

**AGREEMENT PROVIDING FOR CAPITAL FINANCING FOR
SNOHOMISH COUNTY REGIONAL PUBLIC SAFETY
COMMUNICATIONS AGENCY**

This AGREEMENT (“**Agreement**”) is made by and between Snohomish County (“**County**”), a political subdivision of the State of Washington, and Snohomish County Regional Public Safety Communications Agency (“**SNO911**”), a Washington non-profit corporation authorized by RCW 39.34.030(3)(b).

RECITALS

WHEREAS, SNO911 provides emergency communication services on behalf of its member agencies throughout Snohomish County. The County is one of the member agencies of SNO911; and

WHEREAS, Snohomish County Public Safety Communication Agency (“**SNOCOM**”) and Snohomish County Police Staff and Auxiliary Services Center (“**SNOPAC**”) consolidated into SNO911 in 2017 and physically consolidated operations into the leased Everett Campus in 2018, where SNOPAC had been located since 2001; and

WHEREAS, as part of the consolidation, a task force comprised of SNOCOM and SNOPAC members studied facility space and concluded – based on 2015 data – that the current space in the Everett facility could house SNO911 operations through 2025; and

WHEREAS, Snohomish County Emergency Radio System (“**SERS**”) merged with SNO911 in 2019. SNO911 technology staff who were former SERS employees operate out of a leased facility in Marysville, while technology employees for SNO911 continue to work from the Everett Campus. SNO911 believes bringing the technology staff together in one workspace along with the rest of the supportive operations staff is most beneficial to the organization; and

WHEREAS, as of the date of this Agreement SNO911 has now outgrown the space and is leasing space in other locations to accommodate its needs. SNO911 operations are no longer consolidated in one physical location; and

WHEREAS, SNO911 commissioned a future facility study which reviewed multiple options including remodeling the existing facility or building a purpose-built facility from the ground up. The study itself was accepted by the SNO911 Board of Directors on April 18, 2019. On December 17, 2020, the SNO911 Board of Directors unanimously authorized staff to develop plans to build a new 911 facility to consolidate its operations; and

WHEREAS, Section 13 of the Snohomish County Regional Public Safety Communications Agency Interlocal Agreement effective as of January 1, 2018, as thereafter amended and restated

(“SNO911 ILA”), contemplates that its Participating Agencies, as defined therein, may issue debt in order to provide capital financing for SNO911 on terms agreed upon by the parties; and

WHEREAS, by the issuance of its limited tax general obligation bonds, the County is willing and able to provide financing, subject to repayment under the terms of this Agreement, for SNO911’s future facility needs.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and agreements contained in this Agreement and subject to the terms and conditions set forth herein, it is mutually understood and agreed by the parties as follows:

SECTION 1. TERM OF AGREEMENT; DEFINITIONS

This Agreement shall be effective upon mutual execution and shall continue in effect until the Loan, as defined below, has been paid in full (or such longer period as may be required by the Code (as defined below in Section 5) or other applicable law). If the County agrees to issue bonds or other obligations to refund the bonds contemplated herein, with the consent of SNO911, which shall not be unreasonably withheld, the County and SNO911 will enter into an amendment to this Agreement or another agreement with respect to such refunding obligations.

Capitalized terms not otherwise defined herein (including in the recitals hereto, which are incorporated herein by this reference) shall have the meanings set forth in the SNO911 ILA.

SECTION 2. COUNTY LOAN TO SNO911

2.1 The Loan. The County will, subject to the terms and provisions of this Agreement, provide a lump sum payment to SNO911, in an amount not to exceed \$60,000,000; inclusive of Transaction Costs (as defined in Section 3.1), in an amount determined by SNO911 pursuant to Section 2.2 of this Agreement, which SNO911 shall repay pursuant to the terms of this Agreement (“**Loan**”).

2.2 The Bonds. The County will use reasonable efforts to issue one or more series of limited tax general obligation, fifteen (15) year bonds (the “**Bonds**”), the interest on which is expected to be exempt from federal income tax, in an aggregate principal amount that SNO911 reasonably determines is required for the purpose of financing the acquisition, design, construction, furnishing and/or equipping, as the case may be, of a centralized building for housing SNO911’s facilities and equipment, and costs of issuance and other transaction costs. It is anticipated the County will issue such Bonds in coordination with other County bonding needs.

The County and SNO911 acknowledge and agree that the successful issuance of the Bonds will depend on various factors, including but not limited to the feasibility of the project intended

to be financed as described herein, market conditions, satisfaction of requirements of the Code and other applicable law, and other factors outside of the County's control. The parties agree to cooperate with each other in furtherance of the successful issuance of the Bonds, including, if necessary, entering into amendments to this Agreement.

The County shall reserve the right to determine the strategy and issuance of the Bonds. The County will make reasonable efforts to issue the Bonds within the calendar year of SNO911's request, however the County shall determine the actual issuance, marketing, sale and closing dates.

SNO911 shall notify the County of the amount of estimated net proceeds of the Bonds that SNO911 requires for the project (e.g. the project fund deposit), any expected issuance/transaction costs that SNO911 expects to incur as a result of the issuance of the Bonds, and a not to exceed true interest cost ("T.I.C.") for the Bonds that SNO911 is willing to accept, at least one hundred twenty (120) days prior to the anticipated sale date of the Bonds. The T.I.C. is a calculation used in municipal finance to state the actual interest rate of the financing, taking into consideration all issuance costs, transaction costs, and how the bonds are structured. The County expects to use the not to exceed T.I.C. preferred by SNO911 in its sale parameters for the Bond issue.

If market conditions prohibit the County from being able to meet either the amount of net proceeds SNO911 requires or its T.I.C. maximum, the County shall not issue the Bonds. The County shall not be responsible for any costs incurred by SNO911 should the County have to delay or discontinue the sale of, or closing on, the Bonds. The County and SNO911 will remain in contact regarding the Bond issuance timing and market conditions. The County will utilize its financial advisor and bond counsel to adjust the timing as necessary based upon market conditions. If market conditions appear to be unfavorable, SNO911 shall be able to request to 'opt out' of the issuance provided they notify the Snohomish County Finance Director at least ten (10) business days prior to the anticipated sale date. In such event, SNO911 shall remain solely responsible for all costs and expenses incurred by it and by the County in furtherance of the issuance of the Bonds, including fees of the County's financial advisor and bond counsel and all other County costs. If the Bonds were to be issued in coordination with other County bond issue, SNO911's responsibility for the aforementioned costs and expenses will be shared on a pro-rata basis between the Bonds for SNO911 and any remaining County portion of the bond issue.

Upon successful closing of the Bonds, the County shall transfer SNO911's portion of the net proceeds of the Bonds to SNO911 within thirty (30) days.

2.3 Cooperation by SNO911. SNO911 shall fully cooperate with the County in connection with the issuance of the Bonds. At the request of the County, prior to the issuance of the Bonds SNO911 shall (a) provide all such information as determined by the County's bond counsel to be necessary or appropriate to enable it to conduct due diligence with respect to the planned tax-exempt status of interest on the Bonds, (b) conduct such review and provide such information as the County may require in connection with any official statement(s) prepared for the Bonds or otherwise as the County determines to be necessary or appropriate for accurate

disclosure, including continuing disclosure, with respect to the Bonds, (c) execute any closing certificates, papers or other deliverables, including tax certifications and post-issuance compliance policies, as determined by the County to be necessary or appropriate, and (d) cooperate in all post-issuance matters, including, but not limited to, any audit or inquiry by the Internal Revenue Service and any other action or proceeding whatsoever, and maintain required records and provide or cooperate in providing ongoing disclosure, as determined by the County. All costs and expenses incurred by the County or SNO911 in connection with the foregoing shall be the sole responsibility of SNO911.

SECTION 3. TERMS OF REPAYMENT

3.1 Amount of Payment. The County shall provide SNO911 the debt service schedule for the Loan, which shall be the debt service schedule for the Bonds (or portion of the debt service allocated to SNO911 if the Bonds are issued for multiple County purposes) at or prior to the closing of the Bonds. This repayment schedule is calculated by the County's financial advisor using the actual interest rates assigned to the Bonds at the time the Bonds are sold. The annual debt service schedule will include a semiannual interest payment (each June 1 and December 1) and annual principal payment (December 1). SNO911 agrees to remit the amounts stated in the debt service schedule to the County at least thirty (30) days prior to the aforementioned due dates.

Proceeds of the Bonds are expected to be used to pay all issuance and other transaction costs associated with the original issuance of the Bonds ("**Transaction Costs**"). Transaction Costs shall be included in the amount of the Loan and repayment schedule provided for in this Section 3.1. If Bonds are issued in coordination with other County bonding needs, the Transaction Costs of the entire County bond issue will be shared on a pro-rata basis between the Bonds for SNO911 and any remaining County portion of the bond issue by incorporating the issuance costs in the overall debt schedule.

3.2 Delinquent payments. Debt service payments not received at least thirty (30) days prior to due dates shall be subject to a penalty of 5% of the amount due plus additional interest of 10% per annum, up to, but not exceeding, any applicable limitations provided by law on such penalties or interest.

3.3 No Prepayments. It is expected that the Bonds will be subject to prepayment or early redemption approximately 10 years after issuance. SNO911 acknowledges and agrees that the Bonds may not be subject to prepayment or redemption prior to such date. SNO911 agrees to not defease and/or prepay any principal of or interest on the Bonds except as permitted by the County, and in accordance with the terms and provisions of the Bonds.

If there are advantages associated with refunding the Bonds prior to maturity at or prior to the call date for the Bonds, SNO911 and the County will work together to modify this Agreement to exercise the redemption provision. Parties must indicate their intent to the other party to discuss these options in writing at least 120 days prior to the call date.

3.4 No Set-Off or Recoupment. SNO911 shall repay the Loan pursuant to the terms of this Agreement, irrespective of any rights of set-off, recoupment, or counterclaim it might have against the County or any other person; provided, that any such payment shall not constitute a waiver by SNO911 of any claim for recoupment or of any counterclaim. This Section 3.4 shall not be construed to release the County from any of its obligations hereunder or, except as provided in this Section 3.4, to prevent or restrict SNO911 from asserting any rights which it may have against the County under any provision of law, or to prevent or restrict SNO911, at its own cost and expense, from prosecuting or defending any action or proceeding by or against the County or taking any other action to protect or secure its rights.

SECTION 4. PLEDGE

4.1 Source of Security and Payment for the Bonds. The Bonds will be issued as general obligations of the County. The full faith, credit, and resources of the County will be irrevocably pledged for the annual levy and collection of regular property taxes and for the prompt payment of the principal of and interest on the Bonds as the same will become due.

The Bonds shall not be an obligation, either legal or moral, of SNO911 or any Participating Agency, other than the County. User Fees shall not be pledged to the repayment of the Bonds. No bondholder will be a third-party beneficiary hereof or otherwise have rights to enforce SNO911's obligation hereunder. Because SNO911's obligations hereunder, including the obligation to repay the Loan, are not security for the Bonds, and is not provided for the benefit of bondowners, the disclosure documents for the Bonds shall not include any financial or operating information of SNO911 or other information regarding SNO911 or its Participating Agencies, other than the County, without the prior written consent of SNO911.

4.2 Source of Security and Payment for the Loan. The Loan shall be an obligation solely of SNO911, payable from revenues SNO911 as described herein. SNO911 agrees that, for as long as the Loan is outstanding and unpaid, each year it will include in its annual budget revenues in an amount sufficient to pay the principal of and interest on the Loan as the same will become due. SNO911 hereby pledges User Fees to the payment of its obligations due to the County under the terms of this Agreement.

User Fees are comprised of fees for service charged to Participating Agencies for emergency communication services provided by SNO911. Each Participating Agency's obligation to pay its User Fees is contingent on such emergency communication services being provided by SNO911 under the terms of the SNO911 ILA. Each Participating Agency's obligation to pay its User Fees is not a debt or a capital contribution of the Participating Agency, is not a guarantee of the payment of all or any portion of the debt service on Loan or on the Bonds, and is not a debt of the Participating Agency within the meaning of statutory debt limit calculations.

SECTION 5. USE OF FUNDS

All capital assets financed with proceeds of Bonds shall be used by SNO911 solely for its governmental purposes in operating, maintaining, and carrying out governmental functions of providing 911 communication and related services in accordance with the SNO911 ILA.

To the extent that the Bonds are issued on a tax-exempt basis under Section 103 of the Internal Revenue Code of 1986, as amended (“**Code**”), SNO911 agrees to not (1) make use of the proceeds from the sale of such Bonds that will cause the Bonds to be “arbitrage bonds” within the meaning of the Code or (2) act or fail to act in a manner that will cause the Bonds to be considered obligations not described in Section 103(a) of the Code. The foregoing requires, without limitation, that SNO911 will spend at least 85% of the proceeds of the Bonds within three (3) years of issuance, and that any facilities financed with Bond proceeds shall not be leased directly or through sub-lease to any private entity, or otherwise used or sold in a private use, until such time the Bonds have matured or otherwise been prepaid or redeemed. The requirements applicable to tax-exempt bonds are numerous and complex and the foregoing list is not exhaustive. Post issuance federal tax compliance with respect to tax-exempt Bonds will be the responsibility of the County in accordance with its established policies and procedures. However, SNO911, 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 the Bonds, and SNO911 shall be responsible for ensuring its use of Bond proceeds and the financed facilities comply, in all respects, with the requirements applicable to ensure the tax-exempt status of the interest on the Bonds. SNO911 agrees it will otherwise comply with all requirements applicable to tax-exempt bonds to ensure that it shall not take or fail to take any other action that will adversely affect the tax-exempt status of interest on the Bonds and otherwise ensure compliance with applicable provisions of the Code, including, without limitation, maintaining required records for at least three (3) years after payment of the Bonds (and any tax-advantaged bonds issued to refund the Bonds).

SECTION 6. DEFAULT AND REMEDIES

6.1 Events of Default. Any failure on the part of SNO911 to perform or observe its duties, provisions, or obligations hereunder, unless otherwise provided for herein, if such failure shall have continued for a period of sixty (60) days after written notice thereof has been delivered to SNO911 shall be considered a “**Loan Default**” as that term is used in this Agreement.

Any failure by SNO911 to make timely payment on the Loan such that the County fails to make timely payment on the Bonds, shall be considered an “**Automatic Default**” hereunder, provided that the County has first given SNO911 a 10-day notice of failure to receive timely payment on the Loan.

6.2 Remedies. Upon the occurrence of any Loan Default or Automatic Default, the County may proceed to protect and enforce its rights in equity or at law, either in mandamus or for the specific performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy, as the County, being advised by counsel, may

deem most effective to protect and enforce any of its current or reserved rights or interests hereunder with respect to: (i) tax exemption of the Bond, (ii) payment of fees or amounts due, (iii) indemnification and reimbursements due to the County, and (iv) receipt of reports and notices. Prior to initiating any action for a breach of this Agreement, other than an Automatic Default, the parties shall engage in mediation.

6.3 No Right or Remedy Exclusive. No right or remedy herein conferred upon or reserved to a party to this Agreement is intended to be exclusive of any other available right, remedy or remedies, but each and every such right or remedy shall be cumulative and shall be in addition to every other right or remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle a party to exercise any remedy reserved to it, it shall not be necessary to give any notice, other than such notice as may be herein expressly required. No dispute resolution process set forth in the SNO911 ILA shall be required with respect to disputes arising under this Agreement.

6.4 No Additional Waiver Implied by One Waiver. In the event any agreement or covenant contained in this Agreement should be breached by a party to this Agreement and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

SECTION 7. INDEMNIFICATION

7.1 Indemnification of the County. SNO911 shall indemnify, hold harmless, and defend the County, its elected officials, directors, officials, agents, and employees and each of them from and against:

(a) any and all costs to the County arising from or as a result of the issuance of the Bonds or the making of the Loan (including without limitation any audit, inquiry, action or proceeding pertaining to the Bonds or the Loan), and any and all claims by or on behalf of any person or entity arising from any cause whatsoever in connection with the making of the Loan or the issuance of the Bonds, other than claims resulting from the negligence or willful misconduct of the County, its respective officers, agents, servants, licensees, or employees;

(b) any and all claims arising from any act or omission of SNO911 or any of its agents, servants, employees, or licensees, in connection with the Loan or the Bonds, including, without limitation, any act or omission of SNO911 or any of its agents, servants, employees, or licensees adversely affecting the tax-exempt status of interest on the Bonds; and

(c) all reasonable costs, reasonable counsel fees, or liabilities incurred in connection with any such claim or proceeding brought thereon.

In the event that any action or proceeding is brought against the County or any of its respective elected officials, directors, officials or employees, with respect to which indemnity may be sought hereunder, SNO911, upon written notice from the indemnified party, shall assume the investigation and defense thereof, including the employment of counsel, and the payment of all expenses related thereto, PROVIDED that with regard only to claims or proceedings for non-monetary relief, no settlement of a claim or proceeding against an indemnified party shall occur without the consent of such party, PROVIDED FURTHER that such consent shall not be unreasonably withheld; and PROVIDED FURTHER that in case of any audit, inquiry, action or proceeding with respect to the Bonds or the Loan, whether or not the relief sought is monetary, SNO911 shall only assume the defense thereof upon the specific instruction of the County, and in any event, the County may employ its own counsel and advisors, the reasonable costs and expenses of which shall be promptly paid by SNO911 upon demand therefor by the County.

The provisions of this Section 7.1 shall survive the termination of this Agreement.

7.2 Indemnification of SNO911. The County shall indemnify, hold harmless, and defend SNO911, its elected officials, directors, officials, agents, and employees and each of them from and against:

(a) any and all claims arising from any act or omission of the County or any of its agents, servants, employees, or licensees, in connection with the Loan; and

(b) all reasonable costs, reasonable counsel fees, or liabilities incurred in connection with any such claim or proceeding brought thereon.

In the event that any action or proceeding is brought against SNO911 or any of its respective elected officials, directors, officials or employees, with respect to which indemnity may be sought hereunder, the County, upon written notice from the indemnified party, shall assume the investigation and defense thereof, including the employment of counsel, and the payment of all expenses related thereto, PROVIDED that with regard only to claims or proceedings for non-monetary relief, no settlement of a claim or proceeding against an indemnified party shall occur without the consent of such party, PROVIDED FURTHER that such consent shall not be unreasonably withheld.

7.3 Waiver of Immunity Under Industrial Insurance Act. The indemnification provisions of Sections 7.1 and 7.2 above are specifically intended to constitute a waiver of each party's immunity under Washington's Industrial Insurance Act, Title 51 RCW, disability benefit act, or other employee benefits act, 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.

SECTION 8. MISCELLANEOUS

8.1 Entire Agreement. This Agreement constitutes the entire and final agreement and supersedes all prior agreements and understandings, both written and oral, between the County and SNO911 with respect to the subject matter hereof.

8.2 Notices. All notices, certificates, or other communications shall be in writing and shall be sufficiently given and shall be deemed given on the date on which the same has been emailed or mailed by certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the County: Snohomish County Finance Director
3000 Rockefeller Avenue, M/S 610
Everett, WA 98201
(425) 388-3475
Email: nathan.kennedy@snoco.org

If to SNO911: Snohomish County 911 Executive Director
1121 SE Everett Mall Way #200
Everett, WA 98208
Email: kmills@sno911.org

The County or SNO911 may, by notice given in the manner and with the effect set forth herein, designate any further or different addresses to which subsequent notices, certificates, documents, or other communications shall be sent.

8.3 Time of the Essence. Time is of the essence in the performance of each party's obligations under this Agreement. Each will carry out its obligations under this Agreement diligently and in good faith.

8.3 Assignments. This Agreement may not be assigned by any party without the prior written consent of both parties hereto, which consent shall not be unreasonably withheld.

8.4 Amendments, Changes, and Modifications. This Agreement may not be amended or modified in any manner except by an instrument in writing signed by a duly authorized officer or representative of each of the parties hereto.

8.5 No Partnership or Joint Venture. No partnership and/or joint venture is created by and between SNO911 and the County by virtue of this Agreement.

8.6 No Third-Party Beneficiaries. This Agreement is not intended to nor does it create any third-party beneficiaries or other rights in any third person or party, including but not limited to members of the general public and any holders or owners of the Bonds.

8.7 Execution of Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

“County”

“SNO911”

SNOHOMISH COUNTY

SNOHOMISH COUNTY REGIONAL
PUBLIC SAFETY COMMUNICATIONS
AGENCY

County Executive

Board President

Date: _____

Date: 4/21/22

Approved as to form only:

Approved as to form only:

/s/ George B. Marsh

Deputy Prosecuting Attorney

Jordan E. Stephens, Attorney

Date: _____

Date: March 24, 2022

COUNCIL USE ONLY	
Approved	<u>5/18/2022</u>
ECAF #	<u>2022-0438</u>
MOT/ORD	<u>Motion 22-183</u>