299.8 million² in revenues over the life of the levy, in April 2015. Once completed, PSERN will replace and upgrade the county's over 20-years old emergency radio communications system, which is used to dispatch responders to incidents and allow responders to communicate with each other at those incidents.

The county's current emergency radio communications system, also known as KCERCS, is owned by King County, the City of Seattle, Valley Communications Center (Valley Com), and the Eastside Public Safety Communications Agency (EPSCA).

Project Implementation. PSERN is a complex project with multiple tasks over the course of the implementation period including radio site design, acquisition and construction, as well as the acquisition of radios, consoles, and data systems.

Under the terms of the PSERN Implementation Interlocal Agreement ("Implementation Period ILA")³ executed in 2015 by the County and the eleven signatory cities representing the owners of the County's existing emergency radio network (the "Parties"), King County is responsible for leading and implementing the PSERN project. Per the terms of the contract with the County and Motorola⁴, Motorola (PSERN system contractor) will provide design, development, implementation, testing and ongoing support, maintenance and upgrade services for PSERN.⁵

Oversight during the project implementation period is being conducted by a Joint Board, composed of one non-voting chair (the Executive or the Executive's designee) and four voting representatives, one representing each of the current system's owners. The four voting members of the Joint Board may appoint two additional non-voting participants: a chief of a police agency and a chief of a fire agency.⁶

PSERN Operation after Project Completion. The Implementation Period ILA contemplated establishment a nonprofit entity ("PSERN Operator") to own, operate and govern the PSERN system after it is built and fully tested, with the PSERN Operator being able to accept the transfer of the PSERN System from the County and be fully responsible for PSERN following issuance of full system acceptance by the PSERN Joint Board. As indicated in the Implementation Period ILA, the Parties intend and agree

² Based on the August 2020 OEFA forecast. Note: Values are total levy amounts (i.e. 100% collection rate) and have not been adjusted for undercollections.

³ Ordinance 18075, adopted in April 2015. The eleven signatory cities included Bellevue, Issaquah, Kirkland, Mercer Island and Redmond (EPSCA member cities); Auburn, Federal Way, Kent, Renton and Tukwila (Valley Com member cities); and the City of Seattle.

⁴ PSERN project staff indicate that the contract, with respect to duration, includes project implementation through 20 years after project completion.

⁵ In addition to the primary contract with Motorola, the Executive has hired consultants to develop the site design and to provide construction management oversight.

⁶ The current members of the Joint Board are as follows: Brenda Bauer, non-voting Chair; Tanya Hannah, King County voting member; Chief Harold Scoggins, Seattle voting member; Kurt Triplett, EPSCA voting member; Lora Ueland, Valley Com voting member; Chris Elwell, non-voting fire agency member; and Chief Steve Burns, non-voting police agency member.

that the PSERN Operator shall be deemed to be the successor to the County for all PSERN System purposes and shall assume all of the County's rights, responsibilities and liabilities under PSERN contracts, licenses, leases and agreements.

Concurrent to execution of the Implementation Period ILA, the County and the eleven signatory cities representing the owners of the County's existing emergency radio network (the "Parties") also entered into a memorandum of agreement ("MOA") relating to the future operation of PSERN following project full system acceptance.⁷ The MOA set out the basic terms under which the Parties would establish the new, nonprofit entity ("PSERN Operator") that would own, operate and govern PSERN once completed.

It was intended by the Parties that the MOA would be superseded by a future Interlocal agreement ("PSERN Operator ILA"), which would establish the PSERN Operator and detail the future PSERN governance and operations structure with more specificity. Of note, the MOA contains the following three binding provisions that the Parties agreed would be included in the PSERN Operator ILA (all other provisions for inclusion in the ILA would remain open for negotiation):

- The PSERN Operator would be governed by a Board of Directors.
- That Board of Directors would have four voting members – one each to represent the City of Seattle, EPSCA, Valley Com and King County; one non-voting member appointed by the King County Police Chiefs Association; and one non-voting member appointed by the King County Fire Chiefs Association.
- Agencies using the PSERN system would pay the PSERN Operator user fees as provided for in the Implementation ILA during year one of PSERN operations.

ANALYSIS

Proposed Ordinance 2020-0213 would authorize the Executive to execute the PSERN Operator ILA with the cities of Auburn, Bellevue, Federal Way, Issaquah, Kent, Kirkland, Mercer Island, Redmond, Renton, Seattle, and Tukwila. The ILA would create the PSERN Operator as a new separate governmental agency under RCW 39.34.030(3)(b) that is organized as a nonprofit corporation under RCW chapter 24.06 as authorized by the Interlocal Cooperation Act (Chapter 39.34 RCW) to assume ownership and control of PSERN following project full system acceptance (FSA is currently estimated for December 2022). The ILA would also establish the terms for governance and terms under which the PSERN Operator will undertake responsibility for the ownership, operations, maintenance, management and ongoing upgrading and replacing of the PSERN system⁸. The transmitted agreement includes the required provisions from the 2015 MOA that the Parties agreed would be included in the PSERN Operator ILA.

The PSERN Operator ILA, once in effect, would remain in effect until terminated.

⁷ Ordinance 18074.

⁸ "PSERN" is defined in the proposed Operator ILA to mean "the land mobile radio system constructed under the Implementation Period ILA. It also means all equipment, software, and other work deployed during the Operations Period to provide public safety communication service(s) or an addition to an existing infrastructure during the Operations Period to provide new or additional public safety communication service(s)". "Operations Period" is defined in the proposed Operator ILA to mean "the period that commences with the first full month after FSA [full system acceptance] and continuing through the life of the PSERN System.

PSERN Board of Directors. The proposed PSERN Operator ILA, consistent with the terms of the 2015 MOA, would establish a Board of Directors to serve as the governing body of the PSERN Operator. Table 1 provides an overview of the proposed Board of Directors composition, which is also consistent with the terms of the 2015 MOA.

Table 1. PSERN Board of Directors Composition

4 Voting Members	King County Executive <i>or</i> designee approved by the King County Council
	City of Seattle Mayor <i>or</i> designee
	One mayor <i>or</i> city manager <i>or</i> designee representing EPSCA member cities
	One mayor <i>or</i> city manager <i>or</i> designee representing Valley Com member cities
2 Non-voting Members	Representative appointed by the King County Police Chiefs Association
	Representative selected jointly by the King County Fire Commissioners Association and the King County Fire Chiefs Association

An authorized representative of the County, the City of Seattle, Valley Com member cities and the EPSCA member cities must provide written notice of its initial Board of Directors member and alternate member to the Chair of the PSERN Joint Board established under the Implementation Period ILA. Thereafter, the Chair of the Board of Directors would receive written notice of any change (e.g. in the event of a vacancy) of a member or alternate member to the Board.

The Board of Directors would elect from among the Board’s voting members the officers of the PSERN Operator, including but not limited to: a Chair, Vice Chair, Secretary, and Treasurer. Aside from the offices of the Chair and Secretary, any two or more offices could be held by the same person.

Meetings of the Board of Directors. The first meeting of the Board of Directors, as indicated in the proposed ILA, will be held as soon as practicable and necessary to begin operations of the PSERN Operator. According to executive staff, the Board is projected be constituted and hold its first convening in the first half of 2021. The Board would be required to establish bylaws and procedures for its operations and meetings including setting a regular meeting schedule and location (with at least two meetings annually), providing for the scheduling of special and emergency meetings, and providing for attendance by telephone or other electronic voice communication. The Board would be required to hold an annual meeting (to coincide with its first regular meeting each year), during which the PSERN Executive Director would report to the Board of Directors on the state of the PSERN Operator. The Chair would preside over Board meetings, and the Vice Chair would serve in the absence of the Chair. A quorum for a Board meeting would generally be all four of its voting members and board actions would typically require the affirmative vote of all four voting members.

Board of Directors Actions. Under the proposed ILA, the PSERN Operator, through its Board of Directors, would have authority consistent with state law and including but not limited to the following:

- Amend the PSERN Operator ILA⁹
- Establish committees and advisory groups to perform activities related to the PSERN System
- Adopt and amend budgets and approve expenditures
- Adopt and amend policies and bylaws for the administration and regulation of the PSERN Operator
- Adopt and amend purchasing and contracting policies consistent with state law
- Direct and supervise the activities of the Operating Board
- Direct the activities of the Executive Director
- Evaluate the Executive Director's performance
- Establish a fund or special fund/funds
- Establish service rates as set forth in the agreement (described later in this staff report)
- Review and amend terms of use for User Agencies as necessary
- Conduct regular and special meetings
- Approve PSERN operation and maintenance standards
- Determine the services the PSERN Operator shall offer and the terms under which they will be offered
- Approve agreements with third parties
- Incur financial obligations in the name of the PSERN Operator to make purchases or contracts for services to implement the purposes of this agreement¹⁰
- Purchase, take, receive, lease, take by gift, or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or any interest therein, in the name of the PSERN Operator
- Sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all its real or personal property, or any interest therein, and assets
- Sue and be sued, complain and defend, in all courts of competent jurisdiction
- Hold licenses for radio frequencies
- Recommend action to the legislative bodies of the Parties and User Agencies
- Delegate the Board of Directors' authority under this Agreement subject to any applicable law and to such limitations and conditions as the Board may establish
- Enter into agreements with other agencies to accomplish tasks for the PSERN Operator such as agreements for services such as procurement and property leasing
- Contract for staff through agreements with other agencies that specify the employment policies, compensation amounts, and supervisory structure that will apply to such staff

⁹ Of note, amendments to the following terms would first require approval from the legislative bodies of Seattle, King County, EPSCA cities and Valley Com cities: Expansion of the PSERN Operator's scope of services/member funding obligations; Board of Directors powers, composition or voting rights of members; Addition of new Parties; Hold harmless and indemnification requirements; Duration, dissolution, termination or withdrawal provision; and Changes to the conditions for amending the ILA. As indicated in the ILA, legislative approval would not be required for adding additional user agencies.

¹⁰ Per the ILA, nothing in the Agreement authorizes the PSERN Operator to issue bonds or incur indebtedness in the name of any Party or that shall be considered a debt or a guarantee of any Party without its express written consent.

- Exercise any powers necessary to further the goals and purposes of the Agreement that are consistent with the powers of the Parties
- Add parties to the Agreement and concurrently amend the membership of the Board, subject to limitations (see footnote #9)
- Take necessary actions to prepare and plan for a public safety radio system(s) to succeed the PSERN System
- Accept, to the extent allowed by law, loans or grants of funds from any federal, state, local or private agencies and receive and distribute funds

The PSERN Operator would have no power to levy taxes.

PSERN Operating Board. The Board of Directors, under the proposed agreement, will additionally establish and maintain an Operating Board to provide advice and expertise to the Board of Directors. At least one fire commissioner is to be included in the Operating Board's membership.

PSERN Executive Director. The PSERN Board of Directors determines whether the Executive Director will be a contracted employee from another governmental agency or hired directly as an employee of the PSERN Operator. If the former, the Board will contract for an "at will" employee approved by the Board and who may be terminated from the position by a unanimous vote by the Board. If the latter, the Board will hire and set the compensation for and be authorized to terminate the employment of the Executive Director.

Duties of the Executive Director. The Executive Director will report to the Board of Directors and regularly advise the Board on matters related to the operation and functions of the PSERN System and the PSERN Operator, including proposed budgets, financial and liability issues, and all other appropriate matters related to the PSERN System and Operator. Additionally, the Director may request assistance from the PSERN Operating Board to address tasks for technical and user-related expertise. The duties of the Executive Director, as set forth in the ILA, are as follows:

- Manage the PSERN Operator's day-to-day activities consistent with applicable policies, procedures and standards
- Retain appropriate PSERN Operator staff either through the direct hire of staff or through an agency agreement (i.e. contract staff)¹¹
- Hire, evaluate, supervise, discipline and terminate staff in compliance with applicable budget, policies, procedures, agreements and standards
- Propose and administer annual budgets including a contingency
- Approve, consistent with applicable budget policies adopted by the Board of Directors, expenditures and sign contracts in amounts as established by the Board without additional Board approval
- Track the performance of PSERN systems and services
- Provide support to the Board of Directors

¹¹ Regarding PSERN Operator employment, the transmitted ILA identifies employment terms for individuals who will work for the PSERN Operator, as well as provisions for temporary employment (not to exceed 18 months) for individuals whose position will end as a result of PSERN and who are not hired by the PSERN Operator.

- Recommend policies, procedures and standards (and changes thereto) including without limitation policies governing the procurement of goods, services, public works and improvements, staffing and emergency responses
- Provide written monthly reports to the Board of Directors describing the PSERN Operator's budget status, System performance against targets, partial or full System outages, purchases at or above \$10,000, and System usage statistics
- Maintain and manage records in accordance with applicable state and federal laws and regulations
- Prepare an annual report for the PSERN Operator
- Perform other duties as assigned by the Board of Directors

PSERN System Service Level Requirements. The proposed agreement outlines minimum performance requirements for the PSERN System which the PSERN Operator is required to ensure. These minimum performance requirements include the following:

- Delivered audio quality (DAQ) 3.4.
- 97% reliability.
- 97% portable on-street coverage in the Primary Bounded Area (PBA).
- 95% portable on-street coverage in the Highway Buffer Covered Areas.
- Grade of Service of 1.0.
- 99.999% availability of backhaul.
- At least 17 db added signal above the baseline PSERN design within the three polygon coverage areas, which are shown in Exhibit B to the ILA.
- Provide 97% portable on-street coverage with 97% service area reliability (SAR) in the three polygon coverage areas, which are shown in Exhibit B to the ILA.

Additionally, the PSERN Operator is required to ensure that technical support, infrastructure repair, system updates and system upgrades are provided by the system contractor (Motorola) throughout the expected service life of the PSERN System.

PSERN System User Fees. Agencies¹² using the PSERN system will pay a service rate, which is defined in the transmitted ILA to mean "the rate or rates charged to user agencies in accordance with the rate model at Exhibit A [to the PSERN Operator ILA], or as it may be amended by action of the Board of Directors". Under the cost allocation model provided in Exhibit A to the transmitted agreement, which is consistent with the terms of both the 2015 MOA and Implementation ILA, 83 percent of PSERN's annual operating budget in the first year of operations will be paid by radio users and 17 percent would be paid by dispatch console users. The radio user rate will be split among public safety radio users and other radio users, with the rate charged to other radio users set at 78 percent of the public safety radio user rate. As further indicated, the PSERN System annual operating budget and the number of public safety radios, other radios, and consoles will be known quantities at the time the rates are computed.

PSERN Operator Dissolution and Termination. Under the transmitted agreement, both the affirmative vote of a majority of the full Board of Directors and the affirmative vote of a majority of the Parties' legislative bodies would be required for dissolution of

¹² As defined in the transmitted ILA, "user agency" means "an entity that is authorized under an agreement with King County or the PSERN Operator to register and use a radio or other device on the PSERN System".

the PSERN Operator and termination of the PSERN Operator ILA. Subject to meeting these criteria, the Board of Directors would establish a task force to determine how the PSERN System assets and liabilities would be divided. The disposition plan would require a unanimous affirmative vote of the full Board of Directors. Following approval of the disposition plan, the PSERN Operator would wind up business in accordance with the approved plan and any other terms set by the Board. The Board of Directors would set the date for termination of the PSERN Operator ILA by affirmative majority vote of the full Board.

ILA Timing and Other Considerations. As discussed earlier in this staff report, the PSERN Operator (subject to approval of the PSERN Operator ILA by all twelve Parties) will assume ownership and control of PSERN following project full system acceptance. According to executive staff, it is estimated that the PSERN Operator needs at least 18 months to prepare to take over operations of the radio system. Additionally, it is estimated that a national recruitment effort for a PSERN Executive Director would take at least 6-7 months. Accordingly, at least 24-25 months is needed prior to the time that the PSERN Operator would take over operations (currently projected for December 2022), which sets a December 2020 deadline for the PSERN Operator ILA to be fully executed.

As of early September, the ILA has been approved by the cities of Kent, Auburn, Federal Way, Renton, Redmond, Issaquah and Kirkland.

ATTACHMENTS

1. Transmittal Letter
2. Fiscal Note



King County

Dow Constantine

King County Executive

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June 16, 2020

The Honorable Claudia Balducci
Chair, King County Council
Room 1200
C O U R T H O U S E

Dear Councilmember Balducci:

This letter transmits a proposed ordinance authorizing the King County Executive to execute the PSERN Operator interlocal agreement (ILA) that would, if enacted, create a new nonprofit governmental corporation to run the future emergency radio communications system in King County, known as the Puget Sound Emergency Radio Network (PSERN) as called for by Ordinance 18074. The proposed ILA fulfills the requirements of previous agreements: the PSERN Implementation Period Interlocal Cooperation Agreement, which created the PSERN Project, and King County Ordinance 18074. A component of Ordinance 18074 was a Memorandum of Agreement with other emergency radio communications system owners to establish a new non-profit government corporation, the PSERN Operator, to run the future PSERN system.

The PSERN system will serve all of King County and provide communications for nearly 18,000 radios, approximately 200 agencies, and 19 dispatch centers that handle all E-911 response communications throughout the county. Funding for the PSERN Project was approved by King County voters in April 2015 for the purpose of upgrading and expanding the King County Emergency Radio Communications System (KCERCS). Once the PSERN Project is complete, PSERN will provide a reliable, private, and locally-owned system for all emergency response communications throughout King County, including E-911, and other government operations under management of the future PSERN Operator.

Ownership of the future PSERN Operator is established through the Implementation Period ILA and is comprised of 12 partners: King County and the cities of Auburn, Bellevue, Federal Way, Issaquah, Kent, Kirkland, Mercer Island, Redmond, Renton, Seattle, and Tukwila. Each of the 12 owner entities will have to approve the PSERN Operator ILA.

The formation of a new PSERN Operator was determined to be the preferred approach after extensive outreach to impacted agencies during 2012-2014. Outreach efforts targeted users of

The Honorable Claudia Balducci

June 16, 2020

Page 2

KCERCS, including law enforcement and fire chiefs, public safety answering point directors, utilities, hospitals, and schools and other government entities such as utilities. The PSERN Project team continues to perform outreach, provide ongoing informational communications, and conduct meetings with the nearly 200 agencies throughout King County who will use the new system.

The proposed ILA advances the King County Strategic Plan goal of Safety and Justice by enhancing public safety through provision of a reliable and improved emergency communications system. Preparation of this transmittal package required approximately 10 staff hours, costing \$1,372.

Thank you for your consideration of this proposed ordinance. This ILA will meet the requirements of previous local agreements and provide the mechanism for ownership, governance, and maintenance of the life-safety PSERN system supporting E-911 and other important countywide government services.

If your staff have any questions, please contact Kimberly Nuber, Deputy Division Director, Emergency Radio Communications Division, Department of Information Technology, at knuber@kingcounty.gov or (206) 263-5865.

Sincerely,



Dow Constantine
King County Executive

Enclosure

cc: King County Councilmembers
 ATTN: Carolyn Busch, Chief of Staff
 Melani Pedroza, Clerk of the Council
Shannon Braddock, Deputy Chief of Staff, Office of the Executive
Karan Gill, Director, Council Relations, Office of the Executive
Tanya Hannah, Director, Department of Information Technology
David Mendel, Director, Emergency Radio Communications Division

2019-2020 FISCAL NOTE

Ordinance/Motion: :Proposed Ordinance
 Title: Puget Sound Emergency Radio Network (PSERN) Operator Interlocal Agreement (ILA)
 Affected Agency and/or Agencies:
 Note Prepared By: G.Vida
 Date Prepared: 3/25/2020
 Note Reviewed By:
 Date Reviewed:

Description of request:

A proposed ordinance authorizing the King County Executive to execute the PSERN Operator interlocal agreement (ILA) that would, if enacted, create a new nonprofit governmental corporation to run the future emergency radio communications system in King County, known as the Puget Sound Emergency Radio Network (PSERN)

Revenue to:

Agency	Fund Code	Revenue Source	2019-2020	2021-2022	2023-2024
PSERN	3361		0	0	0
TOTAL			0	0	0

Expenditures from:

Agency	Fund Code	Department	2019-2020	2021-2022	2023-2024
PSERN	3361		0	0	0
TOTAL			0	0	0

Expenditures by Categories

	2019-2020	2021-2022	2023-2024
TOTAL	0	0	0

Does this legislation require a budget supplemental?

Notes and Assumptions: