

**CITY OF MARYSVILLE AGENDA BILL**

**EXECUTIVE SUMMARY FOR ACTION**

**CITY COUNCIL MEETING DATE: 4/24/2017**

<b>AGENDA ITEM:</b>	
Ownership Transfer of the SERS Radio Tower at the City's Public Safety Building.	
<b>PREPARED BY:</b>	<b>DIRECTOR APPROVAL:</b>
Worth Norton	
<b>DEPARTMENT:</b>	
Finance / IS	
<b>ATTACHMENTS:</b>	
Agreement between the city of Marysville and the Snohomish County Emergency Radio System regarding ownership of a communication monopole.	
<b>BUDGET CODE: NA</b>	<b>AMOUNT:</b>
	\$0.00
<b>SUMMARY:</b>	

The Snohomish Emergency Radio System (SERS) and the City of Marysville jointly operate a radio tower (monopole) at the City's Public Safety building. As of 2008, SERS removed their radio equipment from the City's server room leaving just City equipment on the monopole operable. This monopole was built and paid for by SERS. SERS approached the City and asked if the City would take over the responsibility and ownership of the monopole.

The City currently operates a Public Works SCADA and Telemetry radio on the pole. There are also plans for adding a VHF repeater on the monopole for City and EOC use. Therefore, the City still has a need for the monopole for the foreseeable future. It is staff's opinion that the City taking ownership of the monopole would be in the best interest of both the City and SERS.

The City had an inspection done on March 29, 2017 by Day Wireless. The inspection report indicated that the monopole was in good structural condition.

<b>RECOMMENDED ACTION:</b> City staff recommends that the City Council authorize the Mayor to sign an agreement with Snohomish Emergency Radio Systems for the transfer of ownership of the SERS monopole.
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**AGREEMENT BETWEEN THE CITY OF MARYSVILLE AND THE SNOHOMISH  
COUNTY EMERGENCY RADIO SYSTEM REGARDING OWNERSHIP OF A  
COMMUNICATION MONOPOLE**

This Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, and is entered into by and between the City of Marysville, a municipal corporation under the laws of the state of Washington, (the “City”) and the Snohomish County Emergency Radio System, a Washington Interlocal Non-Profit Corporation (“SERS”), collectively referred to as the “parties.”

Whereas, SERS, in providing public safety communications, needs to locate communications equipment and facilities at various locations to insure the required coverage for communications is achieved; and

Whereas, the City allowed SERS to install a monopole on the City’s Public Safety Building located at 1635 Grove Street, Marysville, (the “Monopole”) but the parties failed to finalized a lease agreement related to placement of the Monopole; and

Whereas, at the time of installation, the parties anticipated co-location of communications equipment on the Monopole; and

Whereas, SERS no longer has an operational need to maintain communications equipment on the Monopole, but the City desires to continue using the Monopole or having the Monopole available for use; and

Whereas, RCW 39.33.010 allows cities, towns, and counties to transfer property to other governmental entities “on such terms and conditions as may be mutually agreed upon” and that statute applies to SERS as an interlocal non-profit corporation; and

Whereas, the SERS Governing Board of Directors passed a resolution declaring the Monopole to be surplus on April \_\_\_\_\_, 2017; and

Now, therefore, in consideration of the mutual promises herein, the parties agree that:

1. **Effective Date.** This Agreement shall take effect upon being authorized for execution by the governing body of each party and fully executed by the authorized representative of each party.
2. **Termination of Lease.** The parties do not believe that a lease agreement related to the Monopole was ever formed or finalized. Nevertheless, to the extent that either the City, as the landlord/lessor, or SERS, as tenant/lessee, had or has any rights or interests related to the

Monopole under an implied lease, a verbal lease agreement, or common law principals of law or equity, the parties hereby release, waive, and forever discharge their respective rights or interests as of the effective date of this Agreement, except as may otherwise be provided herein.

3. **Transfer of Monopole.** SERS hereby grants, bargains, sells, conveys, and transfers all ownership it has in the certain Monopole installed by SERS on the City's Public Safety Building, located at 1635 Grove Avenue, Marysville, Washington, to the City.
  - a. Value. The SERS Governing Board of Directors, by resolution declaring the Monopole to be surplus has determined that the Monopole has no fair market value to SERS.
  - b. Warranty of Ownership. SERS represents and warrants to the City that all of the expenses in connection with construction and installation of the Monopole have been fully paid and the same is free from any liens and debts and further represents and warrants that SERS owns the Monopole and has the right and ability to transfer the same to the City.
  - c. No Warranty of Structure. SERS does not represent or warrant that the Monopole is suitable for any particular use and the City's use of the Monopole is at the City's own risk. The City has inspected the Monopole and accepts the Monopole in its existing "as-is" condition.
4. **City Ownership.** As of the effective date of this Agreement, the City shall have sole ownership of the Monopole and the sole right to use, maintain, replace, or remove the Monopole at the City's sole discretion and cost. This includes, specifically, but without limitation, the right of the City to remove the Monopole, surplus the Monopole, and dispose of the Monopole in any manner authorized under State law. If the City removes the Monopole, it may thereafter provide written notice of termination to SERS, or an equivalent governmental entity providing public safety communications and replacing SERS, of such removal and thereby terminate all rights provided under the following Section 4 and this Agreement.
5. **SERS Right to Space.** If, within ten years of the effective date of this Agreement, SERS, or an equivalent governmental entity providing public safety communications and replacing SERS (a "replacing entity"), determines, by action of its governing body, that an operational need exists to locate communications equipment on the Monopole, SERS or a replacing entity may request, in writing, to locate communications equipment on the Monopole.
  - a. To the extent the Monopole is still operational, the City will not unreasonably withhold its consent and will not charge more than a nominal fee.

- b. If the Monopole has been removed pursuant to Section 4, above, but the City has not provided written notice of termination, the City is under no obligation to erect a similar monopole or provide equivalent facilities or space on existing facilities. The City may provide written notice of termination.
- c. The rights granted to SERS or the replacing entity are personal and exclusive to SERS or the replacing entity and may not be assigned or sublet and do not extend to communications equipment that is not necessary to the operational goals of SERS or the replacing entity.

**6. Indemnification/Hold Harmless.**

- a. The City's Indemnification of SERS. The City will protect, hold harmless, indemnify, and defend, at its own expense, SERS, its elected and appointed officials, officers, employees, and agents, from any loss or claim for damages of any nature whatsoever arising out of or related to the Monopole after the effective date of this Agreement, including claims by Marysville's own employees or third parties, except for those damages caused solely by the negligence or misconduct of SERS, its elected and appointed officials, officers, employees, or agents.
- b. SERS's Indemnification of the City. SERS will protect, hold harmless, indemnify, and defend, at its own expense, the City, its elected and appointed officials, officers, employees, and agents, from any loss or claim for damages of any nature whatsoever arising out of or related to the Monopole prior to the effective date of this Agreement, including claims by SERS's own employees or third parties, except for those damages caused solely by the negligence or misconduct of the City, its elected and appointed officials, officers, employees, or agents.
- c. Waiver of Immunity Under Industrial Insurance Act. The indemnification provisions of Section 6.a. and Section 6.b. above are specifically intended to constitute a waiver of each party's immunity under Washington's Industrial Insurance Act, Title 51 RCW, as respects the other party only, and only to the extent necessary to provide the indemnified party with a full and complete indemnity of claims made by the indemnitor's employees. The parties acknowledge that these provisions were specifically negotiated and agreed upon by them.
- d. Survival. The provisions of this Section 6 shall survive the expiration or earlier termination of this Agreement.

**7. Duration.** This Agreement shall continue in force and effect until the earliest occurrence of:

- a. Written notice of termination by the City in accordance with Section 4 or 5.b.

b. Ten years after the effective date of this Agreement.

8. **Dispute Resolution.** The parties agree that any dispute, claim, or controversy arising out of or relating to this Agreement will first be discussed between the parties. Thereafter and except as herein provided, no civil action with respect to any dispute, claim, or controversy arising out of or relating to this Agreement may be commenced until the dispute, claim, or controversy has been submitted to a mutually agreed upon mediator. The parties agree that they will participate in the mediation in good faith, and that they will share equally in its costs. Each party shall be responsible for the costs of its own legal representation. Either party may seek equitable relief prior to the mediation process, but only to preserve the status quo pending the completion of that process.

9. **Notices.** All notices given by any party to the other party under this Agreement shall be in writing and shall be delivered either in person or by United States mail to the applicable representative, as provided below. Notice delivered in person shall be deemed given when accepted by the recipient. Notice by United States mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid, and addressed to the other party's representative.

City's Initial Representative:	SERS's Initial Representative:
Worth Norton City of Marysville 1049 State Avenue Marysville, WA 98270	Ralph Krusey SERS 14900 40th Ave NE #102 Marysville, WA 98271

10. **General Terms.**

a. **Entire Agreement; Amendment.** This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes any and all prior oral or written agreements between the parties regarding the subject matter contained herein. This Agreement may not be modified or amended in any manner except by a written document authorized for execution by the governing body of each party and fully executed by the authorized representative of each party.

b. **Governing Law and Venue.** This Agreement shall be governed by and enforced in accordance with the laws of the State of Washington. The venue of any action arising out of this Agreement shall be the Superior Court of the State of Washington, in and for Snohomish County.

c. **Interpretation.** This Agreement and each of the terms and provisions of it are deemed to have been explicitly negotiated by the parties and the language in all parts of this

Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either of the parties hereto. The captions and headings in this Agreement are used only for convenience and are not intended to affect the interpretation of the provisions of this Agreement. This Agreement shall be construed so that wherever applicable the use of the singular number shall include the plural number, and vice versa, and the use of any gender shall be applicable to all genders.

- d. Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be found invalid or unenforceable, the remainder of this Agreement and the application of that provision to other persons or circumstances shall not be affected thereby, but shall instead continue in full force and effect, to the extent permitted by law.
- e. No Waiver. A party's forbearance or delay in exercising any right or remedy with respect to a Default by the other party under this Agreement shall not constitute a waiver of the Default at issue. Nor shall a waiver by either party of any particular Default constitute a waiver of any other Default or any similar future Default.
- f. No Assignment. This Agreement shall not be assigned, either in whole or in part, by either party without the express written consent of the other party, which may be granted or withheld in such party's sole discretion. Any attempt to assign this Agreement in violation of the preceding sentence shall be null and void.
- g. Warranty of Authority. Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign this Agreement.
- h. No Joint Venture. Nothing contained in this Agreement shall be construed as creating any type or manner of partnership, joint venture, or other joint enterprise between the parties.
- i. No Third Party Beneficiaries. This Agreement and each and every provision thereof are for the sole benefit of the City and SERS. No other persons or parties shall be deemed to have any rights in, under, or to this Agreement.
- j. Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement.

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STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of the Snohomish County Emergency Radio System to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
\_\_\_\_\_  
(Legibly print name of notary)  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_