

**THURSTON 9-1-1- COMMUNICATIONS  
AMENDED AND RESTATED  
INTERGOVERNMENTAL AGREEMENT FOR COMMUNICATIONS SERVICES**

THIS THURSTON 9-1-1 COMMUNICATIONS AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT FOR COMMUNICATIONS SERVICES (this "Intergovernmental Agreement") amends and restates the 1995 INTERGOVERNMENTAL AGREEMENT FOR COMMUNICATIONS SERVICES, as amended, made and entered into by and among THURSTON COUNTY, the CITY OF OLYMPIA, the CITY OF LACEY, the CITY OF TUMWATER, the CITY OF YELM, the CITY OF TENINO, the TOWN OF RAINIER, the TOWN OF BUCODA, and the THURSTON COUNTY FIRE PROTECTION DISTRICTS who were signatories thereto (each, a "Party").

In consideration of the mutual promises, benefits and covenants contained herein, the Parties hereby agree as follows:

**Article 1 RECITALS**

1.1. The Parties and the residents of Thurston County benefit both in terms of efficiency and economy from a consolidated communications system (the "System") providing service to Thurston County and the cities, fire protection districts and regional fire authorities within Thurston County.

1.2. Chapter 39.34 RCW, the Interlocal Cooperation Act, authorizes the Parties to agree to the joint provision of Communications Services (as defined herein).

1.3. The Parties agree that it is in the public interest to form a new entity, Thurston 9-1-1 Communications ("TCOMM911"), and execute this Intergovernmental Agreement defining the powers and obligations of TCOMM911 in order to achieve these objectives and provide for the oversight and management of the System.

1.4. It is the intent of the Parties that funding for the System be provided primarily from the countywide emergency communications sales and use total tax receipts and 9-1-1 excise taxes, grants, contracts and fees. Additional revenue may be provided by Member Agencies through Member Assessments.

**Article 2 DEFINITIONS**

Unless otherwise expressly provided herein or unless the context clearly requires otherwise, the terms defined above shall have the meanings set forth above and the following terms shall have the respective meanings set forth below for the purposes hereof.

"Administration Board" means the Board of Directors of TCOMM911.

"Bylaws" means the Bylaws of TCOMM911 attached hereto as Exhibit B, as they may be amended from time to time in accordance with the provisions thereof.

"Code" means the Internal Revenue Code of 1986, as it may be amended from time to time.

"Communications Services" shall include the receipt and processing of any emergency and non-emergency communications, dispatch services for law enforcement, fire and emergency medical services, maintenance and operation of the Thurston County Public Safety Radio System infrastructure or any communications services approved by the Administration Board.

"County" shall mean Thurston County.

"Emergency Communications Systems and Facilities" shall include the systems and physical facilities necessary to provide Communications Services.

"FCC" means the Federal Communications Commission.

"Fees" means billed costs for services provided to Member Agencies and Non-Member Agencies that include such things as rental of equipment. Fees are separate from and may be in addition to Member Assessments.

"Funding Formula" means the formula that describes how Member Agencies are assessed within each specific service (i.e. law enforcement, fire service and Medic One), as further described in Section 11.4.

"Majority Vote" means a decision of the Administration Board by a simple majority of members of the Administration Board present and voting.

"Member Agency" means a general purpose municipal corporation or government agency, a fire district, a Public Safety Interlocal Operation, tribal government, or a state agency created under the laws of the State, which has accepted the terms of and has executed the Intergovernmental Agreement in accordance with the terms thereof as a Member Agency, including original signatories to the Intergovernmental Agreement and entities that joined TCOMM911 in accordance with the provisions of the Intergovernmental Agreement.

"Member Assessments" means the costs for services to Member Agencies and Non-Member Agencies that are over and above projected total revenues from emergency communications sales and use taxes, 9-1-1 excise taxes, grants, contracts and Fees.

"Non-Member Agency" means a general purpose municipal corporation or government agency, a fire district, a Public Safety Interlocal Operation, or a state agency created under the laws of the State, other than a Member Agency, which has agreed to pay TCOMM911 for Communication Services or other services as offered at a rate or rates according to such terms and conditions as may be established by TCOMM911 as evidenced by separate contract between TCOMM911 and such entity. A "Non-Member Agency" may also be a tribal government, a specialized public safety support operation within local government, or private for-profit or non-profit entity

providing services that require use of Communications Services which has agreed to pay TCOMM911 for Communication Services or other services as offered at a rate or rates according to such terms and conditions as may be established by TCOMM911 as evidenced by separate contract between TCOMM911 and such entity; for example and without limitation, a private ambulance service, provided further that Non-Member Agencies described in this sentence may not become Member Agencies.

"Operations Board" means the Operations Board of TCOMM911.

"Public Safety Interlocal Operation" means a joint operation of fire districts and cities for provision of public fire and EMS services entered into and operating pursuant to chapter 39.34 RCW, and may also include a public development authority created pursuant to RCW 35.21.730 et. seq. or a regional fire protection service authority created pursuant to chapter 52.26 RCW, or nonprofit corporation created for the purpose of facilitating a joint operation between fire districts and cities pursuant to RCW 39.34.030(3).

"Represented Entities" means the entities represented by members of the Administration Board.

"Service Specific" shall relate to projects that address the needs of only law enforcement, only fire service, only Medic One, or only fire service/Medic One.

"Supermajority Vote" means a decision of the Administration Board by not less than two-thirds of all members of the Administration Board.

"System" means the consolidated emergency communications system provided pursuant to the terms hereof.

"TCOMM911" means Thurston 9-1-1 Communications, the entity of that name created by this Intergovernmental Agreement.

### **Article 3 FORMATION, PURPOSE AND POWERS**

3.1. Formation. The Parties hereby create Thurston 9-1-1 Communications ("TCOMM911").

3.2. Incorporation.

3.2.1. The Member Agencies shall incorporate TCOMM911 as a nonprofit corporation and instrumentality of the Member Agencies pursuant to Chapter 24.06 RCW and as a tax exempt organization under Section 115 and Section 501(c)(3) of the Code. The Member Agencies may reorganize the form of TCOMM911 in any manner as may be permitted by law as described in Article 13 or by amendment of this Intergovernmental Agreement in accordance with Article 12.

3.2.2. The Articles of Incorporation attached to this Intergovernmental Agreement as Exhibit A and incorporated herein by this reference shall be executed at the time of execution of this Intergovernmental Agreement.

3.3. Purpose. The purposes of TCOMM911 shall include, but are not limited to financing, design, acquisition, construction, equipping, reequipping, operation, maintenance, remodeling, repair, and improvement of the System.

3.4. Powers. In furtherance of its purposes, TCOMM911 shall have the power:

3.4.1. to acquire, construct, receive, own, manage, lease and sell real property, personal property and intangible property;

3.4.2. to operate and maintain the System and related facilities;

3.4.3. to enter into contracts with public and private entities;

3.4.4. to employ and terminate personnel, with or without cause, and contract for personnel and services with public and private entities;

3.4.5. to sue and be sued;

3.4.6. to incur indebtedness and to issue bonds, notes or other evidence thereof;

3.4.7. to establish and collect Fees and Member Assessments;

3.4.8. to establish policies, guidelines or regulations to carry out its powers and responsibilities; and

3.4.9. to exercise all other powers that are within the statutory authority of and may be exercised by the Member Agencies with respect to the System.

#### **Article 4 SYSTEM AND PROVISION OF COMMUNICATIONS SERVICES**

4.1. System Assets. System assets shall be held in the name of TCOMM911. TCOMM911 may acquire, construct, receive, own, manage, lease or sell System assets and other assets. A Member Agency may transfer to TCOMM911 its title to, or operational control of, communication assets. TCOMM911 may control and manage both the assets it owns and the assets that are owned by Member Agencies that have transferred control of those assets to TCOMM911. This Intergovernmental Agreement does not vest in TCOMM911 any authority with respect to other facilities or assets of the Member Agencies. Member Agencies shall be deemed to have an ownership interest in any assets owned by TCOMM911, whether those assets have been developed by, purchased by or transferred to TCOMM911. Such interest shall be exercisable only pursuant to this Intergovernmental Agreement. The fact that title to an asset has been transferred to TCOMM911 by a Member Agency shall create no special right of that Member Agency with respect to that asset.

4.2. Provision of Services. TCOMM911 shall be responsible for providing Communications Services pursuant to this Intergovernmental Agreement. TCOMM911 may contract with Non Member Agencies to provide Communications Services to Non-Member Agencies. These Non

Member Agencies shall pay Fees for these services as established by the Administration Board. TCOMM911 may contract with Member Agencies to provide services other than Communications Services. These Member Agencies shall pay Fees for these services as established by the Administration Board.

4.3. Federal Communications Commission Licenses. TCOMM911 shall be responsible for reviewing, renewing, and updating the FCC licenses required to operate the public safety radio system. In the event of termination of this Intergovernmental Agreement, the Administration Board shall determine the distribution or release of FCC licenses following FCC processes and guidelines.

4.4. Equipment. Each Member Agency shall be responsible for purchasing, maintaining and repairing its own fixed mobile and portable communications, radio and computer equipment, and such other equipment so designated by the Administration Board, and shall retain all rights to such equipment unless otherwise provided by resolution of the Administration Board.

4.5. Use of Network and Information. TCOMM911 shall be responsible for ensuring that the law enforcement data communications network and any criminal history records information received by means of such network shall be used solely for the purposes of the administration of the criminal laws or for the purposes enumerated in Chapter 10.97 and Chapter 446-20 of the Washington Administrative Code.

## **Article 5 TERM AND TERMINATION OF INTERGOVERNMENTAL AGREEMENT**

5.1. Term. This Intergovernmental Agreement shall be effective, as set forth in Section 17.3, when executed by all the Parties. This Intergovernmental Agreement shall continue in effect for 30 years unless earlier terminated in accordance with the provisions of this Intergovernmental Agreement.

5.2. Renewal. This Intergovernmental Agreement shall be automatically renewed for successive terms of five years unless earlier terminated in accordance with the provisions of this Intergovernmental Agreement.

5.3. Termination – Supermajority Vote This Intergovernmental Agreement shall terminate effective upon any date specified by Supermajority Vote and ratification by motion or resolution evidenced in writing of not less than two-thirds of all Member Agencies.

5.4. Assets -Distribution. Upon termination of this Intergovernmental Agreement, the Administration Board shall establish a procedure for realizing the fair market value of TCOMM911 assets, which may include offering assets for sale to Member Agencies or Non Member Agencies. The proceeds of TCOMM911 assets shall be distributed to Member Agencies according to their share of ownership as determined by the Administration Board.

## **Article 6 WITHDRAWAL OF MEMBER AGENCIES**

6.1. Procedure. Any Member Agency may voluntarily withdraw from TCOMM911 effective

December 31 of any year by giving written notice to the Administration Board prior to June 1 of such year of its intent to withdraw. Such written notice shall include evidence of approval of such action by the Member Agency's legislative body. The withdrawal of Member Agencies shall be by written addendum to this Intergovernmental Agreement; signed by the Chair of the Administration Board and the authorized representative of the withdrawing Member Agency.

6.2. Payments Prior to Withdrawal. Member Agencies shall continue to be responsible for paying any rates, fees, charges and assessments imposed by TCOMM911 after notice of withdrawal has been given but before withdrawal has become effective, as if no notice of withdrawal had been given. The Withdrawing Member Agency shall, prior to the effective date of its withdrawal, pay to TCOMM911 such Member Agency's allocable share of the obligations of TCOMM911, as determined by the Administration Board, which shall include obligations or costs incurred by TCOMM911 as of the date the Member Agency's withdrawal notice is received, including, but not limited to, the debt service obligations, contract obligations and cash financed capital projects of TCOMM911.

6.3 Obligations Upon Withdrawal. A withdrawing Member Agency shall relinquish all System equipment which the Administration Board determines is necessary to maintain the System at an effective level of service that all remaining Member Agencies enjoyed prior to the withdrawal.

6.4. Rights Upon Withdrawal. A withdrawing Member Agency shall be entitled to have that Member Agency's interest in TCOMM911 assets equitably determined as set forth in this Section.

6.4.1. Process. The Member Agencies shall use reasonable efforts to determine the value of and method of payment for a withdrawing Member Agency's interest in TCOMM911 assets. If after such reasonable efforts, the value of and payment for a withdrawing Member Agency's interest in TCOMM911 assets, has not been determined, the issue may be treated as a complaint and subject to arbitration as provided for in Article 14.

6.4.2. Equitable Factors. In determining the value of and the method of payment for a withdrawing Member Agency's interest in TCOMM911 assets, equitable factors, including without limitation the following, shall be considered. The Member Agencies acknowledge that the results of this process and application of such equitable factors may result in the realization of less than fair value for a Member Agency's interest in TCOMM911 assets.

- a. The continuing, effective operation of the System;
- b. The withdrawing Member Agency's interest in TCOMM911 assets;
- c. Amounts owed to the System by the withdrawing Member Agency;
- d. The impact on the budgets of remaining Member Agencies and the ability

of remaining Member Agencies to provide services to the public; and

e. The value of the System.

6.4.3. Withdrawing Member Agency May Become Non-Member Agency. A withdrawing Member Agency may become a Non-Member Agency, subject to all obligations imposed upon a Non-Member Agency.

#### **Article 7 TERMINATION OF MEMBER AGENCIES**

7.1. Procedure. A Member Agency may be terminated effective December 31 of any year upon Supermajority Vote at least 180 days in advance that the Member Agency has not complied with TCOMM911 policies, guidelines or regulations, including without limitation FCC rules and regulations. The termination of Member Agencies shall be by written addendum to this Intergovernmental Agreement, signed by the Chair of the Administration Board.

7.2. Obligations and Rights Upon Termination. Following termination, a Member Agency that has been terminated shall be subject to the same obligations and entitled to the same rights as a withdrawing Member Agency under Sections 6.2 through 6.4.3.

#### **Article 8 ADDITION OF MEMBER AGENCIES**

The Parties constitute the original Member Agencies of TCOMM911. Additional Member Agencies may be added upon receipt by the Secretary of the Administration Board of application by a prospective Member Agency, accompanied by motion or resolution evidenced in writing by the legislative body of such prospective Member Agency, and approval by Supermajority Vote. The Administration Board in its sole discretion shall determine the appropriate payment required of additional Member Agencies. Such required payment may take into account past investment and formation costs and the ability to contribute future revenue from a dedicated funding source for maintenance, operations, and replacement purposes. The admission of Member Agencies shall be by written addendum to this Intergovernmental Agreement, signed by the Chair of the Administration Board and the authorized representative of the new Member Agency.

#### **Article 9 ADMINISTRATION BOARD AND OPERATIONS BOARD**

The Administration Board shall govern TCOMM911 as described in the Bylaws, and the Administration Board shall have the powers set forth in the Bylaws. The Operations Board shall advise the Administration Board in the operation of TCOMM911 as described in the Bylaws, and the Operations Board shall have the powers set forth in the Bylaws.

#### **Article 10 BUDGET**

The annual budget shall be prepared by the Executive Director and submitted to the Administration Board, the Operations Board and each Member Agency, reviewed by the Administration Board and the Operations Board and adopted by the Administration Board as set forth in the Bylaws. The budget process will include a process for public participation prior to

adoption. Each Member Agency will be sent a copy of the final budget.

### **Article 11 FINANCES**

11.1. General. System funding will be provided primarily from the countywide emergency communications sales and use tax total receipts, 9-1-1 excise taxes, grants, contracts and fees. Throughout the term of this Intergovernmental Agreement, the County shall continue to impose and collect (or cause to be imposed and collected) on behalf of TCOMM911 the emergency communications sales and use tax total receipts and 9-1-1 excise taxes.

11.2. Assessments for Additional Services, Hardware, Software. Thurston 911 Communications may provide additional services, hardware, or software to Member (individual or a group) or Non-Member Agencies through separate agreements. Each agreement will include the terms and conditions for provision of the additional services, hardware, or software, and the cost or assessment associated with each. Assessments are the responsibility of the Member or Non-Member Agencies, who shall pay its share to TCOMM911 in accordance with the terms and conditions of the agreement.

### **Article 12 AMENDMENTS**

Any Member Agency may request changes to this Intergovernmental Agreement. Amendments to this Intergovernmental Agreement may be made only by the written agreement of all Member Agencies.

### **Article 13 CHANGE IN CORPORATE FORM**

Notwithstanding anything in this Intergovernmental Agreement to the contrary, the Administration Board may, by Supermajority Vote, approve conversion of TCOMM911 to a joint operating agency, municipal corporation, public corporation, limited liability company, limited liability partnership or other corporate form. The Member Agencies hereby acknowledge that the Administration Board has the authority to elect to change the corporate form of TCOMM911 as set forth in this Article 13 and to effect such change. Each Member Agency hereby consents to such change in corporate form.

### **Article 14 ARBITRATION**

Any controversy between the Member Agencies in regard to the application or interpretation of this Intergovernmental Agreement may be submitted to and determined by arbitration in accordance with Chapter 7.04 RCW.

### **Article 15 INSURANCE**

The Administration Board shall procure insurance including without limitation general liability, officers and public officials errors and omissions, property, casualty and fire. The Administration Board may authorize contracts with insurance and/or risk pools, or other agencies to provide the insurance coverages deemed by the Administration Board to be reasonable and appropriate for



TCOMM911.

## **Article 16 GENERAL TERMS**

16.1. Agreement Complete. This Intergovernmental Agreement is a complete expression of the terms herein and any oral or written representations or understandings not incorporated herein are excluded.

16.2. Time of Essence. Time is of the essence in the performance of the provisions of this Intergovernmental Agreement.

16.3. Waiver. No term or provision of this Intergovernmental Agreement shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the Member Agency claimed to have waived or consented.

16.4. Subsequent Breach. Waiver of any default shall not be deemed a waiver of any subsequent default. Waiver of breach of any provision of this Intergovernmental Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Intergovernmental Agreement unless stated to be such through written approval of all Member Agencies.

16.5. Rights Reserved. Except as specifically provided herein, each Member Agency retains all rights and claims that may exist now or in the future against another Member Agency.

16.6. Notice. Except as otherwise provided herein, all notices, consent or other communications required hereunder shall be in writing or (if consented to by a Member Agency) electronic means and shall be sufficiently given if addressed and mailed by first class, certified, or registered mail, postage prepaid, or (if consented to by a Member Agency) sent electronically, as specified on the signature page of each Member Agency, or as specified by such Member Agency to TCOMM911 and the other Member Agencies.

16.7. Partial Invalidity. If any of the provisions of this Intergovernmental Agreement are held to be invalid, illegal or unenforceable, the remaining provisions shall remain in full force and effect.

16.8. Assignment. No Member Agency may sell, transfer or assign any of its rights or benefits under this Intergovernmental Agreement without Administration Board approval. Notwithstanding the foregoing, any entity into which a Member Agency or substantially all of its Communications Services is converted or merged shall succeed to the rights, benefits and obligations of such Member Agency under this Intergovernmental Agreement without further action by any Member Agency or TCOMM911.

## **Article 17 EXECUTION**

17.1. Multiple Counterparts. This Intergovernmental Agreement may be executed in multiple counterparts.

17.2. Authority. Each of the undersigned represents that this Intergovernmental Agreement is duly authorized by the Member Agency represented.

17.3. Effective Date. All of the undersigned having executed this Intergovernmental Agreement, this Intergovernmental Agreement is effective January 1, 2021.

[INSERT SIGNATURE BLOCKS FOR EACH PARTY WITH CONTACT INFORMATION FOR DELIVERY OF NOTICES PURSUANT TO SECTION 16.6]

City of Olympia  
P.O. Box 1967  
Olympia, WA 98507

Date: \_\_\_\_\_

Signed By: \_\_\_\_\_  
Printed Name

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Additional Signees if Required:

Signed By: Michael M. Young  
Printed Name

Signature: *Michael M. Young*

Title: Deputy City Attorney

Signed By: \_\_\_\_\_  
Printed Name

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

**NOTE: EACH PARTY HAS SIGNED A SEPARATE SIGNATURE PAGE**