

BILL NO. 2918

ORDINANCE NO. _____

**ORDINANCE APPROVING A USER AGREEMENT FOR
SUBSCRIBER RADIOS AND INTEROPERABLE RADIO SYSTEM
BETWEEN ST. LOUIS COUNTY, MISSOURI AND THE CITY OF
CHESTERFIELD**

WHEREAS, The residents of St. Louis County approved a tax for the purpose of establishing better emergency communication systems within St. Louis County and between police and fire departments; and

WHEREAS, St. Louis County, through the Emergency Communications Commission, has developed a county-wide emergency communication system for the use of police and fire departments; and

WHEREAS, the Emergency Communications Commission intends to provide radios to the Chesterfield Police Department at no cost the City of Chesterfield; and

WHEREAS, the City of Chesterfield has been asked to enter into a User Agreement For Subscriber Radios St. Louis County, Missouri.

**NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF
THE CITY OF CHESTERFIELD, ST. LOUIS COUNTY MISSOURI, AS
FOLLOWS:**

Section 1. The City Council of the City of Chesterfield hereby authorizes the City Administrator to enter into User Agreement for Subscriber Radios and Interoperable Radio System, in accordance with the Agreement marked "Exhibit A" attached hereto.

Section 2. This Ordinance shall be in full force and effect from and after its passage and approval.

Passed and approved this _____ day of _____, 2013.

MAYOR

ATTEST:

CITY CLERK

FIRST READING HELD: _____

**USER AGREEMENT FOR SUBSCRIBER RADIOS
INTEROPERABLE RADIO SYSTEM**

THIS AGREEMENT, Made and entered into this _____ day of _____, 2012, by and between ST. LOUIS COUNTY, MISSOURI, acting for the St. Louis County Emergency Communications Commission, hereinafter referred to as “ECC”; and _____, hereinafter referred to as “Agency”;

WITNESSETH:

WHEREAS, ECC has entered into a contract with Motorola Solutions, Inc. (“Motorola”) whereby Motorola is obligated to design, deliver, install, test, and maintain a county-wide emergency communications radio system and associated commercial items, commercial computer software, radios and other equipment, subsystems and services (the “System”);

WHEREAS, ECC intends to provide radios to Agency to enhance its ability to communicate for both routine and emergency operations and to permit Agency to use the System, subject to the rules, regulations, policies and standards established by the ECC;

WHEREAS, Agency is authorized to enter into this Contract by Ordinance No. _____, and ECC is authorized to enter into this Contract by Ordinance No. 12,154;

NOW, THEREFORE, the parties agree as follows:

1. **Definitions.** The following definitions apply to these terms, as used in this Agreement:

Infrastructure –all fixed electronic and civil components that make up the System. This includes owned or leased radio towers, monopoles, and rooftop installations; RF transmitters, microwave components, combiners, antenna systems, controllers, comparators, routers, GPS time standards, and other network hardware; environmental equipment shelters and HVAC subsystems; UPS and emergency power generator systems; and countywide recording systems.

Subscriber Radios or Radios –mobile (vehicle-mounted) and portable (handheld) radios; desktop control stations and desksets; digital vehicular repeater systems; RF modems used for mobile data; and associated accessories (batteries, battery chargers, shoulder microphones, holsters, etc.).

System – the county-wide emergency communications radio system and associated commercial items, commercial computer software, equipment, subsystems and services.

Motorola Contract – the contract dated December 15, 2011 between ECC and Motorola for the P-25 800 MHZ Digital Trunked Radio/Microwave System Project (RFP No. 2010-07-RH).

2. **Use of the System.** ECC hereby grants Agency permission to use the System, after it is installed, tested and accepted, subject to the following:

- a. Agency shall comply with the rules, regulations, policies and standards established by the ECC (except in the event of conflict with the terms and conditions of this Agreement, which shall control).
- b. Agency shall comply with all laws, rules and regulations relating to use of the System, including but not limited to FCC regulations.
- c. Agency shall commit to transitioning its operations to the System and, upon so doing, relinquishing unused VHF/UHF frequencies and associated licenses within its control. Agency shall cooperate with the ECC to develop a list of such frequencies, in compliance with the FCC Order dated February 21, 2012, DA 12-245, WT Docket 99-87.

3. **Title and Ownership of Subscriber Radios.** ECC agrees to transfer ownership of the Subscriber Radios specified in **Exhibit A** (Radios) which is appended hereto and made a part of this Agreement, to Agency to enhance its ability to communicate during routine and emergency operations anywhere within St. Louis County and the rest of the metropolitan area. Agency agrees to accept ownership of the specified Radios upon receipt and comply with all provisions of this Agreement. Agency shall not transfer, sell, give or otherwise dispose of any of the Radios without the consent of the ECC. During the term of this Agreement, ECC may purchase and transfer to Agency additional Radios. ECC and Agency agree that the provisions of this Agreement will apply to all such additional transfers of Radios accepted by Agency. ECC shall, upon each additional transfer, provide Agency with an updated **Exhibit A** which the parties agree may be added to this Agreement as an amendment signed by both parties. The Agency agrees to accept title to the Radios if such title is required.

Exhibit A is intended to accomplish a like-for-like replacement (see identification of standard Law Enforcement, Fire/EMS, and Local Government radios in sections 4.3, 4.4 and 4.5 of Countywide Radio System Policies Adopted May 10, 2012 attached hereto as **Exhibit B**) for each operational radio owned by Agency, as well as non-functioning radios that failed within the past two years and were not replaced by Agency in anticipation of entry into this Agreement. **Exhibit A** is not intended to accomplish a replacement of stockpiled out-of-service radios. In the event that the parties agree that **Exhibit A** is incomplete, ECC shall supply additional replacement radios and **Exhibit A** shall be amended accordingly. ECC will make the final decision on such matters.

Agency understands and agrees that it will be primarily responsible for funding and procuring additional radios in the event of growth of its individual programs. Agency agrees it generally must fund any cost differences for additional radio features or substitutions that it requests.

ECC agrees to procure and allocate a reasonable number of spare portable radios to participating agencies as deemed appropriate. Final decision on spare portable radio allocations will be made by ECC.

4. **Programming, Data Conversion, Fleetmapping & Interoperability Template Design.** The ECC will be responsible for programming the Radios. Costs for conversion of GPS data and/or interface to CAD or other computer management systems will be the responsibility of individual user agencies, including Agency if applicable. The ECC will be responsible for initial and ongoing fleetmapping and interoperability template design and codeplug provision for user agencies including Agency. This will include design of specific talkgroups to meet the routine needs of individual agency operations including Agency.

5. **Radio Inventory Control.** Agency shall inspect each of the Radios upon receipt to make sure it is in good working order and free from defects and malfunctions. If each of the Radios is found free from defects/malfunctions Agency shall indicate its acceptance of each of the Radios on the Inventory Control Form, a sample of which is attached to this Agreement as **Exhibit C**. If any of the Radios is found to be defective and/or malfunctioning Agency shall describe the defects/malfunctions on the Inventory Control Form and promptly provide the form to the Director of Emergency Communications for ECC by fax or e-mail. Upon request, Agency will provide a written inventory of each of the Radios to the Emergency Communications Director. The report shall be in a format approved by the ECC.

6. **Property and Casualty Insurance.** Agency agrees to maintain such property and casualty insurance as it deems appropriate on each of the Radios. Although the ECC will pay for depot maintenance coverage (see Section 8) for malfunctions due to manufacturing defects, all costs attributed to the loss, breakage, misuse, or destruction of a Radio will be the responsibility of the Agency.

7. **Infrastructure.**

- a. System Design & Construction – The ECC will be responsible for all System design, site acquisition, construction, testing, cutover, and acceptance activities for the Infrastructure. Concentration will be given to outdoor coverage and building penetration, inter-agency interoperability, System redundancy, and network survivability.
- b. Operation, Maintenance & Support – The ECC will be responsible for the operation, technical performance, preventative maintenance, modifications/additions, hardware/software upgrades, routine corrective repairs, and emergency restoration of the Infrastructure. The ECC will oversee and manage contractors authorized to maintain and support the Infrastructure.
- c. Physical Security – The ECC will ensure that reasonable physical security measures are taken to protect the equipment sites of the Infrastructure.
- d. Critical System Data – The ECC will ensure that all System data, custom configurations, and interoperability & fleetmapping templates are regularly backed up and secured in an off-site protected location, in accordance with St Louis County standards and best practices.

- e. Backup Network Testing – The ECC will schedule, coordinate, and conduct tests of backup systems, including countywide, all-agency FailSoft drills pursuant to Motorola practices.
- f. Radio Licenses – The ECC shall be the named licensee, and will be responsible to acquire and maintain all licenses required by the Federal Communications Commission (FCC) for the operation of the System. The ECC will investigate and remediate any complaints of interference or substandard performance of the System. The ECC will comply with all applicable laws including but not limited to FCC regulations.
- g. System Inventory – The ECC shall be responsible to maintain and update an inventory of the Infrastructure in accordance with the fixed assets policies of St. Louis County.
- h. System Funding – The ECC shall, on an annual basis, submit a budget request to County Council for sufficient funds to handle the insurance and ongoing maintenance and upgrade costs for the Infrastructure, including contingency funding to address unforeseen emergency requirements.

8. **Subscriber Radio Warranty and Maintenance.** The ECC will provide the 1-year warranty as described in the Motorola Contract, subject to the exclusions, limitations, conditions and disclaimers stated therein. To the extent that ECC has sufficient funds available, the ECC will fund the annual depot maintenance costs for the Radios for the five-year post-warranty period (including any Radios that were purchased directly by the Agency from the Motorola Contract), subject to the exclusions, limitations, conditions and disclaimers stated in the Motorola Contract. In the event that ECC does not have the funds necessary to cover maintenance costs, ECC's obligation to pay for maintenance costs shall be terminated without financial penalty to ECC. ECC shall notify Agency in writing of its inability to provide continued appropriations to pay for maintenance costs. At such time, Agency and ECC will meet to discuss funding options to cover the maintenance costs. Agency agrees to take proper care of each of the Radios as recommended by the manufacturer and standard operating procedures. Agency will be responsible for coordinating repair scheduling and/or drop off with the maintenance contractor. Billable repairs caused by accident and/or misuse will be the responsibility of the Agency.

9. **Loss or Theft.** Agency agrees to notify ECC immediately (or as soon as reasonably possible) upon discovery of the loss or theft of any of the Radios. The ECC will suspend the missing Radio's electronic registration within the System, so that it cannot be used by unauthorized persons.

10. **Training.** Agency agrees to provide and maintain training to personnel in the proper and safe use of the Radios. Motorola will conduct training classes as described in the Motorola Contract, and Agency will be invited to participate in such training.

11. **Emergency Response/Mutual Aid.** ECC agrees and understands that the Agency is free to use the Radios for all of their operations, including those which may involve travel outside of the metropolitan area for special events and emergency/mutual aid response.

12. **Notices.** Any notice, request, complaint, demand or other communication required by this Agreement to be given to or filed with ECC or Agency, shall be in writing and shall be given or filed in the manner and at the addresses specified below.

ECC:

Director of Emergency Communications
St. Louis County Police Department
7900 Forsyth Blvd.
Clayton, Missouri 63105
Fax: _____

With a copy to:

County Counselor
St. Louis County Government Center
41 S. Central Ave.
Clayton, MO 63105
Fax: 314-615-3732

AGENCY:

Name/Title: _____

Address: _____

Fax: _____

With a copy to:

Name/Title: _____

Address: _____

Fax: _____

or at such different address as the parties may give by written notice mailed, faxed or delivered personally to the addresses of the other party listed above. Any mailed notices will be effective three days after deposit in the United States Mail, properly addressed with postage prepaid.

13. **Liability Protection.** Agency and ECC acknowledge that service disruptions will occur from time to time and agree to hold each other harmless for all such disruptions. ECC assumes no responsibility with respect to the use or storage of the Radios, and Agency and ECC assume no responsibility for any accidents or claims arising out of use of the Radios. Notwithstanding the foregoing, it is not the intent through this Agreement of any Party to in any way affect, waive, or modify the doctrines of sovereign immunity, official immunity or other similar protections that would otherwise be available to any Party to assert against third party claims that may arise or be brought.

14. **Term.** The initial term of this Agreement shall be from the date set forth above and through December 31, 2019 unless sooner terminated pursuant to Section 15 or Section 16. ECC and Agency agree to negotiate a successor agreement in good faith in accordance with their intent that Agency shall be able to continue to use the System at no cost to achieve the common goal of enhanced communications.

15. **Default and Termination for Cause.** Any material violation of this Agreement is a default. In the event of a default, each party shall give the other party written notice of the alleged default, and each party will be afforded a reasonable opportunity to cure the default or present their disagreement for resolution to a mediator in accordance with the dispute resolution process set forth in section 15A. Failure to cure a default or participate in the dispute resolution process will result in a termination of this Agreement, but no such termination shall take effect until 90 days after the governing body of Agency or ECC finds and determines, by resolution or ordinance, that the Agreement should be terminated for cause. If Agency or ECC finds and determines by resolution or ordinance that the default has been cured during such 90 day period, and that reasonable assurance has been provided against further default, then this Agreement shall remain in effect.

15A. **Dispute Resolution Process.** Prior to mediation, the parties will first attempt to settle their disputes by a meeting between representative(s) designated by the Emergency Commissions Commission and representatives designated by the Agency. If, after such meeting, the parties are unable to resolve a conflict involving an alleged default, then they shall present their disagreements to a mutually agreeable mediator for mediation. If the parties are unable to agree on a mediator within thirty (30) calendar days after one party requests mediation, then the parties agree to utilize a mediator chosen by United States Arbitration and Mediation (USA&M) as best to handle a contractual dispute among government entities. Each party shall bear its own costs for mediation and the parties shall share the cost of the mediator. The mediation process must be followed to its conclusion prior to any party seeking relief from any court, except in an emergency.

16. **Funding Out.** If the governing body of a party should not appropriate or otherwise make available funds sufficient to fulfill the party's obligations under this Agreement, such party may unilaterally terminate this Agreement, without financial penalty, upon ninety (90) days written notice to the other party.

17. **Return of Radios.** Upon expiration or termination due to Agency default, the ECC may require that all Radios that it provided to Agency that are less than six years old be returned to the ECC and that title to such Radios be transferred to ECC or to another entity designated by the ECC. In the event that Agency's services are assumed by another agency participating in the System, Agency may transfer its Radios to that new agency with advance notice to ECC.

18. **Amendments.** This Agreement may be amended only by written agreement of ECC and Agency.

19. **Venue.** In the event that any actions or proceedings are initiated with respect to this Agreement, the parties agree that the venue thereof shall be St. Louis County, Missouri, and that this Agreement shall be governed by the laws of the State of Missouri.

20. **Fairness.** Agency understands that it does not operate in an identical manner to each and every other agency that will be using the System and, therefore, agrees that it may be treated differently in some respects by ECC. On the other hand, ECC understands that Agency expects to be treated fairly relative to other agencies including St. Louis County agencies and, therefore, agrees to treat Agency in an equitable manner as compared to such other agencies, taking into account differences in demonstrated need and all other relevant factors.

Executed by the ECC the _____ day of _____, 2012.

Executed by the Agency the _____ day of _____, 2012.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK. SIGNATURE PAGES FOLLOW.

COUNTY OF ST. LOUIS

Chairman, Emergency Communications
Commission

Approved as to legal form:

County Counselor

Approved:

Risk and Insurance Manager

Approved:

Accounting Officer

AGENCY OF

By: _____
Title: _____

ATTEST:

Approved as to legal form:

Agency Attorney

STATE OF MISSOURI)
) SS.
COUNTY OF ST. LOUIS)

On this _____ day of _____, 201__, before me, a Notary Public in and for said state, personally appeared _____ [name], _____ [title] of _____ [agency], known to me to be the person who executed the foregoing agreement in behalf of said Agency and acknowledged to me that he or she executed the same for the purposes therein stated.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Public

My commission expires: