

RESOLUTION NO. 2019-03

RESOLUTION OF THE BOARD OF DIRECTORS OF SOUTH SOUND 911, A PUBLIC AUTHORITY, APPROVING THE PUBLIC SAFETY COMMUNICATIONS CENTER FINANCING AGREEMENT

WHEREAS, Pierce County has agreed to issue bonds on behalf of South Sound 911 for the construction of the Public Safety Communications Center (PSCC) project; and

WHEREAS, a financing agreement has been negotiated between South Sound 911 and Pierce County addressing repayment of the bonds using South Sound 911 funding sources;

NOW, THEREFORE BE IT RESOLVED THAT THE BOARD OF DIRECTORS OF SOUTH SOUND 911 DOES HEREBY ADOPT THE FOLLOWING RESOLUTION:

Section 1. The Agreement for Financing the Public Safety Communications Center (Agreement), in the form attached hereto as Exhibit A, is hereby approved by the Board of Directors.

Section 2. The Executive Director is authorized and directed to enter into the Agreement on behalf of South Sound 911.

Section 3. This resolution shall take effect and be in full force from and after its passage.

ADOPTED by the Board of Directors of South Sound 911, Pierce County, Washington.

DATED and SIGNED this 9th day of AUGUST, 2019.

SOUTH SOUND 911


BOARD OF DIRECTORS CHAIR

ATTEST:


Clerk of the Board

APPROVED AS TO FORM:


Peter Beckwith, General Counsel

This Agreement for Financing the Public Safety Communications Center (this "Agreement") is made and entered into by and among Pierce County, a home-rule charter County and a political subdivision of the State of Washington (the "County"), and South Sound 911 Public Authority, previously an emergency communications agency established by its Member public agencies pursuant to a 2011 Interlocal Agreement for Communication Services and now a public development corporation chartered under the provisions of RCW 35.21 ("SS911" or "Authority") (together the "Parties" and each a "Party").

RECITALS

WHEREAS, chapter 39.34 of the Revised Code of Washington ("RCW") (the "Interlocal Cooperation Act") authorizes the parties to enter into an interlocal agreement for the joint provision of public safety communication services; and

WHEREAS, RCW 82.14.420 authorizes a county legislative authority to submit an authorizing proposition to the county voters in order to allow the county legislative authority to fix and impose a sales and use tax for the purpose of providing funds for emergency communications systems and facilities; and

WHEREAS on July 26, 2011, the County Council adopted Resolution No. R2011-87 submitting to Pierce County voters a ballot proposition authorizing imposition and collection of a countywide one tenth of one percent sales and use tax to fund South Sound 911 (hereinafter "South Sound 911 Tax"); and

WHEREAS in Resolution No R2011-87 the County Council also expressed its intent to issue bonds to construct emergency communications systems and facilities to house SS911, the newly-created emergency communications joint operations agency; and

WHEREAS on November 8, 2011, Pierce County voters approved imposition and collection of the South Sound 911 Tax; and

WHEREAS, the County entered into an Interlocal Agreement for Communications Services in 2011 with cities located within the County that had populations over 50,000 that were operating emergency communications systems and facilities (2011 ILA), which was executed by Member Agencies and became effective January 1, 2012; and

WHEREAS, the 2011 ILA provided for construction of a new SS911 consolidated public safety emergency communications center ("PSCC") financed by bonds to be repaid from the proceeds of the South Sound 911 tax; and

WHEREAS, the 2011 Interlocal Agreement was subsequently amended and restated twice, including but not limited to adding two cities as parties; and

WHEREAS, the Member Agencies that comprised SS911 before it became a public corporation were Pierce County, City of Tacoma, City of Lakewood, Pierce County Fire Protection District No. 3 (West Pierce Fire & Rescue), City of Fife, and City of Puyallup; and

WHEREAS, the Member Agencies of SS911 requested the formation of SS911 as a Public Authority to assume the rights and responsibilities of and to otherwise serve as the successor to the Interlocal Agency and the City of Tacoma has approved the Charter for the Public Authority; and

WHEREAS, in the years that followed 2011, SS911 and the County considered various alternative methods for financing the PSCC; and

WHEREAS, on May 21, 2019 the County Council adopted Resolution No. R2019-66 expressing the Council's intent to authorize issuance of limited tax general obligation bonds in an amount sufficient to produce \$65 Million in proceeds needed to pay construction and related costs for a PSCC; and

WHEREAS, the County, in conjunction with SS911, has determined that the county-owned real property located at 3580 Pacific Avenue S. in Tacoma, Washington, commonly known as the Puget Sound Behavioral Health Site, (Parcel No. 7470023329 - hereinafter "PSBH Site" or "Subject Property"), meets the County's and SS911's criteria for construction of the PSCC; and

WHEREAS, SS911 has identified the need for a three-story, 75,000 square foot building that includes a Public Safety Answering Point ("PSAP") to house police and fire emergency communications, a municipal emergency operations center ("EOC"), a public counter area for law enforcement records functions, and related administrative offices; and

WHEREAS, SS911 has also identified the need for furniture, fixtures, equipment, and systems to serve the numerous operational, administrative and support functions associated with the PSAP, EOC and data center; and

WHEREAS, plans for the PSCC call for a stand-alone backup facility in the event South Sound 911 is unable to operate in the primary communications center due to a natural or other disaster; and

WHEREAS, SS911 engaged a consultant to conduct a facility planning study in 2013 that identified local options for a backup site and in late 2016 the same consultant reviewed options and recommended that SS911 retain the South 35th Street Communications Center located at 2415 S. 35th Street in Tacoma, Washington on the Pierce County Annex Campus as a PSCC back-up facility; and

WHEREAS, in January 2017, both the Policy Board and Operations Board of SS911 approved the South 35th Street Communications Center, as a PSCC back-up facility; and

WHEREAS, capital improvements are needed to the South 35th Street Communications Center, which currently operates as SS911's law enforcement communications center, to prepare it to serve as a PSCC back-up facility;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree as follows:

Section 1. Recitals.

The foregoing recitals, including the definitions set forth therein are incorporated into and are a part of this Agreement.

Section 2. PSCC Project.

The PSCC Project shall include:

- a. Construction of a three-story, 75,000 square foot building that includes a PSAP to house police and fire emergency communications, an EOC, a public counter area for law enforcement records functions, and related administrative office ("PSCC Building"); and
- b. Furniture, fixtures, equipment, and systems to serve the numerous operational, administrative and support functions associated with the PSAP, EOC and data center ("FF & E"); and
- c. Capital improvements to the South 35th Street Communications Center to prepare it to serve as a PSCC back-up facility ("S 35th Street back-up facility improvements").

Section 3. Total Budget for PSCC Project.

The total budget for the PSCC Project is sixty-five million dollars (\$65,000,000).

Section 4. Project Management and Cost Control.

- a. SS911 shall manage and be responsible for the design and construction of the Project.
- b. SS911 and the County shall each assign a representative to the Project.
- c. The County representative may attend all Project meetings and have access to all design documents.
- d. During construction, any additive, deductive or cost changes that increase the overall construction bid amount will be provided to the County representative for prior approval.

Section 5. Financing, Fund Management and Payment Process.

- a. Pursuant to Resolution No.2019-66, the County Council has expressed its intent to authorize the County to borrow money and issue limited tax general obligation bonds in an amount sufficient to produce \$65,000,000

in proceeds with the debt service on such bonds to be paid from the South Sound 911 Tax.

- b. It is expected that the Pierce County Council will authorize the issuance by the County of a separate series of limited tax general obligations bonds designated as “Limited Tax General Obligation Bonds, 2019A (Public Safety Communications Center Project)” (the “2019A Bonds”), in an amount sufficient to produce \$65 Million in proceeds to finance the costs of the PSCC Project.
- c. Subject to County Council approval of the bond ordinance for issuance of the 2019A Bonds, proceeds of the 2019A Bonds will be retained by the County in its South Sound 911 Bond Construction Fund and dedicated for payment of the PSCC Project costs and related financing costs. Payment of the PSCC Project costs shall be initiated pursuant to a written request for payment submitted by the SS911 representative to the County representative, together with supporting information as reasonably requested by the County representative. Any payment request must receive concurrence from the County representative, and the County will be deemed to have concurred if no comment is received from the County representative within five (5) business days after the County representative’s receipt of a payment request from the SS911 representative.
- d. Any interest on the bond proceeds shall be retained in the South Sound 911 Bond Construction Fund.
- e. Upon execution of the construction contract for the PSCC Building, the SS911 and County representatives will jointly establish the expected expenditure schedule for use of bond proceeds to pay the PSCC Project costs. The expenditure schedule shall be reviewed periodically and adjusted if needed to maintain its conformance with actual PSCC Project activities.
- f. Monthly receipts of the South Sound 911 Tax collected by the County shall be applied by the County, as the first priority for the use of revenues from the South Sound 911 Tax, to make monthly deposits to the debt service fund for the 2019A Bonds as well as the debt service funds for other County bonds previously issued to finance capital assets for SS911 and to which the County pledged South Sound 911 Tax revenue , including the County’s outstanding Limited Tax General Obligation Bonds, 2012, and outstanding Limited Tax General Obligation Bonds, 2013A (collectively with the 2019A Bonds, “County Debt”), in the amounts required for the County to pay each regularly scheduled semiannual debt service payment on County Debt. The remaining South Sound 911 Tax revenue following each such monthly deposit in the debt service funds for

County Debt shall be distributed monthly to SS911 for the purposes set forth in RCW 82.14.420, as it may be amended from time to time.

- g. If annual revenue received by the County from the South Sound 911 Tax is at any time insufficient to meet the regularly scheduled debt service requirements of County Debt, SS911 shall make up any such shortfall to ensure that County Debt is fully and timely paid and retired. SS911 shall identify the sources of revenues and include in its adopted budgets any necessary authorization to expend the revenues that it intends to rely on to make up any such shortfall. SS911 shall take into account and anticipate potential changes to expected revenues from the South Sound 911 Tax and consider and plan for contingencies to ensure that it will have sufficient other revenues to make up any such shortfall. To that end, the County will endeavor to provide to SS911, as early as may be practicable in advance of any regularly scheduled debt service payment date for County Debt, notice of any events or circumstances of which the County becomes aware that indicate that revenues expected to be received from the South Sound 911 Tax may be insufficient to pay, in full, the debt service requirements of County Debt, but the provision of such notice shall not be a precondition to the obligation of SS911 to make up any such shortfall.
- h. The County will deduct Allocated Costs from the Sales and Use Tax revenue and the E-911 Excise Tax revenue received by and/or available to the County before remitting to SS911.

“Allocated Costs” means County direct and indirect costs, including but not limited to central overhead services of the County (to include the cost of administering bond financing) that are legally allocable to the SS911 and that are allocated pursuant to the County’s approved central services cost plan.

“Sales and Use Tax” means the voter-approved imposition of a 1/10th of 1% sales and use tax, the proceeds of which will be used for the purpose of providing funds for costs associated with design, acquisition, construction, equipping, operating, maintaining, remodeling, repairing, reequipping, improvement and financing of emergency communications systems and facilities.

“E-911 Excise Tax” means the excise tax imposed by the County pursuant to RCW 82.14, as it may be amended from time to time.

- i. All capital assets financed with proceeds of County Debt shall be used by SS911 solely for its governmental purposes in operating, maintaining and carrying out governmental functions of providing Communication Services and Support Services as defined in its Charter. SS911 shall not make or permit any sale, lease, management or service contract, or other

arrangement that provides to any nongovernmental person any special legal entitlement to use the capital assets comprising the PSCC Project and other capital assets used by SS911 in providing Communication Services and Support Services and financed with County Debt. Post issuance federal tax compliance with respect to County Debt will be the responsibility of the County in accordance with its established policies and procedures. However, SS911, as the expected principal user of such capital assets, shall cooperate with the County as reasonably required for the County to maintain the tax exemption for County Debt. So long as any County Debt remains outstanding, SS911 shall maintain its status as a governmental instrumentality, within the meaning of Internal Revenue Service Revenue Ruling 57-128, of the local government units that are parties to the interlocal agreement pursuant to which SS911 was created.

Section 6. PSBH site – Ground Lease with Right to Purchase.

- a. The PSCC will be constructed on the County-owned PSBH Site (3580 Pacific Avenue S. in Tacoma, WA – Parcel No. 7470023329).
- b. The County and SS911 will enter into a ground lease of the PSBH Site for a duration that coincides with the period that the 2019A Bonds are outstanding (“PSBH Site Ground Lease”) and all terms and conditions for the lease shall be as set forth Exhibit A and its attachments.
- c. The Ground Lease will include a right to purchase the PSBH Site as improved with the PSCC Building and its FF & E after the 2019A Bonds are fully paid and retired and no longer outstanding.
- d. Lessee’s right to purchase the PSBH Site as improved for a Purchase Price of \$2.95 Million shall be subject to conditions at Section 14 of the Ground Lease at Exhibit A which is incorporated by reference hereto.
- e. At the end of the Ground Lease term, all improvements made to the PSBH Site, including the PSCC, as well as any FF&E associated with the PSCC that was financed with County Debt, will convert to County ownership unless prior to the expiration of the Ground Lease term, SS911 gives notice of its intent to exercise its right to purchase the PSBH Site as Improved with the PSCC, and all contingencies to closing on such conveyance are satisfied.
- f. It is understood and acknowledged that SS911 has already paid most of what it would owe under the PSBH Site Ground Lease. The County Council in Ordinance No. 2016-62s recognized an advance payment by SS911 for a proposed new SS911 Public Safety Communications Project that the County applied to the cost of the demolishing the then-existing Puget Sound Behavioral Health building. The \$2.95 Million that SS911 shall have paid by the Effective Date of the Ground Lease shall also be credited as advance payment by SS911 of the Purchase Price for PSBH Site as improved.

Conveyance of the PSBH Site as improved shall be subject to the closing contingencies in Section 14 of the Ground Lease which is incorporated by reference hereto.

- g. In the event of SS911's failure to perform the obligations set forth in Sections 12 and 13 related to the County's issuance of 2019A Bonds for the PSCC Project, the County may extinguish SS911's Right to Purchase the PSBH Site as improved. It is understood and acknowledged that in such event, SS911 would forfeit the advance payment it will have made toward the Purchase Price.

Section 7. Dispute Resolution.

Any disputes not resolved by the SS911 and County representatives will be referred to the County Executive and SS911 Executive Director. If a dispute is not resolved at the Executive/Executive Director level within 5 business days, SS911 and the County will engage a mediator and participate in at least one mediation session prior to escalating the dispute to litigation. The cost of mediation services shall be split equally between SS911 and the County.

Section 8. Assignment.

This Agreement shall not be assigned by SS911 without the prior written consent of the County, which consent may be granted, withheld, conditioned or delayed by the County in its sole and absolute judgment and discretion.

Section 9. Indemnification.

Each Party shall defend, indemnify, and hold each other harmless from and against any and all claims, demands, suits, actions, judgments, recoveries, liabilities damages, penalties, costs and expenses, including but not limited to reasonable attorneys' fees, resulting from damage to property or bodily injury, including death, to the extent caused by a Party's breach of this Agreement or the negligent actions or omissions of that Party, or its employees, servants, agents, or officers elected or appointed. The foregoing indemnity specifically covers actions brought by the Party's own employees, and each Party agrees that the foregoing indemnity is specifically and expressly intended to constitute a waiver of immunity under Washington's Industrial Insurance Act, RCW Title 51, but only as to the Party or Parties entitled to indemnity and only to the extent necessary to provide a full and complete indemnity as required under this Section. The indemnification obligation provided in this section shall survive the expiration or earlier termination of this Agreement for the duration of any applicable statute of limitations.

Section 10. Duration of Agreement.

The term of this Agreement shall commence on the Effective Date of this Agreement and be for a period not less than the period that the County Debt is not fully paid and retired and remains outstanding.

Section 11. Miscellaneous Provisions.

- A. Authority. SS911 represents and warrants that SS911 has all necessary approvals to enter into this Agreement and the Ground Lease at Exhibit A.
- B. Waiver. No waiver of any breach of this Agreement by the Parties hereto shall be held to be a waiver of any other or subsequent breach. Failure of the Parties to enforce any of the provisions of this Agreement or to require performance of any of the provisions herein, shall in no way be construed to be a waiver of such conditions, nor in any way effect the validity of this Agreement or any part hereof, or the right of the Parties to hereafter enforce each such provision.
- C. Severability. In the event any provision of this Agreement shall be declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not, in any way, be affected or impaired thereby.
- D. Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the financing of the PSCC Project and Ground Lease of the PSBH Site for the contemplated construction of the PSCC Building, and terms and conditions for SS911's eventual exercise of the right to purchase the PSBH Site as improved with the PSCC Building and its FF & E.
- E. Notice. Any formal notice or communication to be given by the Parties to this Agreement shall be deemed properly given, if delivered either in physical or electronic means, or if mailed postage prepaid and addressed to the following designated representatives of each Party:

If to Pierce County:

Attn: Karl Imlig, Director of Facilities Management

1102 Broadway, Suite 302

Tacoma, WA 98402

Email: karl.imlig@piercecoutywa.gov

Copy to:

Attn: Deputy Prosecuting Attorney

Pierce County Prosecuting Attorney – Civil Division

955 Tacoma Avenue South, Suite 301

Tacoma, WA 98402

If to South Sound 911 Public Authority:

Attn: Janet Caviezel, Assistant Director
955 Tacoma Avenue South, Suite 202
Tacoma, WA 98402
Email: janet.caviezel@southsound911.org

- F. Amendment. This Agreement may be amended by the mutual consent of the Parties hereto. No additions to or alterations of the terms of this Agreement shall be valid unless made in writing, formally approved by the County Council, and other required legislative bodies, and executed by duly authorized agents of the Parties.
- G. Independent Contractor. Each Party to this Agreement is an independent contractor with respect to the subject matter herein. No joint venture or partnership is formed as a result of this Agreement. Nothing in this Agreement shall make any employee of one Party an employee of another party for any purpose, including, but not limited to, for withholding of taxes, payment of benefits, worker's compensation pursuant to Title 51 RCW, or any other rights or privileges accorded by virtue of their employment. No Party assumes any responsibility for the payment of any compensation, fees, wages, benefits or taxes to or on behalf of any other Party's employees. No employees or agents of one Party shall be deemed, or represent themselves to be, employees of another Party.
- H. No Third Party Beneficiaries. This Agreement is for the benefit of the Parties only, and no third party shall have any rights hereunder.
- I. Applicable Law. This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington.
- J. Transmitted Signatures. Signatures on transaction documents, including this Agreement, transmitted via facsimile or electronically scanned and transmitted via electronic mail shall be acceptable and binding.
- K. Counterparts. This Agreement may be executed in any number of counterparts, each of whom shall be an original, but those counterparts will constitute one and the same instrument.
- L. Nondiscrimination. The Parties shall comply with the nondiscrimination requirements of applicable federal, state and local statutes and regulations.

M. Effective Date. The Effective Date shall mean the date upon which the County Executive (who shall be the last person to sign) shall have affixed his signature to this Agreement as indicated opposite his name below.

N. Exhibits. The following exhibit is attached to this Agreement and by this reference are incorporated herein as if fully set forth:

Exhibit A - Ground Lease

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

[remainder of page intentionally left blank; execution page follows]

**SOUTH SOUND 911
SIGNATURE PAGE**

South Sound 911 Public Authority:

By _____
Andrew E. Neiditz Date
SS911 Executive Director

Approved as to form:

By _____
Peter Beckwith Date
SS911 General Counsel