King County

KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

September 30, 2014

Motion 14237

Proposed No. 2014-0339.1 **Sponsors** McDermott

A MOTION acknowledging receipt of a report from the King County executive in accordance with Ordinance 17696, Section 21, Proviso P4, regarding the options related to the acquisition and governance of the new public safety emergency radio network.

WHEREAS, Ordinance 17696, Section 21, Proviso P4, requested the executive to transmit a report on the replacement of the public safety emergency radio network by January 30, 2014, and

WHEREAS, the executive wrote to the council on January 30, 2014, detailing the incompatibility in the timing between the system vendor request for proposals responses and the desired deliverables for proviso P4, and requesting a six-month postponement for this proviso, modifying the transmission date to July 31, 2014, and

WHEREAS, the executive is now submitting the report in fulfillment of Proviso P4, and

WHEREAS, the report includes information on the financial options for the replacement of the network, including identifying, addressing and evaluating options and alternatives for funding the acquisition and governance of the new public safety emergency radio network, as requested in Proviso P4;

NOW, THEREFORE, BE IT MOVED by the Council of King County:

The receipt of the Report on Options Regarding the Acquisition and Governance of the New Public Safety Emergency Radio Network, which is Attachment A to this motion, is hereby acknowledged.

Motion 14237 was introduced on 8/18/2014 and passed by the Metropolitan King County Council on 9/29/2014, by the following vote:

Yes: 9 - Mr. Phillips, Mr. von Reichbauer, Mr. Gossett, Ms. Hague, Ms. Lambert, Mr. Dunn, Mr. McDermott, Mr. Dembowski and Mr. Upthegrove
No: 0
Excused: 0

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Larry Phillips, Chair

ATTEST:

Melani Pedroza for

Anne Noris, Clerk of the Council

Attachments: A. Report Regarding the Acquisition and Governance of the New Public Safety Emergency Radio Network

Attachment A - 14237

A Report

Regarding the Acquisition and Governance of the New Public Safety Emergency Radio Network (PSERN)

Submitted in Fulfillment of King County Ordinance 17696, Section 21, Proviso 4

June 2014

Table of Contents

I. INTRODUCTION

a. Proviso

King County Ordinance 17696, Section 21, Proviso P4, Lines 626 – 651 reads as follows:

P4 PROVIDED FURTHER THAT:

Of this appropriation, $50,000 shall not be expended or encumbered until the executive transmits a report on the financing options for the replacement of the public safety emergency radio system and a motion that acknowledges receipt of the report and the motion is passed by the council. The motion shall reference the proviso's ordinance, ordinance section, proviso number and subject matter in both the title and body of the motion.

The executive must file the report and motion required by this proviso by January 30, 2014, in the form of a paper original and an electronic copy with the clerk of the council, who shall retain the original and provide an electronic copy to all councilmembers, the council chief of staff and the lead staff for the budget and fiscal management committee, or its successor.

The report shall identify, address and evaluate options and alternatives for funding the acquisition of the new public safety emergency radio network, including but not limited to:

A. A description of the estimated total costs of the new system and its projected cash flow needs of the project including timing;

B. A description of all possible financing mechanisms that could fund a project of this type with a discussion of the pros and cons of each method;

C. An evaluation of the possibility of sharing the financing of the new system with the four subregional entities that constitute the King County Regional Communications Board, which owns the current system;

D. An evaluation of the possibility of proportionately sharing the financing of the new system with all of the jurisdictions that currently use the system, including evaluating the potential impact of levy suppression for the junior taxing districts; and

E. A description of potential options for the governance of the new system.

This report is submitted in fulfillment of the proviso.

b. Content and Organization of this Report

In addition to this introduction, this report includes four additional sections in the following order:

- Financing options for the replacement of the public safety emergency radio system, other than the two options in the bullets immediately below;
- An evaluation of the possibility of sharing the financing of the new system with the four subregional entities that constitute the King County Regional Communications Board, which owns the current system;
- An evaluation of the possibility of proportionally sharing the financing of the new system with all of the jurisdictions that currently use the system; and
- A description of potential options for the governance of the new system.

For each of the funding options, the report describes the option, lists the pros and cons of the option, and evaluates the overall strength of the option. Finally, the options are evaluated in relationship to each other.

c. Background: The Current System and the Need for a Replacement System

The current emergency radio system was funded in 1992. King County Ordinance 10464 authorized a countywide property tax ballot measure to fund the system. The voters approved the measure and property taxes were collected over three years. Construction was substantially completed in 1997. Except for existing sites, the collected taxes paid for the entire system, including infrastructure and radios. Today the system supports over 16,000 radios used by over 100 agencies.

The ownership and governance structures for the current system were established by an Interlocal Agreement (ILA) approved by King County Ordinance 10956. The current system has four owners and four subsystems. The subsystems are owned by King County, the City of Seattle, the Eastside Public Safety Communications Agency (EPSCA) and the Valley Communications Agency (ValleyCom).

EPSCA is a non-profit corporation consisting of the cities of Bellevue, Issaquah, Kirkland, Mercer Island, and Redmond. ValleyCom is a joint board whose members are Auburn, Federal Way, Kent, Renton, and Tukwila. Each owner owns multiple sites with electronic equipment funded by the 1992 ballot measure. Each owner is responsible for the operation and maintenance of its sites and associated equipment. All four subsystems are controlled by a central computer (also called a switch) jointly owned by the four owners. This enables the four subsystems to act as one system; allowing users to move from area to area usually without noticeable changes in service.

The system was built to meet two related needs. When the public calls 9-1-1, the dispatcher uses the radio system to send a police car, fire engine, or ambulance to the location needing assistance. The radio system is also used by these responders to coordinate their response at incident locations. It is used by firefighters inside a building to communicate with command staff outside the building. It is used by police to coordinate a search or arrest. An ambulance bringing a heart attack or shooting victim to a hospital will discuss the patient's condition with hospital staff while in transit to get treatment directions and to ready hospital staff for the specific emergency. At major events, such as the Southcenter shooting, the system was used to coordinate the response among the multiple agencies and disciplines responding. Because many of these uses are life critical, the system must never be out of service.

The system works dependably today but it faces future problems. Parts in the system are old and are wearing out with increasing frequency. This is occurring as the company that built our system is ending the sale of new parts and the repairing of old parts over a number of years. By the end of 2018, sales of all new parts and repairs will be fully ended.

There are other issues with the current system. It was designed in 1992 for the County's population at that time. Since then, the County's population and the dispersal of that population have grown in ways no one could have anticipated. As a result, our system does not cover all of the areas in the County where service is needed and it lacks the capacity necessary during large-scale disasters and incidents. The owners cannot correct these problems because the vendor no longer sells the parts needed to do so.

It will take us several years to build and test a new system once funding is secured. The current system will not be turned off when the vendor stops supporting it at the end of 2018. The four owners will be able to keep the system running satisfactorily for a couple additional years by using the spare parts already amassed, by fixing broken components ourselves, and by purchasing parts from third-parties. This is a time-limited strategy, however. Eventually the system will degrade.

II. COST AND CASH FLOW NEEDS FOR A NEW SYSTEM

a. Estimated Total Costs of the New System

The estimated cost of the project to build the new system is $265 million (which is roughly the midpoint of the cost breakdown on page 5). This estimate was generated through a report by a specialized consultant, research on the costs of other systems, our experience in building the METRO radio system, and the knowledge and experience of staff in the four subsystems.

The figures are preliminary. Many of the component costs are estimates. Examples included (1) the equipment vendor contract has not been negotiated; therefore, the price is not set; (2) the site engineering and design work that will determine site upgrade costs has not started; and (3) one percent for arts requirements are still being clarified. Below, the communications equipment line represents the high and low estimates for the equipment vendor costs.

This overall estimate is based on the following components:

COST CATEGORY	$ AMOUNT (low)	$ AMOUNT (high)
Communication Equipment	104,000,000	124,000,000
Sales Tax	9,880,000	11,780,000
Bond Financing Costs	27,618,635	27,618,635
Site Construction	21,397,478	21,397,478
Total Salaries and Benefits	11,099,927	11,099,927
Capital IT Lease - Principal	6,678,000	6,678,000
System Testing & Acceptance Support	5,282,000	5,282,000
Reimbursable Costs	4,965,222	4,965,222
Bond Issuance	3,569,262	3,569,262
Quality Assurance	3,000,000	3,000,000
A/E Consultant Final Design	2,918,850	2,918,850
1% for the Arts	1,900,000	1,900,000
Special Election Costs	1,800,000	1,800,000
Insurance	1,000,000	1,000,000
Office Space for Project Staff	840,000	840,000
Consulting IT Services	700,000	700,000
Construction Management	600,000	600,000
PSERN Incorporation	500,000	500,000
Warehouse for installation activities	477,000	477,000
Legal	400,000	400,000
Supplies	308,448	308,448
Procurement	300,000	300,000
Vehicles	164,000	164,000
Travel	107,500	107,500
Hardware/Software	20,800	20,800
Project Cost (Subtotal)	209,527,122	231,427,122
Contingency @ 20%	41,905,424	46,285,424
TOTAL PROJECT COST (ESTIMATE)	**$251,432,546**	**$277,712,546**

Estimated Project Cost

b. Projected Cash Flow Needs

Project cash flow needs will be greatly impacted by the vendors' contract and accompanying schedule. These documents have not been finalized so the timing and amount of many projected expenses are highly speculative. With these caveats, here is our best projection of cash flow needs.

This cash flow projection is premised on a funding source being available in 2015. If funding is not available in 2015, the dates for needed cash flow would simply occur later than as shown.

	2015	2016	2017	2018	2019	2020	2021	2022	TOTAL
Total Project Cash Needed	18%	9%	23%	19%	24%	5%	1%	0%	**99%**

Projected Cash Flow Needs

III. POSSIBLE FUNDING OPTIONS

A variety of potential funding options are discussed in detail below. One option not discussed is funding the system through federal and state grants. While such grants may have been available at one time, these grants have been defunded in part or in whole over the last four years. In addition, federal budget earmarks have been largely abolished. Though we have looked, we do not know of any grant or combination of grants that could reasonably be expected to pay for a significant portion of our system.

a. Option: Savings

The Interlocal Agreement for the current system approved in King County Ordinance 10956 makes some reference to funding the next public safety radio system. Paragraph 9.12 of the ILA reads:

> "The subregion shall collect annual replacement reserves which shall be adequate to provide for the depreciation and replacement of: (a) commonly owned Network Controller Equipment and other commonly owned System equipment purchased with Levy Proceeds and successor equipment, and (b) Subregionally owned system equipment purchased with Levy Proceeds and successor equipment with the exception of Communication Center equipment. ... Subregions shall share in the actual cost of replacement and repair of commonly owned Network Controller Equipment, as determined by the Board..." (underlining added).

Thus, the subsystem owners were expected to save enough to pay for replacing "subregionally owned system equipment purchased with Levy Proceeds and successor equipment with the exception of Communication Center equipment." However, the description of their obligation to pay for the new system is far more limited. The ILA describes the obligation to pay as limited to a "share in the actual cost of replacement and repair of commonly owned Network Controller

Equipment, as determined by the Board" (underlining added). The four subsystem owners replaced this equipment in 2010.

The subsystem owners also put aside replacement reserves, perhaps sufficient to replace the system at 1992 prices. These reserves have been used for midlife upgrades on at least two occasions. In the case of King County, reserves were used to finish the current system because the levy proceeds were insufficient. King County has also used its replacement reserves for subscriber radio purchases and to fund the PSERN project activities since 2007.

Pros	Cons
The ILA set up an expectation that the subsystems would accrue savings to pay for a new system when the time came.	The subregions have some reserves. These could contribute to funding but would be insufficient to fund a major share of the project.
	There would still be a need for a ballot measure even if the subregions had saved sufficient funds to replace the "Subregionally owned system equipment purchased with Levy Proceeds." This equipment comprises only about one-half of the total project budget. It does not include radios, site improvements, dispatch consoles, and other major costs.
	The agreement about what will be paid for (commonly owned Network Controller Equipment) is only a small part of the costs of system replacement.
	During the life of our system the subsystems have already seen to the "replacement and repair of commonly owned Network Controller Equipment."

The current ILA contained a provision whereby the four co-owners agreed to save enough money to replace "subregionally owned system equipment purchased with Levy Proceeds and successor equipment with the exception of Communication Center equipment." No one could have had a realistic estimate of how much an adequate system would cost in 2014. Today's savings total less than 10 percent of the costs of procuring and building a new system.

b. Option: Rates

Another option would be for system users to pay for the capital expenses of a new system through increases in the rates paid for use of the system. Today, system users pay a monthly fee for use of the system to one of the four owners. Each subsystem owner independently determines what rates it will charge its users and how to determine its rate or rates to capture its operational expenses and some reserves. Most subsystems use a fixed per radio cost, though this is not universal. Payments go back to the subsystem. Rates today vary from roughly $5 to $35 per month per radio.

If the projected cost estimate of $265 million was spread over today's approximately 16,700 customers, each bill would need to increase approximately $15,868 or a little over $66.12 per month for 20 years. The new system will also have significantly more sites than the current system leading to an increase in operating costs. These operating costs are also captured in rates. It is estimated that rates could rise to over $100 per month per radio under this option.

Pros	Cons
This option would eliminate or reduce the amount needed to be raised by imposing taxes.	Paying for capital costs out of operating funds may not be sound policy.
The project would retain all of the funds collected, unlike with some of the tax provisions (see below).	All system users, including King County agencies, such as the Sheriff, would need to increase their operating budgets to pay these higher rates. For example, the Sheriff's Office has about 1,700 radios. Assuming rates go from $39 per month to $100 per month, an additional $1.2 million per year would be needed for the Sheriff's budget.
Full funding with user fees eliminates the uncertainty of a ballot funding measure.	The system would likely lose users if rates are increased. For some users, such as police, fire, and emergency medical responders, the system is essential to their jobs. For other agencies, such as schools, water and sewer districts, etc., radio is a convenience. Many of these agencies would stop using the radio system. With fewer users paying a share of the increased costs, rates would need to increase even more for those still using the new system.
	This funding option would not be practical within existing user agency budgets.
	It would necessitate bonding, for 20 years. Financing costs would significantly increase (at least double). These costs are already estimated near $30 million for a 10 year bond. The result would be an even larger rate increase.
	There will also be risks associated with defaults on contracts. Capacity to fund debt service payments would need to be included in case of

	default on contract obligations, or build in an increased rate to account for a percentage of users that may not paying.

An estimated increased rate of $100 per month per radio would have a large impact on responder agency budgets. Unless these agencies received larger budget allocations, they could be forced to choose between decreasing the number of radios available for first responders and decreasing the number of responders.

In addition, a rate of $100 per month per radio would result in a loss of non-essential users of the system. This is contrary to our underlying goal of encouraging use of the system. Approximately 40 percent of system users are not first responders; they are school, roads, water and sewer district employees. For these workers, the system is useful but rarely life critical. Many such agencies would not buy service at the stated price. The system has a high fixed operating cost; there is little change in operating costs as the number of users grows or shrinks. With fewer customer and fixed operating costs, the rates for the remaining users would need to increase even further.

This option presents a policy choice that has significant impacts on certain agency users, and would reduce use of the system by some current users.

c. **Option: Sales and Use Tax**

i. **Criminal Justice Sales Tax**

RCW 82.14.450 allows the County to place a proposition on the ballot to impose and collect up to three-tenths of one percent (.3%) sales and use tax for criminal justice purposes. Revenues received by a county under this taxing authority must be shared between the County and cities as follows: sixty percent must be retained by the County and forty percent must be distributed on a per capita basis to cities in the County.[1] In addition, one-third of all of these revenues must be spent on public safety "defined as activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil justice system occurs."

A three-tenths of one percent (.3%) sales tax would collect approximately $131 million in its first year according to the Performance, Strategy and Budget staff. Of this amount, King County would receive approximately $78.6 million per year, and the 39 cities would collectively receive approximately $52.4 million.

[1] A city may also place a proposition on the ballot to impose and collect a sales and use tax within the city in the same rates. The distribution of the tax revenues received by a city is 85 percent to the city and 15 percent to the County. The same limitation of the use of revenues described above applies to a city imposed sales tax.

There have been at least two Criminal Justice Sales Tax ballot measures. One measure was passed by voters; the 2010 measure failed.

Pros	Cons
As a tax measure, it requires only a majority of votes cast to be adopted and has no turnout requirement.	
Two-thirds of the funds could be used for expenditures unrelated to criminal justice.	The County would only receive 60 percent of the taxes collected; 40 percent would go to the cities. While the County could try to convince the cities to give us part of their monies to put toward the radio project, it is uncertain whether all 39 cities would do so.
	Because a city may independently impose this tax and retain more of the tax revenue, a jurisdiction may view this tax as tax option for the future and may not want to see it imposed for this purpose.

There are other potential countywide needs for this funding source in the future. The statutory distribution would also make it difficult to compel cities to use their portion of the proceeds for this project. Cities that may consider this tax within their city may conclude that the County's implementing a Levy Lid Lift is a better funding option.

ii. Emergency Communication System Sales Tax

RCW 82.14.420 provides for a sales tax to be "used solely for the purpose of providing funds for costs associated with financing, design, acquisition, construction, equipping, operating, maintaining, remodeling, repairing, reequipping, and improvement of emergency communication systems and facilities." The County must share funds collected with "any city over fifty thousand [that] operates emergency communication systems and facilities." There are nine such cities.[2] No fixed distribution is established; rather, the cities and County "shall enter into an interlocal agreement ... to determine distribution of the revenue provided in this section."

Pros	Cons
Measure requires only a majority of votes cast to be adopted.	
The tax revenues can only be used for	The County would need to reach

[2] Auburn, Bellevue, Federal Way, Kent, Kirkland, Redmond, Seattle, and Shoreline.

emergency communication systems and facilities.	agreement with nine cities about the distribution of the taxes collected. It is uncertain what percentage of revenues the cities would require to reach an agreement. If agreements could not be reached, the proposition could not be placed on the ballot.
	A single city could withhold its approval of this tax option.

This tax shares the problems common to all sales and use taxes: the perception that the County's sales and use taxes are already high and the regressive nature of sales and use taxes. Agreement must be reached with nine cities. The RCW does not mandate that revenues be divided; that would need to be negotiated. Ideally, the cities would dedicate their share of revenues to the construction of the new public safety and emergency radio network. There has been no support for such a measure in our preliminary discussions with city officials.

iii. Property Tax Levies

Article VII, Section 2 of the Washington State Constitution and state law set a limit on the property taxes a county may collect. There are two relevant exceptions to these limits, commonly known as excess levies and levy lid lifts.

1. Excess Levy

RCW 84.52.056(1) provides for temporary "excess levies" to a county's "regular property taxes." A county may temporarily exceed this limit "<u>for the sole purpose of making the required payments of principal and interest on general obligation bonds issued solely for capital purposes, other than the replacement of equipment</u>, when authorized so to do by majority of at least three-fifths of the voters of the taxing district voting on the proposition to issue such bonds and to pay the principal and interest thereon by annual tax levies in excess of the limitation herein provided during the term of such bonds, submitted not oftener than twice in any calendar year, at an election held in the manner provided by law for bond elections in such taxing district, <u>at which election the total number of voters voting on the proposition shall constitute not less than forty percent of the total number of voters voting in such taxing district at the last preceding general election</u>." (underlining added). The seismic upgrade of Harborview Hospital is an example of a county excess levy.

Pros	Cons
The County would receive all the revenue collected and would not be required to share revenues with other	This funding option would fund only part of the system as it cannot be used for "the replacement of equipment."

jurisdictions.	
The County has sufficient bonding capacity to issue a sufficient amount of bonds to fund the project.	This tax requires a 60 percent affirmative vote and a minimum turnout of 40 percent of voters at the last general election.

As noted above, bonds authorized by this RCW cannot not used for "the replacement of equipment." Because this phrase is not well defined in the law, there are uncertainties associated with using an excess levy for the entire project. This funding option could cover the non-equipment replacement portion of the costs associated with the replacement of the system.

Alternatively, the County could seek to resolve the legal uncertainties. State law authorizes a declaratory judgment action to determine the validity of bonds when legal uncertainties exist. The County would file an action in Superior Court. The County would appoint and the County would pay for legal representation to contest the County's position. There would then be an automatic appeal to the Washington State Supreme Court. The County utilized this procedure most recently in order to issue bonds for Safeco Field. Taking such action for this project would require time and significant costs.

2. Levy Lid Lift

State law limits the annual increase in the amount of a taxing district's levy to one percent. RCW 84.55.050 authorizes the County to ask voters to "lift" to this statutory lid on the amount of property taxes a county may levy and collect. This ballot measure requires a simple majority of voters and the ballot measure may limit the use of the tax revenues and set the number of years for the "lid lift". If the purpose of the levy is to pay the principal and interest on bonds, as we anticipate, the ballot measure may last no longer than nine consecutive years.

Examples of King County Levy Lid Lifts include:

- 2014 Automated Fingerprint Identification System (AFIS) Levy
- 2013 Parks, Trails, and Open Space Replacement Levy
- 2012 Children and Family Justice center Levy

"[F]unds raised by a levy under RCW 84.55.050 may not supplant existing funds used for the limited purpose specified in the ballot title. For purposes of this subsection, existing funds means the actual operating expenditures for the calendar year in which the ballot measure is approved by voters."

Pros	Cons
The County would receive all the revenue collected; it would not need to share these revenues with other jurisdictions.	Because the levy would increase the aggregate levy rates countywide, this option has the potential to negatively impact some junior taxing districts. Given information known today, the County's Economist has concluded that this will not impact any fire districts; however some fire district officials have expressed concern.
Ballot measure requires only a majority of votes cast to be adopted and no turnout requirement for election.	Unlike an excess levy, this levy may only be imposed for a maximum of 9 years if used to repay bond. It would be preferable to have a longer payback term to reduce the amount needing to be collected from property owners each year.
Unlike an excess levy, this property tax option could provide full funding of the project.	

A Levy Lid Lift is the most viable funding alternative for fully funding a new system at this time. While some fire officials have expressed concern, our analysis indicates that fire districts should not lose revenues because of such a measure. .

3. Using Both an Excess Levy and a Levy Lid Lift

It is possible to put both an excess levy and a levy lid lift on the ballot at the same election. The excess level would pay for those parts of the project that are not "equipment replacement"; the lid lift would pay for the remainder of the project. It is unlikely that King County could combine these multiple funding measures in a single public vote; thus, both measures would need approval for the project to move ahead.

Pros	Cons
This could provide full funding for the project.	Voters may pass one measure but not the other, leaving the project without sufficient funding.
Less potential impact to junior taxing districts.	Voters may find two ballot measures for the same overriding purpose confusing.
	An excess levy needs a 60 percent majority and turnout requirements to be

	adopted.

Putting these two types of measures on the same ballot is a high risk strategy. Using two measures to fund the project is likely to result in voter confusion leading voters to reject one, if not both, of the measures.

d. Evaluation: Sharing the Financing with the Subregional Entities

As noted above, the subregions have limited reserves. To the best of our knowledge, these radio reserves are insufficient to pay for even 10 percent of the project's costs. These reserves could be used to pay for a portion of the project, however.

If the subregions were asked to make a contribution in excess of their reserves, they could raise funds in several ways. They could raise their users' rates. The City of Seattle and King County could use a number of tax measures or general fund revenues. While the County has sufficient property tax levy capacity, Seattle may have limited capacity for a levy lid lift, although an excess levy is an option. The other two subregion owners, ValleyCom and EPSCA, do not have taxing authority and would need to receive these funds from their member cities.

Pros	Cons
	Every local government in the County benefits from the system, but only twelve of the 40 governments in the County (5 EPSCA cities + 5 ValleyCom cities + Seattle + King County) are current owners of the system and would pay the project's costs under this scenario; twenty-eight cities would not be required to raise taxes for the system.
It would reduce the impact to the County's taxing limits.	The local governments involved do not have sufficient revenue today to pay for this. This option would necessitate their raising local taxes. They have expressed a reluctance to commit their taxing authority for this project.
It could pay a portion of the project.	The twelve local governments involved have indicated an unwillingness to do this.
It would not impact junior taxing district revenues in the way feared by some fire districts now.	This has all the detriments of funding through rate increases (see above).
	The County would be without a functional recourse if a jurisdiction committed to participate in the plan and then changed its

	mind or declined to pay the assessment.

An option such as this would not be acceptable to the twelve local governments paying the capital costs of a new system because forty local governments would benefit from the new system. Even if the twelve local governments paid these capital costs in exchange for lower rates going forward, agreement is unlikely. These jurisdictions have indicated they are not prepared to do this.

e. Evaluation: Sharing the Financing with All Jurisdictions

There are approximately 100 separate jurisdictions that currently use the system counting all King County government departments (Sheriff, roads, etc.) as a single jurisdiction. Potentially, the project costs could be divided on some basis such as the proportion of radios on the current system. If we divided the estimated project cost of $265,000,000 by 16,700 radios, each radio would potentially be assessed $15,868. For the Sherriff's Office, the assessment would be almost $27 million over 20 years. In addition, many users who feel that using the radio system is convenient but not essential would stop their service leaving fewer users to share the burden.

Pros	Cons
	This would need all jurisdictions to participate to be fully successful. If some, but not all, jurisdictions agreed, you would have a "free rider" problem.
All who benefit would potentially contribute.	It would be very complex to get 100 jurisdictions to agree on a shared plan.
The impact on the County's taxing limits would be reduced.	If this was made a condition for use of the system, some users would stop their use with the same repercussions as if capital funding was done through rate increases.
It would not impact junior taxing district revenues in the way feared by some fire districts now.	If this was made a condition for use of the system, would it be practical for the system owners to actually deny service to a government that failed to pay its assessment.

The complexity of getting agreement among over 100 jurisdictions makes this option very difficult. Some jurisdictions, such as schools, would likely drop their radio service rather than contribute to infrastructure costs, thereby increasing the burden on those willing to contribute. In addition, it is beneficial for these jurisdictions to be on the system because emergencies occur at their facilities and responders must coordinate with their staffs.

f. Partial Funding Options

It is theoretically possible to put a Levy Lid Lift on the ballot and use those proceeds for replacing equipment, and to put an Excess Levy on the ballot and use those proceeds for the non-equipment replacement components of the project. This is likely to require the Council and voters to approve two separate measures.

Pros	Cons
	There is not yet agreement on the amount of the contribution or the specific uses for the contributions.
If the subsystem owners contributed to project costs, this would be easier to explain to voters than the use of multiple taxing measures.	Using multiple tax options, such as a combination of a Lift and Excess Levy, can be difficult to explain to voters.
The impact on the County's taxing limits would be slightly reduced.	
It could slightly reduce the fears of some fire districts.	
This has been discussed with the subsystem owners and some owners have expressed an agreement with the concept.	

It would be useful to explore having the subsystem owners contribute either their unneeded reserves or a set amount to the project. For example, these contributions could be used to operate the new system between the time it is turned on and used until it is turned over for ongoing operations. They could also be used to set up a new organization to conduct ongoing operations once the system is completed. Discussions about this are on-going.

Putting both a levy lid lift and an excess levy on the ballot at the same time seems unwise. Doing this would likely require two separate ballot measures and public votes. The likelihood of voter confusion and failure of one or both measures seems high, especially given that the excess levy requires a 60 percent majority vote.

g. Conclusion

Using a Levy Lid Lift is the most viable option for funding a new system with a single taxing measure. Such a tax could be augmented if the current subsystem owners contributed to a part of the project's costs. One option would be to ask for reserves in excess of what they will need until the new system is in full use.

IV. A DESCRIPTION OF POTENTIAL OPTIONS FOR THE GOVERNANCE OF THE NEW SYSTEM

a. Introduction

The scope of the Public Safety and Emergency Radio Network (PSERN) project includes purchasing a new radio system and new subscriber radios to operate on that system. This report addresses the ownership and governance options for the new system. It does not address the subscriber radios which most likely will be owned by the individual user agencies that use the new system.

The project will have two phases. Phase 1 involves the planning and construction of the new system. The subsystem owners have agreed that the County serve as lead for Phase 1 and an interlocal agreement is being drafted to govern Phase 1 activities.

Phase 2 is the operating and maintenance phase that begins when the system has been tested and accepted. It is anticipated this phase will extend for twenty years after system acceptance. This report limits its discussion of governance to Phase 2.

Philosophically, we believe that governance should be closely associated with operations; the chief purposes of governance are to make sure the system provides good service delivered in a cost-effective way. Because PSERN is designed to be a single system (not a combination of separate systems) and will operate as one system, we think the best ownership model for PSERN is a single agency. Any attempt to divide ownership among multiple owners would be arbitrary and inefficient.

A single owner model does not mean governance by a single government. Rather, it is essential that the ownership and operation of a regional system be governed regionally. It is assumed that the PSERN owner/operator will be governed pursuant to an Interlocal Agreement (ILA) under Washington's Interlocal Agreement Act, Chapter 39.34 (ICA), which offers several governance options. For the reasons stated in paragraph D(5), the ILA that governs the current system cannot be used for PSERN without substantial revision.

RCW 39.34.030(3) provides that, among other things, an interlocal agreement shall specify:

"(b) The precise organization, composition and nature of any separate legal or administrative entity created thereby together with the powers delegated thereto, provided such entity may be legally created. Such entity may include a nonprofit corporation organized pursuant to chapter 24.03 or 24.06 RCW whose membership is limited solely to the participating public agencies or a partnership organized pursuant to chapter 25.04 or 25.05 RCW whose partners are limited solely to participating public agencies, or a limited liability company organized under chapter 25.15 RCW whose membership is limited solely to participating public agencies, and the funds of any such corporation, partnership, or limited liability company shall be subject to audit in the manner provided by law for the auditing of public funds."

This report analyzes the following options for governance of a single owner model:

- the system is owned by a nonprofit corporation or limited liability company
- the system is owned by a designated lead party governed by a joint board
- the system is owned by one of the partners in a partnership

b. Nonprofit or LLC Ownership

A nonprofit corporation model formed and governed by the County and the cities that control the current system. The System is owned by a Nonprofit Corporation or Limited Liability Company

The ICA specifies that a nonprofit corporation may be formed under chapter 24.03 or 24.06 RCW or Limited Liability Company (LLC) may be formed under chapter 25.15 RCW. A corporation is established by filing Articles of Incorporation with the Washington State Secretary of State. There must also be incorporators or initial directors. They, in turn, will adopt by-laws.

Nonprofit corporations are directed by a Boards of Directors that may administer an organization on a day-to-day basis or hire a manager to do so. In most large, sophisticated organizations, the board sets policies and hires a manager to assume day-to-day management duties.

LLC participants are members (who are comparable to directors in a corporation). LLCs are formed by filing a "certificate of formation" with the Secretary of State. They typically adopt "member agreements" (similar to corporate bylaws) defining how the company will be run.

Regardless of the statute under which a nonprofit corporation or an LLC is formed, these types of entities are recognized as separate legal entities with all the powers typical of corporations including the powers to contract, hire and fire staff, own property and sue or be sued. Formation of such a separate entity may provide an initial degree of protection against individual liability of its members for contracts, torts, or debts. Any limitations on individual member liability, however, are not absolute and may be overridden by a court based on the particular facts of a case. In general, a court may "pierce the corporate veil" and hold individual members liable when a corporation or LLC is a sham, engages in fraud or other wrongful acts, or is used solely for the personal benefit of its directors, officers, or members.

Courts also may ignore the corporate existence where the controlling shareholder or shareholders use the corporation as merely their instrumentality or alter ego, where the corporation is undercapitalized, and where the corporation ignores the formalities required by law or commingles its assets with those of a controlling shareholder or shareholders. In addition, courts may refuse to recognize a separate corporate existence when doing so would violate a clearly defined statutory policy. In all instances a manager or member is personally liable for his or her own torts.

Pros	Cons

The corporation has clear legal authority to hold title to the PSERN assets, enter into contracts, and hire employees.	Some more formalities in the creation of the entity and periodic administrative and record keeping tasks including maintaining active status with the Office of the Secretary of State.
PSERN would be owned by a single owner under a single contract making for clear decision-making and vendor problem resolution procedures.	
There would be some arguable protection against individual member liability.	
A single member would not be able to bind the corporation unless the board of directors authorized the member to do so.	

The nonprofit corporation model offers the best combination of clear legal authority and the opportunity for clear decision making, problem resolution, and change management procedures. The nonprofit corporation model has worked well for two local radio agencies, the Eastside Public Safety Communications Agency (EPSCA) and the Snohomish County Emergency Radio System (SERS). EPSCA was originally organized under a joint board model. EPSCA reorganized itself as a nonprofit corporation in 2012. SERS incorporated in July 1999. They have been happy with this structure and, as far as is known, have not discussed modifying or changing it.

c. Joint Board Ownership

The system is owned by all members in common or by a designated lead member and governed by a Joint Board

In a joint board model, a separate legal entity is not formed. Accordingly, ownership of the PSERN assets would be held either by all members in common or by one of the members acting as a designated lead agency. The ILA would establish the board and the terms and conditions for governance of the PSERN, but one of the members would need to hire staff, sign the contracts, and perform the other duties of ownership. At the same time, that member would bear liability for claims unless the ILA provided for division of these costs.

Pros	Cons
The joint board is simpler to form than a corporation, though neither is difficult to form. It is formed by the adoption of the ILA itself together with a local filing or notice.	It would add complexity if system assets were owned in common and contracts executed all members in common.
	It is unclear whether any single member is willing to serve as lead agency, owning

	system assets and contracting on behalf of all members. To date, none of the members has expressed an interest in doing this.

A joint board is the easiest type of governance structure to put in place, though any of the options are not difficult to establish. It is a difficult model administratively, however.

d. Partnership Ownership

Chapters 25.05 and 25.10 RCW define partnerships in Washington. Some partnerships provide for two classes of members: general partners who run the partnership and limited partners who benefit from the partnership but don't help run it. The participants in PSERN governance would be general partners.

A key feature of partnerships is that every general partner has the ability to bind the partnership subject to certain limitations. For example, one of the state statutes for partnerships provides that:

> "(1) An act of a general partner, including the signing of a record in the partnership's name, for apparently carrying on in the ordinary course of the limited partnership's activities or activities of the kind carried on by the limited partnership binds the limited partnership, unless the general partner did not have authority to act for the limited partnership in the particular matter and the person with which the general partner was dealing knew, had received a notification, or had notice under RCW 25.10.016(4) that the general partner lacked authority."

> "(2) An act of a general partner that is not apparently for carrying on in the ordinary course of the limited partnership's activities or activities of the kind carried on by the limited partnership binds the limited partnership only if the act was actually authorized by all the other partners."

A partnership can hire a manager to run the business.

In addition, in a partnership all general partners are jointly and severally liable. This means that if a partner does something that gives rise to the liability of the partnership, each party is independently liable for the full extent of the injuries stemming from the tortious act. Thus, if a plaintiff wins a money judgment against the parties collectively, the plaintiff may collect the full value of the judgment from any one of them. That party may then seek contribution from the other partners.

Pros	Cons
	Any of the partners can bind the partnership in most instances even without the other partners' concurrence.

	Partnerships can result in unclear authority when dealing with outsiders.

The difficulty with partnerships is that it in most instances every general partner is able to bind the partnership in dealings with third parties. It is often unclear to outsiders whether the partner speaks for the partnership or not. If the action appears to be within the partnership's normal course of business and the third party does not know that the partner is acting without authorization, the partnership is bound by the action. It is superior to have this authority be clear.

e. PSERN cannot be implemented, operated and maintained under the current ILA.

For the following reasons, the current ILA cannot be used to implement, operate and maintain the PSERN:

- The current ILA put in place a multi-owner ownership and management structure that is inconsistent with the single system architecture of the PSERN.
- The current ILA members agree that the County should act as the lead for PSERN's implementation phase. The current ILA is contrary to this agreement and would need to be amended for this purpose.
- The current ILA also requires that shared decisions be adopted unanimously. As the signer of the vendor contracts, the County could be responsible for paying claims for delay even if we would have been willing to move forward but one or more other ILA members is not. The desirability of having such a requirement in a project this large is questionable unless there is a quick and effective process for resolving impasses. The current ILA does not have such a process.
- When PSERN is built, tested, and accepted, it will move on to routine operations. The County does not want to conduct the ongoing operation of PSERN.
- The operations model in the current ILA is four separately owned subsystems with joint ownership of the central control computer. As noted above, the PSERN is a single system and any division of assets among separate owners would be arbitrary and inefficient.
- The current ILA has the four members (EPSCA, ValleyCom, Seattle, and the County) each receiving funds from the ballot measure and each building its own subsystems with that money. That was necessary back in 1992 to reach agreement; today everyone agrees that is not the best way to plan and build PSERN.

The current ILA would need to be substantially rewritten to support the PSERN project.

Pros of Amending Current ILA	Cons
Some of the provisions would remain in force	A single owner/operator would be the most

and unchanged. These would not need to be renegotiated and rewritten.	cost-effective structure operational structure. Governance should support this structure.
	Every ILA provision would need to be reviewed. If a provision continues to be acceptable, it could be copied verbatim into the new agreement. This method saves little or no work.
	Amending the ILA rather than producing a new ILA would neither remove the need for legislative bodies to approve the amended document nor remove the need for the amended document to be signed by all its parties.
	Many sections of the governance document would still need to be extensively amended including: • Virtually all provisions related to system construction and testing; • Methods for ordering, programming, installing, and testing radios; • Responsibility for ongoing operation and maintenance of the system once PSERN is built, tested, and accepted; and • Handling of warranty issues.
	Dividing the vendor contract among multiple owners during initial negotiations would make the negotiations much more complex. There would need to be multiple negotiations with each of the "owners" negotiating and approving its own contract.
	Dividing PSERN into four subsystems would be very difficult. Not only will there be additional sites, but the way the network operates technically will be very complex.
	If the vendor contract was divided among multiple owners after the initial contract was entered into, negotiations could be even more complex. Again, there would need to be multiple negotiations with each of the "owners" negotiating and approving its own

	contract. The vendor is very likely to seek a reduction in the County's protections and, having begun the work, the County's bargaining leverage would be reduced.
	Keeping the existing governance structure would mean that ValleyCom would be a signatory of the amended document and a member of the governing body (RCB). Its legal authority to fill these roles is unclear despite the fact that it has done this for 20 years.
	So many revisions would be needed that it would be difficult to track them.

f. Conclusion

Major construction projects must have a lead agency. There must be a single point of contact for vendor communications during system construction and testing. The parties to the current system ILA agree that King County should be the lead agency for this part of the project with their support and oversight, and the County supports this decision.

The current Interlocal Agreement used for the construction, management, and governance of the current public safety radio system conflicts with this structure. The current ILA distributed tax funds among the four members (Eastside Public Safety Communications Agency, Valley Communications Center, City of Seattle, and King County). Each member then constructed, operated, and governed separately owned subsystems with joint ownership of the central control computer. Either a new ILA must be adopted or the current ILA must be amended to reflect this change in responsibility for the build out phase.

System operations should be the driver of the governance structure. The most effective and efficient operations structure is single agency. A single agency operational model is best suited to quickly diagnose and fix system problems, to handle updates and upgrades, to reduce staff redundancies, and to maximize staff expertise.

In addition, the system should be the same throughout its service area. Public safety radio communications should be a regional service. First responders from multiple agencies regularly engage in joint operations and provide support to each other. Suspects drive down I-5 travelling from one jurisdiction to another. Police officers direct traffic at major fires and emergency medical service providers also respond. Many agencies show up for large events ranging from the Southcenter shooting to the Nisqually quake. Service should be uniform throughout the service area of the County. Any system divisions are artificial and suboptimal from an operational and cost efficiency perspective. In addition, there will be difficulties in moving from a single vendor contract to the multiple vendor contracts that would be necessary in a multiple owner/operator model.

One possibility would be for the County to build PSERN and then for the County or another jurisdiction to run it. The County does not want to own and operate PSERN during ongoing operations, and the other parties to the current ILA agree. None of the other parties has expressed an interest in running PSERN, however.

Another alternative would be to establish a new nonprofit corporation to conduct ongoing operations and own the system. This option would produce a clear decision making structure and the most straightforward legal relationship between the system owner/operator and the vendor providing updates, upgrades, and repairs through the life of the system. For these reasons, this is the recommended option.