

## **Communications System Use Agreement City of Roy and Pierce County**

This agreement is made and entered into by and between the City of Roy, herein referred to as "User", and Pierce County, herein referred to as "County", for the purpose of allowing the use of County's Radio System by User's Police Department communications equipment.

WHEREAS, the County has communication infrastructure systems established for Pierce County Radio coverage, which may be made available to other municipal corporations; and

WHEREAS, the User is a municipal corporation with a need to use the County's Radio System with all applicable rules and regulations of the County; and

WHEREAS, the User recognizes its obligation to pay for the use of the system in accordance with the schedule of rates and charges currently placed in effect by the County;

NOW THEREFORE IT IS HEREBY AGREED BETWEEN THE PARTIES, AS FOLLOWS:

### **1. Purpose**

The purpose of this agreement is to permit User the use of the County's Radio System, for its radio and communication needs for dispatch services, calls for service while contracted with the Law Enforcement Support Agency (LESA), subject to all applicable rules and regulations of the County and the Federal Communications Commission (FCC). User is hereby permitted to allow other fire departments in the region (as well as the County Department of Emergency Management) to use the same system.

### **2. Term**

The term of this agreement shall commence on the first day of January, 2010 and terminating on the 31<sup>st</sup> day of December, 2010. This agreement may be renewed for additional five (5) year terms subject to the negotiation of a use charge schedule by the parties.

### **3. Use Charges**

User shall pay County an annual use charge in accordance with the following schedule for the User's use of the Radio System, except as authorized under paragraph 7 or 8 hereof. Payments shall be due and payable on the first day of each period below stated, for the use of the Radio System.

1/1/10 – 12/31/10     \$390.00 For the year.

### **4. Technical Standards**

User shall operate its equipment communicating with the Radio System in compliance with the rules and regulations of the FCC and of the County.

### **5. Inspection**

The County shall have the right to inspect User's equipment (radios) at any time during the term of this agreement to ensure compliance with the terms and conditions herein. Advance notice of such an inspection will be provided whenever possible.

## 6. Lawful Conduct

User agrees that the Radio System used hereunder is only for the purposes contemplated herein and to comply with all applicable Federal Communications Commission laws and ordinances. User shall not carry on or permit any illegal or immoral practice or business using such Radio System.

## 7. Assignment

User's interest hereunder shall not be sold, conveyed, mortgaged, encumbered, assigned or otherwise transferred without prior written approval of County.

This agreement is binding upon County and User and their respective heirs for the duration of this agreement.

## 8. Sublet

User may **not** sublet, or in any manner, allow any other party the use of the Radio System without prior written approval of County.

## 9. Breach or Default

The following event shall constitute a breach or default of this agreement by User:

Failure to perform or comply with any of the terms, covenants or conditions of this agreement, if the nonperformance or noncompliance shall continue for a period of thirty (30) days after written notice by County to User. Provided, that if performance or compliance cannot be reasonably attained within thirty (30) days, User shall have commenced performance within the thirty (30) day period and shall continue good faith correction of the breach to attain performance or compliance as soon as reasonably possible.

## 10. Remedies

In the event of default or breach, County shall have the following rights:

1. County shall have the right to cancel or terminate this agreement following notice required by paragraph 9.
2. County may elect, but shall not be obligated; to make any payment required of User herein or comply with any term, covenant or condition required hereunder to be performed by User.
3. The remedies given to County shall be cumulative, and the exercise of one right or remedy by County shall not impair its right to exercise any other right or remedy.

## 11. Notices

All notices and other communications shall be in writing and shall be deemed given if delivered or forwarded by certified mail, proper postage prepaid, to the following:

If to County: Pierce County DEM  
Office of the Director  
2501 S 35<sup>th</sup> St, Suite D  
Tacoma, WA 98409-7405

If to User: City of Roy  
Office of Mayor  
PO Box 700  
Roy, WA 98580

## **12. Surrender**

Upon termination or expiration of this agreement, User shall cease using the Radio System.

## **13. Non-liability and Indemnifications**

User agrees that County shall not be liable for injury or death to any person, damage to property, or loss of business arising out of or in any way connection with the User's use of the Radio System.

County shall give User prompt notice of any such claim and User agrees to indemnify and hold County harmless against all such claims, including investigation costs, court costs and attorney's fees. User shall indemnify and save harmless County from all loss, liability, damage or other injury, including reasonable attorney's fees, arising as a direct or indirect result of any and all acts, omissions or negligence of Users, its officers, employees, contractors or subcontractors in its performance of this agreement. User shall also indemnify and save harmless County from any claims for copyright, libel, slander or similar liability by reason of the exercise of its rights hereunder. User assumes all responsibility and risk for its use of Radio System covered by this agreement.

## **14. Attorney Fees**

If either party files an action to recover any use charge or payment under this agreement, for or on account of any breach of this agreement, to enforce or interpret any of the provisions of this agreement, or for the recovery of possession of the herein mentioned Radio System, then the prevailing party shall recover all reasonable collection costs and attorney's fees.

## **15. Non-waiver of Breach**

The failure of County to insist upon strict performance of any of the covenants and conditions of this agreement, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such rights, or any other covenants or conditions, but the same shall be and remain in full force and effect.

## **16. Other Documents**

Each party undertakes to execute such additional or other documents as may be required to fully implement the intent of this agreement.

## **17. Miscellaneous**

This agreement shall be governed by and construed in accordance with the laws of the State of Washington and the regulations of the Federal Communications Commission. This agreement replaces and supersedes all prior agreements and understanding between the parties with respect to the subject matter herein.

No alterations, modifications or changes in this agreement shall be valid unless made in writing and agreed to by both parties. Nothing in the execution and performance of this agreement shall be deemed in any way to constitute the parties as joint ventures or partners with each other.

IN WITNESS WHEREOF, the parties have executed this Agreement this 8 day of March, 2010.

**PIERCE COUNTY**

**Recommended:**

By [Signature] Date \_\_\_\_\_  
Tim Lenk  
Communications Systems Manager

**CITY OF ROY**

**Recommended:**

By [Signature] Date 3/8/2010

**Attest:**

By [Signature] Date \_\_\_\_\_  
Prosecuting Attorney  
(as to form only)

**Attest:**

By [Signature] Date 3/9/10  
City Attorney (as to form only)

By [Signature] Date 3/23/10  
Budget and Finance

By \_\_\_\_\_ Date \_\_\_\_\_

**Approved:**

By [Signature] Date 3/16/10  
Steven C. Bailey  
DEM Director

**Approved:**

By \_\_\_\_\_ Date \_\_\_\_\_

**CITY OF ROY, WASHINGTON**

**RESOLUTION NO. 664**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROY, PIERCE COUNTY, WASHINGTON, APPROVING THE AGREEMENT WITH PIERCE COUNTY FOR COMMUNICATIONS SYSTEM USE SERVICE FOR THE CITY OF ROY FOR THE PERIOD OF ONE (1) YEAR EFFECTIVE JANUARY 1, 2010 TO DECEMBER 31, 2010.**

**WHEREAS**, the County possesses communication infrastructure systems established for Pierce County Radio coverage, which may be made available to the City of Roy Police Department; and

**WHEREAS**, the City of Roy Police Department has a need to use the County's Radio System with all applicable rules and regulations of the County; and

**WHEREAS**, the City of Roy recognizes its obligation to pay for the use of the system in accordance with the schedule of rates and charges currently placed in effect by the county in the amount of (\$390.00) Three hundred ninety dollars for a one (1) year period;

**NOW, THEREFORE,**

Section 1. The City Council of the City of Roy approves the contract entitled "Communications System Use Agreement - City of Roy and Pierce County" ("Agreement") for 2010, requiring payment of \$390.00 for one (1) year period with Pierce County for communications system which allows the City of Roy's police department's use of county's radio system with an agreement to be on file in the city clerk's office.

Section 2. The Mayor of Roy is hereby authorized to sign the Agreement in substantially the form on file in the city clerk's office.

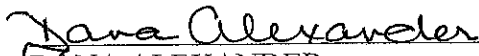
Section 3. All acts in conformance with the Agreement are hereby ratified.

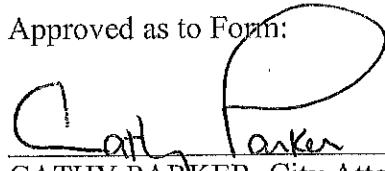
Introduced, passed and approved this 8 day of March, 2010.

  
KAREN YATES, Mayor

Attest:

Approved as to Form:

  
DANA ALEXANDER  
City Clerk/Treasurer

  
CATHY PARKER, City Attorney  
WSBA#16406