

Introduced by: Council Present

AN ORDINANCE OF THE CITY OF BERKELEY, MISSOURI, AUTHORIZING THE MAYOR TO ENTER INTO AND EXECUTE THE ATTACHED COOPERATION AGREEMENT WITH ST. LOUIS COUNTY EMERGENCY COMMUNICATIONS COMMISSION (ECC) FOR DISPATCH EQUIPMENT

Now, Therefore, Be it ordained by the City Council of the City of Berkeley, Missouri, as follows:

Section 1. The Mayor is hereby authorized to enter into and execute the attached cooperation agreement with St. Louis County Emergency Communications Commission (ECC) to install, access, and maintain the countywide emergency communication radio systems, which includes dispatch equipment for 5 years.

Section 2. The attached agreement is hereby incorporated herein and made a part of this ordinance, as if fully set out herein.

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

1st Reading this 18th day of November 2019

2nd Reading this _____ day of _____ 2019

3rd Reading, PASSED and APPROVED, this _____ day of _____ 2019

Theodore Hoskins, Mayor

ATTEST:

Deanna L. Jones, City Clerk

Approved As To Form:
Donnell Smith, City Attorney

Final Roll Call:

Mayor Hoskins	Aye ___	Nay ___	Absent ___	Abstain ___
Councilwoman Hoskins	Aye ___	Nay ___	Absent ___	Abstain ___
Councilwoman Mitchell	Aye ___	Nay ___	Absent ___	Abstain ___
Councilwoman Williams	Aye ___	Nay ___	Absent ___	Abstain ___
Councilwoman-at-Large Greene	Aye ___	Nay ___	Absent ___	Abstain ___
Councilman Hindeleh	Aye ___	Nay ___	Absent ___	Abstain ___
Councilwoman Anthony	Aye ___	Nay ___	Absent ___	Abstain ___

Saint Louis COUNTY

EMERGENCY COMMUNICATIONS COMMISSION

10/29/2019

SLATER Radio System User Agencies
REF: Radio System User Agreement Renewal- URGENT
Subscriber Radios

Dear Radio System User Agency,

Please review the attached User Agreement Renewal for **Subscriber Radios**, sign and return two (2) originals to me at the address below. Additionally, the agreement will require an ordinance from your jurisdiction authorizing the agreement, which needs to accompany the returned signed originals. Once received we will return an original back to you with County signatures. The ECC currently has the original user agreement your agency filed and it expires midnight December 31st, 2019.

The term of the new agreement is 5 years (End of 2024), at which point we will send out another renewal.

Since the agreement requires an ordinance be passed, please give this matter immediate attention.

We will be sending this notice out via multiple pathways, so you may receive it more than once, and possibly to different people within your organization or municipality. Please reference your current agreement for information on how it should route through your agency.

If you need anything further please let me know.

Sincerely,



Mike Clouse
Director
Emergency Communications Commission
1150 Hanna Rd.
Ballwin, MO 63021

314-615-7114 Office

**USER AGREEMENT FOR ST. LOUIS COUNTY AGENCIES
INTEROPERABLE RADIO SYSTEM**

THIS AGREEMENT, Made and entered into this _____ day of _____, _____, by and between ST. LOUIS COUNTY, MISSOURI, (“County”) on behalf of the St. Louis County Emergency Communications Commission, hereinafter referred to as the “ECC”; and _____ City of Berkeley _____, hereinafter to as “Agency”;

WITNESSETH:

WHEREAS, ECC developed a county-wide emergency communications radio system with Motorola Solutions, Inc. (“Motorola”) whereby Motorola continues to maintain the county-wide emergency communications radio system and associated commercial items, commercial computer software, radios and other equipment, subsystems and services (“the System”);

WHEREAS, ECC the is the sole owner and operator of a county-wide emergency communications radio system providing communication links that permit participating governmental entities to communicate within the geographical boundaries of St. Louis County and beyond;

WHEREAS, numerous St. Louis County Agencies, including Law Enforcement, Fire Departments, Local Governments and other St. Louis County organizations are current authorized Agencies of the System;

WHEREAS, it is desirable to have a unified countywide interoperable radio system to promote communication between all governmental entities and further the goal of protecting and providing public safety services to the people of St. Louis County;

WHEREAS, ECC intends 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, the Agency is a law enforcement, fire or local government agency who provides assistance in emergency situations to St. Louis County residents and visitors;

WHEREAS, the Agency therefore affects and furthers the goal of protecting the health, safety, and welfare of the people of St. Louis County;

WHEREAS, Agency is authorized to enter into this Agreement by Ordinance No. _____, and County is authorized to enter into this Agreement by Ordinance No. **26,293**;

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.).

Primary Agency – a hospital, law enforcement, fire service, or other public safety agency that has been granted permission to use the System.

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

Encryption – the conversion of data into a form called cipher text that cannot be understood by unauthorized entities.

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, 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. Agency shall comply with any and all mandates issued by the FCC and authorized regulatory agencies. If, subsequent to this Agreement, technical or other changes are mandated by the FCC, Agency must timely comply with the mandate(s). The ECC will not be responsible for any costs, damages or losses incurred due to the regulatory mandate(s).
- c. Agency shall comply within one (1) year of receipt of notice from the ECC with any voluntary upgrades or changes to the System by the ECC, including change in vendor. The ECC shall have the sole discretion to upgrade or change the System. The ECC will not be responsible for any expenditure, losses, or other claims caused by or attributed to such voluntary upgrades or changes to the System.
- d. Agency is prohibited from selling, assigning or transferring any right of use to the System, in whole or in part, to any other person or entity.

3. **Title and Ownership of Subscriber Radios.** ECC transferred ownership of Subscriber Radios specified in the original Agreement in 2013 to the 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 shall not transfer, sell, give or otherwise dispose of any of the Radios without the consent of the ECC. Agency understands and agrees that it will be primarily responsible for funding and procuring replacement and additional radios in the event of growth of its agency. Agency agrees it generally must fund any cost differences for additional radio features or substitutions that it requests.

4. **Programming, Data Conversion, Fleetmapping & Interoperability Template Design.** The ECC will be responsible for programming Subscriber 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. **Infrastructure.**

- a. 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. The ECC shall comply with all FCC and regulatory laws, rules and regulations relating to use of the System. ECC will provide Agency with one (1) year notice of any voluntary upgrades or early compliance with mandates to the System affecting Agency.
- b. Physical Security – The ECC will ensure that reasonable physical security measures are taken to protect the equipment sites of the Infrastructure.
- c. 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.
- d. Radio Licenses – The ECC is 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.

- e. Backup Network Testing – The ECC will schedule, coordinate, and conduct tests of backup systems, including countywide, all-agency FailSoft drills pursuant to ECC best practice.
- f. 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.
- g. 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 funding for Subscriber Radio Warranty and Maintenance ends on December 31, 2021. After December 31, 2021, the Agency is responsible for obtaining warranty coverage for Subscriber Radios, mobile and portable, through Motorola or a Motorola factory authorized repair center. The Agency shall ensure that all maintenance performed on Agency's Subscriber Radios is performed by a certified technician employed by ECC authorized vendor or Motorola depot repair center. 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.

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. **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.

11. **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.

County:

Director of Emergency Communications Commission
 St. Louis County Police Department
 1150 Hanna Road
 St. Louis, Missouri 63021
 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: Art Jackson, Major / Interim Police Chief

Address: 8340 Frost Avenue, Berkeley MO 63134

Fax: 314-264-2198

With a copy to:

Name/Title: Debra Irvin, City Manager

Address: 8425 Airport Road, Berkeley MO 63134

Fax: 314-264-2074

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.

12. **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.

13. **Term.** The initial term of this Agreement shall be from the date set forth above and through December 31, 2024 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.

14. **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 14A. 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.

14A. **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.

15. **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.

16. **Transfer of Radio Ownership.** 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.

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

18. **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.

19. **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 County the _____ day of _____, 2019.

Executed by the Agency the _____ day of _____, 2019.

ST. LOUIS COUNTY

County Executive

Attested:

Administrative Director

Chairman, Emergency Communications Commission

Approved as to legal form:

County Counselor

Approved:

Risk and Insurance Manager

Approved:

Accounting Officer

AGENCY OF City of Berkeley

By: _____

Title: _____

ATTEST:

Approved as to legal form:

Agency Attorney

STATE OF MISSOURI)

) SS.

COUNTY OF ST. LOUIS)

On this _____ day of _____, 2019, 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 is authorized to executed this Agreement 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: