

**INTERLOCAL AGREEMENT BETWEEN THE
CITY OF PUYALLUP AND THE CITY OF EDGEWOOD**

THIS INTERLOCAL AGREEMENT ("Agreement") is made and entered into this day of October 7, 2008, by and between the City of Puyallup (hereinafter the "City") and the City of Edgewood (hereinafter "Edgewood").

RECITALS

WHEREAS, the City owns and operates the communication site located at 12226 48th Street East in Edgewood, Washington and legally described in Exhibit A ("the Property") that contains a telecommunications monopole ("the Monopole") for providing essential public safety telecommunications services. Said communications site is located pursuant to Interlocal Agreement between the City and Mountain View-Edgewood Water Company; and

WHEREAS, the City represents that it has the authority to enter into this agreement pursuant to the terms of its agreement with Mountain View-Edgewood Water Company; and

WHEREAS, the City has an emergency radio communications system that is beneficial to Edgewood, and,

WHEREAS, Edgewood needs emergency communications services and the City is willing to allow Edgewood limited use of City 800MHz radio services provided such use does not interrupt City services. In the alternative, the City is willing to permit Edgewood the use of certain space on the monopole communications site for communications purposes if necessary; and

WHEREAS, it is in the public's interest that the parties enter into this Agreement to more effectively and efficiently provide essential public safety telecommunications; and

WHEREAS, the value of the space on the tower and the shelter shall be exchanged between the City and Edgewood as a service to Edgewood, and no monetary consideration between the City and Edgewood is necessary, provided, however, Edgewood shall be limited in the use of City 800 MHz radio system in Edgewood or two antennas on the monopole and space for two shelter racks of equipment supplied and supported at Edgewood expense; and

WHEREAS, this Agreement is authorized by the Interlocal Cooperation Act set forth in Chapter 39.34 of the Revised Code of Washington; **NOW THEREFORE**,

**IN CONSIDERATION OF THE PROMISES AND AGREEMENTS CONTAINED
HEREIN, IT IS AGREED AS FOLLOWS:**

TERMS

1. **Purpose.** The purpose of this Agreement is to establish a contractual arrangement, to facilitate the exchange of emergency communications radio use or possible space between the City and Edgewood, and to define the parties' respective rights, obligations and liabilities regarding this undertaking.
2. **Term.** The term of this Agreement shall be indefinite, and this Agreement shall continue from year to year until terminated by notice of termination in writing given by one party to the other. Notice of termination must be given three hundred and sixty (360) days prior to the termination date.
3. **Specific Provisions.** The specific terms and conditions for shared use of the emergency radio communications equipment or communications site are attached hereto and incorporated herein by reference as Exhibit "B" and all term governing the parties' respective use of the Monopole and the Property are as set forth in and incorporated herein by reference as Exhibit "B".
4. **Annual Review.** The City and Edgewood agree that the Communications Managers for the parties will annually review the effectiveness of this Agreement on or about the anniversary date of this Agreement. Each party hereto shall designate a Communications Manager and shall notify the other party of that individual and identify contact information. If the identity of a party's Communications Manager subsequently changes, the party shall promptly notify the other party of such change.
5. **Financing.** Each party shall bear its own cost of performing under this Agreement, subject to the terms and conditions reflected in Exhibit "B".
6. **Joint Board.** There will be no joint board created to administer this Agreement.
7. **Property.** No real property will be jointly acquired or held pursuant to this Agreement. At the termination of this Agreement, each party shall retain ownership of its respective property assets. Removal or relocation of any Edgewood-installed equipment shall be at the expense of Edgewood and will require inspection and approval of Puyallup. Upon need to remove, relocate or otherwise vacate tower and facilities Edgewood agrees to do so in a way concurrent with existing ordinances, codes and site requirements as well as FCC regulations. Any interference, damage or interruption to either party's service will be the responsibility of the causing party to repair back to "original" condition.
8. **Joint Indemnification and Hold Harmless.** Each party to this Agreement shall protect, defend, indemnify and hold the other party, its appointed or elected officials, employees, officers, agents, assigns, volunteers or representatives, harmless from any and all claims, actions, injuries, damages, losses or suits, including attorney fees, arising or alleged to have arisen directly or indirectly out of or in consequence to the extent caused by the fault or negligence of the indemnitor, its appointed or elected officials, employees, officers, agents, assigns, volunteers or representatives.

It is expressly understood by the parties that the indemnification provided under this section constitutes the indemnitor's waiver of immunity under the Industrial Insurance provisions of Title 51 RCW, solely for purposes of this indemnification. This waiver has been mutually negotiated by the parties.

The provisions of this section shall survive the termination of this Agreement.

9. Insurance. Each party shall provide an "Evidence of Coverage" statement to the other party from their respective insurance provider or risk pool.

10. Notices. Any notices or other contacts required under the terms of this Agreement must be directed to the following:

To the City of Puyallup:
City of Puyallup
Attn: Ron Tiedeman
1100 "C" 39th Ave SE
Puyallup, WA 98374

To the City of Edgewood:
City of Edgewood
Attn: Chief Ed Knutson
2221 Meridian Avenue E.
Edgewood, WA 98371

11. Filing. This Agreement shall be filed with the Puyallup City Clerk and recorded with the County Auditor.

12. Amendment. This Agreement may be modified from time to time only by further agreement in writing as mutually agreed to by both parties.

13. Mediation/Arbitration Clause. If a dispute arises from or relates to this Agreement or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties may in their mutual discretion agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under WAMS Alternative Dispute Resolution service rules or policies. The mediator may be selected by agreement of the parties or through WAMS. All fees and expenses for mediation shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.

14. Applicable Law – Venue. This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. The venue for any litigation arising out of this Agreement shall be the Superior Court of Pierce County, Washington.

15. Waiver. No waiver of any right under this agreement shall be effective unless made in writing by the authorized representative of the party to be bound thereby. Failure to insist upon full performance on any one or several occasions does not constitute consent to or waiver of any later nonperformance.

16. Captions. The captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

17. **Time of Essence.** Time is of the essence for each and all of the terms, covenants, and conditions of this Agreement.

18. **Concurrent Originals.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

19. **Ratification and Confirmation.** Any acts consistent with the authority and prior to the effective date of this Agreement are hereby ratified and confirmed.

20. **Severability.** If any term, provision, covenant, or condition of this Agreement is held by a court of competitive jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated as a result of such decision.

21. **Entire Agreement.** This Agreement constitutes the entire understanding of the parties. It supersedes any oral representations that are inconsistent with or modify its terms and conditions.

22. **No Third Party Beneficiary.** This Agreement is executed for the exclusive benefit of the signatory parties hereto, and may only be enforced by said parties. Nothing herein shall be construed as vesting any rights, privileges or claims for or in any third party.

CITY OF PUYALLUP:

APPROVED BY CITY COUNCIL 09/23/2008

By: Gary McLean

Its: City Manager

Date: 9.26.08

CITY OF EDGEWOOD:

By: Kim Wild

Its: City Manager

Date: 10.07.08

APPROVED AS TO FORM:

By: Cheryl Carlson

Its: City Attorney

ATTEST:

Barbara J. Price
Barbara J. Price, City Clerk

APPROVED AS TO FORM:

By: J. Zachary Lell

Its: City Attorney

ATTEST:

Deanne Meiners
Deanne Meiners, Deputy City Clerk

EXHIBIT A

Legal Description of Monopole

12226 48th Street East (Parcel No. 0420232017).

Section 23 Township 20 Range 04 Quarter 21 : E 50 FT OF N 105 FT OF FOLL N
627.24 FT OF W 1/2 OF W 1/2 OF NE OF NW EXC RD (DCCBEMS6-3-81)

EXHIBIT B

Terms and Conditions

I. General.

The City shall provide Edgewood limited emergency use of the City 800 MHz radio system and equipment in furtherance of the city's recognition and support of regional cooperation in public safety communications. The City and Edgewood shall work together to identify the best solution for Edgewood communications by either sharing the City radio system or installing Edgewood owned and operated equipment at their own expense. The City agrees to assist Edgewood in programming and use of radio equipment during and after the testing phase of City equipment, if needed. The City shall provide sufficient space on its Monopole located on the Property for the installation and operation of Edgewood's telecommunication facilities ("The Edgewood Facilities"). The Edgewood Facilities "space" shall consist of no more than two racks and two communication antennae, together with such auxiliary and support apparatus as may be reasonably necessary to ensure the successful operation of the antennae.

The parties will reasonably cooperate with respect to determining the specific location on the Monopole in which to install the Edgewood Facilities.

All routine and/or reoccurring maintenance necessary for the continued operation of each party's respective facilities shall be performed and funded exclusively by the party owning such facilities.

Edgewood shall have a limited right to enter the property for purpose of accessing the Edgewood facilities through an emergency City contact.

Edgewood acknowledges that the City's equipment is part of a regional radio system which involves six other sites linking the Puyallup/Edgewood area through Tacoma to King and Snohomish Counties, and provides key regional emergency communications capability. In the event another party petitions to co-locate equipment at the Property, the City shall review impacts, improvements, and revenue generated (if any), before such a co-location is allowed.

II. City Obligations.

City will provide Edgewood 5 portable XTS 2500 radios with chargers for preliminary coverage and usage testing on the City 800 MHz radio system once the system has been implemented and tested. Edgewood shall test and use portables for a pre-defined period and area mutually agreed upon, and shall make a decision to proceed using said radio system or install two antennas and up to two shelter racks of equipment at their own cost. Due to the nature of the Edgewood emergency communication needs, the City shall provide Edgewood \$30,000 for regional emergency communications assistance and involvement to the City during planning, construction and implementation phases of City project and ongoing regional emergency communications efforts.

Edgewood shall keep the test radios if a decision to use the City system is made, in which case Edgewood agrees to adhere to and abide by city radio usage guidelines. The City further agrees to assist Edgewood in planning and talk-group assistance. The planned system capacity on the City radio network is capable of supporting, and will have, one emergency talk-group dedicated to Edgewood and emergency events requiring its use once frequency rebanding and frequency freeze is lifted and can be requested by the FCC.

In the event Edgewood does not use the City radio network, the City shall, at no charge to Edgewood, provide sufficient space for two racks, and two antennas for the Edgewood equipment. All installation, equipment, and communications shall be approved by the City of Puyallup radio and engineering personnel prior to access or installation. Equipment installation and grounding must meet strict R56 grounding and installation requirements and will need to be thoroughly reviewed and approved by the City prior to installation as well.

Antenna orientation, size and aesthetics must be approved by the City prior to installation to meet applicable emergency communication code requirements. The City shall not unreasonably withhold such approval. Edgewood shall coordinate any work with the City thirty (30) days prior to beginning work.

The City will provide Edgewood with an emergency generator connection(s) for backup power at the communications site, provided capacity is suitable for equipment load. Edgewood will be responsible for the installation of those connections to its equipment and Edgewood Facilities. If the generator is not suitable, Edgewood may purchase a suitable generator and install generator in existing location on site premises for shared use if necessary and approved by all parties, both public and private.

If it is decided that Edgewood will not use the City Radio System, then the City will allow use of VHF frequencies to Edgewood as they become available. If further use is needed, the city agrees to discuss the possible transfer of those frequency(s) provided the FCC allows the City to maintain some if not all their VHF frequencies after 800MHz implementation is complete.

III. Edgewood Obligations

At the City site, Edgewood shall at its own expense conduct an interference analysis and present it to the City for review prior to City acceptance of any proposed equipment installation. If interference to either Party's equipment is caused by implementation of other Party's equipment, the Party whose equipment is causing the interference shall immediately take measures to eliminate the interference within a reasonable time.

Edgewood agrees to terms and conditions set forth, and understands City of Puyallup is offering this assistance, storage of equipment, use of system and monopole for emergency services reasons. Edgewood agrees to follow applicable City regulations with respect to its own system installation, due to the critical nature of radio communications system.