

PARTICIPATION AGREEMENT BETWEEN THE BOARD OF BUTLER  
COUNTY COMMISSIONERS AND @@ TO UTILIZE THE BUTLER  
COUNTY 800 MEGAHERTZ PUBLIC SAFETY COMMUNICATION  
SYSTEM

WITNESSETH

**WHEREAS**, R.C. 5502.261 provides:

*“A board of county commissioners that has entered into an agreement to establish a countywide emergency management agency may appropriate money from its general fund to support the functions and operations of the agency, including the development, acquisition, operation, and maintenance of a countywide public safety communication system and any communication devices, radios, and other equipment necessary for the system's operation and use. Money appropriated under this section may be expended to purchase and maintain the assets or equipment of the agency, including equipment used by the personnel of other political subdivisions that have entered into the agreement with the board establishing the agency. Money also may be appropriated under this section directly to a political subdivision that has entered into the agreement with the board establishing the agency, to enable the political subdivision to purchase communication devices, radios, and other equipment necessary for the countywide public safety communication system's operation and use.”*

**WHEREAS**, the Board of Butler County Commissioners and all Butler County political subdivisions who are being provided radio equipment for the countywide 800 megahertz radio system have entered into an Agreement with the Board establishing the countywide Emergency Management Agency; and

**WHEREAS**, an event that impacts public health, safety, and welfare of residents and requires a public safety response may sometimes: (1) require a response which exceeds the capacity of a local government or the county government to respond; (2) not be confined to a single local government jurisdiction; and (3) begin in one local jurisdiction and move to another within or outside the County- such as in pursuit of a fleeing suspect;

**WHEREAS**, any event requiring a public safety response requires communication and coordination between and among the responders in order to maximize the effectiveness of that response and thereby advance public health, safety and welfare ;

**WHEREAS**, mutual aid agreements exist throughout Butler County in order to allow one local jurisdiction to provide another with public safety assistance but experience has shown that the available communication systems do not interoperate to such an extent as to achieve maximum coordination between and among the various local jurisdiction responders; and

**WHEREAS**, because it is foreseeable that a sudden and unexpected event will occur which will exceed the capability of a single local jurisdiction to respond and thus require it to

request mutual aid from the county or other local jurisdictions, the county and all its local jurisdictions have decided to improve their communication capability between and among each other now for the benefit of the citizens of Butler County; and

**WHEREAS**, providing a single, county-wide interactive communication system , communication equipment, and training in the use of that equipment for the county and those units of local government in the county willing to agree to engage in multi-jurisdictional mutual aid and coordination is necessary, reasonable and prudent;

**NOW THEREFORE FOR AND IN CONSIDERATION of the mutual promises and considerations set forth herein, the Commissioners and the joining political subdivision do hereby bargain, promise and agree as follows:**

### **PREAMBLE**

At present, public safety and public service entities in Butler County operate on several different radio frequencies and there are areas where no radio reception or transmission is possible. These conditions pose a communication problem and endanger public safety and the safety of public safety service providers when radio communication is lost or when departments on different frequencies respond to an emergency and cannot readily coordinate their efforts.

In order to remedy these shortcomings, the Board of Butler County Commissioners, the Butler County Sheriff, and all Butler County political subdivisions which use radio communication to provide public safety services have joined together to design and build a new countywide 800 megahertz radio communication system to be constructed by the Board of County Commissioners and to be operated by the Butler County Sheriff in cooperation with the Butler County political subdivisions who use that system.

### **AGREEMENT**

This Participation Agreement (hereafter “**Agreement**”) is entered into this \_\_ day of April, 2009, by and between the Board of Butler County Commissioners (hereafter called the “**Commissioners**”) and @@, a political subdivision located within Butler County, (hereafter called “**the joining political subdivision**” or “Subscriber”) in order to establish the terms and conditions on which the joining political subdivision shall:

(a) become entitled along with Butler County and all other Butler County political subdivisions who use the Butler County 800 Megahertz Countywide Public Safety Radio Communication System (hereafter collectively called “**all other participating political subdivisions**”) to use the Butler County 800 Megahertz Countywide Public Safety Radio Communication System (hereafter called the “**System**”) to communicate with Butler County and all other participating political subdivisions; and

(b) be provided with an inventory of communication equipment (hereafter called “**Subscriber Equipment**”) including such consoles, consolettes, control stations, base stations, receivers, transmitters, mobile or portable radios, or any other radio frequency interface, which has a unique System identification number, specifically described or identified in Exhibit A attached to and made a part of this Agreement and signed by a Participant, which is compatible with the System and which Butler County has acquired from Motorola through the Motorola Contract; and,

(c) utilize the System, System Equipment and Subscriber Equipment for:

(i) “Local Purposes” (hereafter “Local Purposes”) which means use of the System and Subscriber Equipment for communication purposes only by, among, and between the users of an individual joining political subdivision; and

(ii) Intra-System Purposes (hereafter “IS Purposes”) which means use of the System and Subscriber Equipment for communication purposes by, among, and between two or more joining political subdivisions who use the System and Subscriber Equipment within Butler County according to mutually-established protocols ; and

(iii) Extra-System Purposes (hereafter “ET Purposes”) which means use of the System for communication purposes by and between one or more joining political subdivisions within Butler County and one or more communication networks outside Butler County including a network which is not a part of the System.

(d) lease, own, maintain, insure, repair, sell, trade, replace, upgrade, improve, remove, and return Subscriber Equipment; and

(e) add or remove features or functionality to the System and Subscriber Equipment;

#### **Article I: Construction, Maintenance, and Operation of the System by the County**

1. The System shall include and consist of, but is not necessarily limited to, the radio communication network which makes communication using the Subscriber Equipment possible including: (a) the various towers, antennas, microwave dishes and the equipment necessary to send, receive, monitor, control, and communicate with the remainder of the System including the emergency power generators and their fuel; (b) the Master Site and the equipment necessary for it to be able to send, receive, monitor, control, and communicate with the remainder of the System; and (c) the 800 megahertz radio band frequencies that are used by the System regardless of which political subdivision holds the actual FCC license, (which shall hereafter collectively be called the “Network Equipment.”).

2. The County shall cause the System to be engineered, designed, constructed and installed in accordance with: (i) the terms and conditions of the Motorola Contract, (ii) applicable FCC and FAA Regulations, and (iii) and the laws and regulations of other units of state and federal government to the extent applicable.
3. The System will provide mobile service (as such term is defined in FCC Regulations) coverage, including coverage through the use of hand carried transmitters as provided in the Motorola Contract. The System and the Subscriber Equipment provided shall meet the following criteria:
  - (a) Be fully APCO Project 25 compliant, fully compliant with the System, and capable of transmitting and processing signals to, from and over the System;
  - (b) Provide instantaneous Interoperability with all Radio Equipment and individual independent/subsystems of the Parties and Local Entities at the network level, radio level and dispatch level;
  - (c) The network architecture of the System is scalable and expandable to meet future needs and system loading;
  - (d) Employs the technology of Trunked Radio Systems; and
  - (e) Enable voice communications but not data transfer.
4. The County will cause the System to be completed and fully operational by April 30, 2009 (the "Completion Date").
5. With respect to the initial completion and placing of the System in full operation, and except as otherwise agreed in writing, the County shall be responsible for paying any and all cost and expenses incident to or necessary for:
  - (a) engineering, designing, constructing, installing and operating the System as defined in Article II, Section 1 of this Agreement and the Master Site.
  - (b) constructing, installing and operating the fiber optic connection between the public safety answering points and the System using the county's fiber optic backbone.
  - (c) providing each joining political subdivision its initial allocation of Subscriber Equipment.
  - (d) enabling each joining political subdivision's Subscriber Equipment to be capable of communicating over and using the System.
6. After the System is constructed and placed in operation and for so long as it shall remain in operation, except as otherwise expressly provided in this Agreement, no part of the cost of operating or maintaining the System or the Network Equipment (as initially provided and constructed by Motorola) shall be passed through, directly or indirectly, to any joining political subdivision, but such costs shall be paid by the Commissioners.

## **Article II: Agreement to Participate in the System**

1. In consideration for Butler County building and making communication on the System possible as well as providing the joining political subdivision with Subscriber Equipment including Talk Group templates and improved communication features and functionality, the joining political subdivision (as defined above) agrees to participate in and use of the System in accordance with the terms of this Agreement, both as this Agreement now provides and as it may be amended and supplemented by mutual agreement from time to time.
  
2. Each joining political subdivision's participation in the use of the System shall be for an indefinite term. Participation in and use of the System is voluntary. Such participation shall continue indefinitely at the mutual will of the Commissioners and the joining political subdivision so long as the System is operational. This Agreement may be terminated, with or without cause, at the will of the Commissioners or the joining political subdivision. However, if a joining political subdivision or its officials, officers, agents, employees or contractors commit, permit, allow or tolerate a material and continuing violation of the terms of this Agreement, the rules or bylaws adopted for the System, or the System's FCC licenses, and the violation has an adverse impact on other joining political subdivision's use and enjoyment of the System, the violating joining political subdivision's right to use the System and its System Equipment, or the particular individual user guilty of the violation may be involuntary terminated, limited, removed, suspended, altered, or materially curtailed until the violation is cured. Upon the occurrence of the initial violation, the joining political subdivision and any individual user(s) believed to be responsible for the infraction will be informed of the infraction in writing by the Sheriff and instructed to cease and desist their misconduct. Thereafter, should that violation reoccur, the Sheriff shall have the right, dependent upon the nature, extent, frequency and severity of the violation, to take action, reasonable under the circumstances, to involuntarily terminate, limit, remove, suspend, alter, or materially curtail use of a particular user's Subscriber Equipment or the System to prevent repetition of the violation.
  
3. This Agreement may be terminated, in whole or in part, and the Network Equipment may cease being operated, in whole or in part, irrespective of the desire or willingness of one or more joining political subdivisions to continue it if, in the opinion of the Commissioners, the Network Equipment is obsolete; if continued operation of the System is no longer cost-effective; if the Network Equipment becomes substantially non-operational, incapable of operation, or irreparable due to casualty, deterioration, signal loss, interference, or degradation, or age; if the System's maintenance or repair is no longer possible at a reasonable cost; or if a decision is made by the Commissioners to abandon, mothball, or cease use of the Network Equipment, for a temporary or permanent period. Realizing the importance of the System to each joining political subdivision, the

parties agree that abandonment of all or part of the Network Equipment will not lightly be considered or implemented. Therefore, should the Commissioners tentatively conclude this Agreement should be terminated because the Network Equipment can or should no longer be operated, they will provide all participating political subdivisions with at least thirty-six (36) months written notice of their intention to terminate this Agreement and cease operating the Network Equipment in the future. The Commissioners agree not to terminate operation of the Network Equipment unless and until all participating political subdivisions are first given at least one hundred and eighty (180) days written notice by mail from the Commissioners of the possibility of such a termination decision. Upon sending such a written notice, the Commissioners agree to conduct a public hearing in order to hear and consider any and all information and recommendations of the participating political subdivisions and their representatives both in favor of such a decision, in opposition to such a decision, and also with respect to the establishment of a new or alternate system of communication to replace the Network Equipment, which may or may not involve all or part of the existing Network Equipment.

4. Unless otherwise agreed in writing, by signing this Participation Agreement, neither the Commissioners, nor any joining political subdivision's legislative authority, nor all participating political subdivisions collectively, shall be deemed to have committed themselves to make a temporary or permanent, revocable or irrevocable, or irreversible commitment of such joining political subdivision's finances, equipment, manpower or resources to the System or to each other.
5. Unless otherwise agreed in writing, by signing this Participation Agreement neither the Commissioners, nor any joining political subdivision, nor all participating political subdivisions collectively, shall be deemed to have agreed to make a specific annual minimum contribution of time, materials, manpower, or an appropriation of public funds for the purchase, construction, reconstruction, use, operation, expansion, contraction, repair, maintenance, rehabilitation, or improvement of the System or Subscriber Equipment for any particular term.
6. In accordance with and for so long as Section 307.63 of the Revised Code so provides, the Commissioners shall be responsible for administration and maintenance of the Network Equipment. Should Section 307.63 of the Revised Code be amended upon either point, this Agreement shall, likewise, be amended by operation of law to reflect the language of the statutory amendment. Unless otherwise agreed in writing, and in accordance with Revised Code 307.01, the Commissioners shall own and hold all legal right and title to the Network Equipment. Each joining political subdivision shall have the right to use its Subscriber Equipment on the Network Equipment in accordance with this agreement, as it may be amended and supplemented from time to time. If so agreed in writing, a joining political subdivision may, and in a manner allowed by law, acquire title to some or all of its Subscriber Equipment from the Commissioners. Regardless of the holder of title to its Subscriber Equipment and except to the extent covered by the three (3) year Motorola Maintenance Agreement which comes with the System, upon

being delivered possession of its Subscriber Equipment, each joining political subdivision shall immediately become financially and otherwise responsible in all respects for the future maintenance, repair and replacement of that Equipment without future financial commitment or obligation on the part of the Commissioners. Moreover, upon receiving its Subscriber Equipment, each joining political subdivision shall immediately arrange through its own insurance provider to insure its Subscriber Equipment in order to provide a replacement for it in case it should be destroyed or damaged due to accident, casualty, destruction or damage in the line of duty, or any other extraordinary cause excluding ordinary wear and tear. The Commissioners shall be under no obligation to surrender possession of any Subscriber Equipment to any joining political subdivision absent the Commissioners being satisfied that joining political subdivision has assumed financial responsibility for its Subscriber Equipment's insurance, maintenance, repair, and replacement.

7. In accordance with and for so long as Section 307.63 of the Revised Code so provides, and unless and until the Butler County Sheriff (hereafter "Sheriff") should elect otherwise, the Sheriff shall operate the Network Equipment. Should Section 307.63 of the Revised Code be amended upon this point, this Agreement shall, likewise, by operation of law be amended to reflect the language of the statutory amendment.

### **Article III. Subscriber Equipment and Joining Political Subdivision Equipment**

1. Upon executing this Agreement and agreeing to its terms, and once the System becomes operational, each joining political subdivision shall be provided its initial allocation of Subscriber Equipment as identified in an Exhibit A attached hereto and each of Subscriber's mobile radios, as identified in Exhibit A, will be installed in the appropriate vehicle, all at County expense. Upon delivery, each joining political subdivision's Subscriber Equipment shall be ready for initial Local Purpose and IS Purpose use by Subscriber employing templates made ready for its use by Motorola.
2. In accordance with its obligation under its Countywide Emergency Management Agreement, each joining political subdivision promises that, if called upon for assistance by the County or another joining political subdivision, it will provide such public safety manpower, equipment, or other form of mutual aid resources as it is able, when it is able, and for so long as it is able.
3. As additional consideration for its receipt of the Subscriber Equipment set forth in Exhibit A, each joining political subdivision promises and agrees: (a) to use the Network Equipment and Subscriber Equipment for Local Purpose, IS Purposes and potential ET Purposes according to the terms of this Agreement; (b) to use any Subscriber Equipment, regardless of whether it was acquired by the Commissioners or such joining political subdivision in accordance with this Agreement as well as any rules for System use adopted under the authority of this Agreement; and (c) to surrender such joining political

subdivision's owned (not leased) surplus radio communication equipment as is: (a) no longer needed, or (b) is currently incapable of operation on the System's Network Equipment. It being the intention of Butler County to reprogram and reuse compatible radios as spares, when a joining political subdivision has older but identical Motorola equipment to the Subscriber Equipment being provided by Butler County, it will exchange that identical equipment for the new Subscriber Equipment on a one for one basis.

4. The initial allocation of Subscriber Equipment provided to Subscriber as set forth in Exhibit A may, but need not necessarily in all cases, include communication consoles and associated equipment for such console's use. Communication consoles, regardless of their financial source of origin, shall always and under all circumstances be considered Subscriber Equipment, not Network Equipment.
5. Unless otherwise agreed in writing, the initial inventory of Subscriber Equipment provided to Subscriber as described in Exhibit A is and shall remain the property of the Commissioners. Unless otherwise agreed in writing, the initial inventory of Subscriber Equipment shall be made available to the joining political subdivision for so long as it: (a) uses the System in accordance with the terms of this Agreement, (b) is compatible with and capable of sending and receiving signals from the Network Equipment; and (c) the joining political subdivision does not withdraw from participation in the System. Although the Commissioners have no duty at any time during the remaining life of this Agreement to provide any joining political subdivision with any new, used, upgraded, refurbished, replacement, or additional Subscriber Equipment beyond that set forth in Exhibit A, unless otherwise agreed in writing, any additional or replacement Subscriber Equipment which is provided to Subscriber by the Commissioners at county expense in addition to or in replacement of the initial inventory of Subscriber Equipment shall also be considered Subscriber Equipment belonging to the Commissioners.
6. In addition to the initial inventory of Subscriber Equipment provided by the Commissioners as described in Exhibit A and provided it is compatible with the System, each joining political subdivision shall retain the right, at its own expense, throughout the term of this Agreement to acquire and use what would otherwise be termed System Equipment (if provided by the County) on the System. This equipment shall be known as a "Joining Political Subdivision's Equipment." Unless otherwise agreed in writing, a Joining Political Subdivision's Equipment shall remain the exclusive property of such joining political subdivision and thus, for this purpose, not be considered Subscriber Equipment. Accordingly, the cost of making a Joining Political Subdivision's Equipment compatible with and ready for use on the System shall be borne by the joining political subdivision. Likewise, the County shall not be responsible for the repair, maintenance, or refurbishment of a Joining Political Subdivision's Equipment. Finally, a joining political subdivision shall be solely responsible at its own expense for securing and maintaining in effect during the term of this Agreement insurance against the destruction, casualty, loss, theft and all forms of damage to or destruction of such Joining Political Subdivision's



Equipment.

7. A Joining Political Subdivision's Equipment shall not be used or operated on the System unless and until it has first been approved for use on the Network Equipment by the Sheriff. The test for approval for use on the System shall be as follows: A Joining Political Subdivision's Equipment may be used on the System if it is: (a) compatible with the System, (b) properly programmed for use on the System, and (c) does not create any interference with the operation of the System. As Operator of the System, the Sheriff alone is charged with determining, in the exercise of sound and reasonable discretion, whether a piece of a Joining Political Subdivision's Equipment has been properly programmed and is capable of functioning on the System without interference. However, Subscriber Equipment purchased by the Commissioners shall automatically be deemed approved and suitable for use on the System. Since the total number radios in use on the System may cause delay in securing a communication channel, the total number of radios in use on the System and the number, frequency and length of delays then being encountered in receiving a clear channel may be considered by the Sheriff in deciding whether a Joining Political Subdivision's Equipment should be permitted to be used on the System. However, once the Sheriff determines any Joining Political Subdivision's Equipment will not be allowed on the System due to current communication channel delays, neither the County nor any other joining political subdivision shall be permitted to add new equipment to the System until the channel delay issue is resolved, at which time each Joining Political Subdivision's Equipment in the quantity sought in the denied application to be used on the System shall be allowed access to the System in order of each Joining Political Subdivision's application to be allowed to use its equipment on the System until the System once more experiences unacceptable channel overcrowding.
  
8. Over time, and once the initial manufacturer's warranty has expired, it is anticipated that the initial Subscriber Equipment set forth in Exhibit A will require maintenance, repair, or refurbishment at the joining political subdivision's expense. It is anticipated that such activity may cause the introduction of new components such that it is no longer possible to separate the original Subscriber Equipment from components which have subsequently been installed. If Subscriber Equipment has been subjected to repair, replacement, or refurbishment by a joining political subdivision at such subdivision's exclusive expense and that expense has not been reimbursed by the County such that the original Subscriber Equipment is no longer separable from the repaired or refurbished Subscriber Equipment without damage to the equipment or loss of its functionality (not including a loss or replacement of battery power), then such Subscriber Equipment shall cease to be Subscriber Equipment and shall instead be considered to be the separate property of the joining political subdivision. This process shall be termed ("Transmutation") At such point as the County recognizes a piece of Subscriber Equipment has undergone transmutation and gives notice of that status to a joining political subdivision, the Subscriber Equipment shall no longer be deemed to be the property of the County, but it shall instead be deemed the property of the joining political subdivision. The County shall promptly provide each joining political subdivision with written notice of any

transmutation of its Subscriber Equipment.

9. A Joining Political Subdivision's Equipment is also subject to Transmutation if it has been repaired, replaced, or rehabilitated at County expense and reached a condition similar to that set forth above. Using the same standard as the County applies to transmutation of Subscriber Equipment to a joining political subdivision, a Joining Political Subdivision's Equipment repaired at County expense, shall be deemed to have undergone Transmutation and shall thereafter be considered Subscriber Equipment and be returned to the Commissioners upon cessation of participation.
10. Network Equipment is not subject to transmutation.
11. Throughout this Agreement where a provision references Subscriber Equipment and concerns a matter of System operation or use of the System for communication, provisions of this Agreement referencing Subscriber Equipment shall be deemed to be equally applicable to a Joining Political Subdivision's Equipment in order to prevent different rules from being implied to exist for the use of Subscriber Equipment and a Joining Political Subdivision's Equipment in the use of the System's communication capability.

#### **Article IV. Use of the System For Communication**

1. Use of the Network Equipment, Subscriber Equipment, and a Joining Political Subdivision's Equipment shall occur in accordance with the terms of this Agreement, including any rules and protocols developed under and in accordance with the terms of this Agreement for Local Purposes, IS Purposes or ET Purposes.
2. The Sheriff has elected to exercise the authority granted to county sheriffs in Section 307.63 of the Ohio Revised Code to operate the System. Therefore, the Sheriff shall be responsible for the hiring and supervision of employees necessary to operate the System consistent with this Agreement and the rules and protocols established under authority of this Agreement. As used in this Participation Agreement, operation of the system means use of its Network Equipment capabilities as a whole, interactive and unified system of communication. However, this paragraph should not be construed to grant the Sheriff any power or authority to use the System's operation or Network Equipment to influence local methods of conducting police, fire or EMS Local Purpose public safety operations.
3. Unless otherwise agreed in writing, any joining political subdivision which is operating a public safety answering point ("PSAP") or a dispatch center at the initiation of the System's operation shall be entitled to continue to do so unless it decides to discontinue its PSAP or dispatch center. Unless otherwise agreed in writing by the Commissioners, however, no new PSAP or dispatch center will be added to the System or provided Subscriber Equipment in order to do so at County expense.

4. A Butler County Public Safety Communications System Advisory Board (hereafter "Advisory Board"), was created by the Commissioners in Resolutions 05-05-981 and its composition has been supplemented by Resolutions 7-08-1388 and 07-08-1549. These Resolutions and any attachments to them are attached to this Agreement and made a part of it as Exhibit D. As an exercise of their authority under R.C. 307.63 to establish "policies or rules for the administration, operation and maintenance of the system," the Commissioners shall determine the composition of the Advisory Board by resolution, and they may alter the composition of the Advisory Board from time to time as they deem necessary. Future amendments to these resolutions on the composition of the Advisory Board shall be treated as a part of this Agreement as if they were fully rewritten here.
  
5. The Advisory Board shall:
  - (a) make recommendations to the Sheriff concerning the operation of the System, the Network Equipment, and Subscriber Equipment for Local Purposes, IS Purposes and potential ET Purposes;
  - (b) act as a liaison between the Sheriff and all participating political subdivisions which use the Network Equipment; and
  - (c) adopt rules for use of the System for IS Purposes and potential ET Purposes. All Network Equipment System Management functions shall be performed by the Sheriff consistent with recommendations of the Advisory Board and this Agreement. System Management functions include the following responsibilities:
    - (a) Assignment of Radios' use priorities;
    - (b) Management of Talkgroups to assure appropriate use of the System;
    - (c) Enforcement of System Rules, Procedures and Protocols to be established pursuant to this Agreement;
    - (d) Generate, from time to time as the Sheriff deems necessary, and use statistical data and reports concerning the System Parties' or Local Entities' Talkgroups, call durations, call types, busy signals, and other data analyses and reports; and
    - (e) Maintain Grade of Service (roaming) and the Motorola Guaranteed Service Level;
    - (f) All other services and functions provided elsewhere in this Agreement.
    - (g) Maintaining System minimum standards which meet or exceed APCO 25 standards;

As of the execution of this Participation Agreement, the Advisory Board has not yet adopted any rules for use of the System for IS Purposes and potential ET Purposes. If and when such rules are adopted by the Advisory Board, those rules shall be distributed to all joining political subdivisions and be considered incorporated into and made a part of this Agreement as if they were fully rewritten here and be identified as Exhibit E.

6. The Advisory Board shall determine the number of talk groups and identify the specific talk group(s) that each joining political subdivision's police, fire, and emergency medical services and any other authorized Subscriber Equipment users shall be awarded exclusively for its own Local Purposes, and all participating political subdivisions agree

to abide by that determination.

7. The Advisory Board shall identify and recommend to the Sheriff the specific talk groups available to all participating political subdivisions for police, fire, and emergency medical service and any other Subscriber Equipment users for IS Purposes and potential ET Purposes, and all participating political subdivisions agree to abide by the Sheriff's determination for System IS Purposes and potential ET Purposes.
8. The Advisory Board shall develop and recommend to the Sheriff for implementation the standards and criteria necessary to be granted access to a specific IS Purpose or ET Purpose talk group. It shall also develop and recommend to the Sheriff the standards and criteria necessary to terminate such use. All participating political subdivisions agree to abide by such standards and criteria in their use of the System and to educate their users of Subscriber Equipment and Joining Political Subdivision Equipment about them, and to enforce their user's adherence to the standards and criteria using disciplinary action if necessary.
9. The Advisory Board shall develop and recommend to the Sheriff for implementation the procedure by which and the person(s) with authority to permit use of an IS Purpose or ET Purpose Talk group for IS Purposes or ET Purposes. It shall also develop and recommend to the Sheriff the standards and criteria necessary to terminate such use. All participating political subdivisions agree to abide by such procedures, standards and criteria in their use of the System and to educate their users of Subscriber Equipment about such procedures, and to enforce their user's adherence to the standards and criteria using disciplinary action if necessary.
10. For purposes of simplifying System use, decreasing the use of unique and unfamiliar local jargon and codes, and in the interest of increasing user understanding of IS Purpose communications and ET Purpose communications by all participating political subdivisions, the Advisory Board may create System-wide police, fire and emergency medical services protocols, terminology, codes, and identifiers. All participating political subdivisions agree to abide by such determination protocols, terminology, codes, and identifiers in their use of the System for IS Purpose communications and ET Purpose communications and to educate their users of Subscriber Equipment about them. Repeated and unjustified violations of System rules, guidelines, procedures, protocols or violation of this Agreement or FCC laws or regulations may result in a joining political subdivision's curtailment, suspension or termination from System use or feature access. In order to protect the integrity, security, safety, functionality and efficient operation of the System for all participating political subdivisions, the County and all participating political subdivisions agree to take corrective action, appropriate and reasonable in light of the severity of the violation and its impact on the System, against any of its employees who violate System standards, rules, protocols, terminology, codes, or identifiers.
11. Each joining political subdivision retains the right to adopt and utilize its own protocols,

terminology, codes, and identifiers for its Local Purpose use of its Subscriber Equipment and Joining Political Subdivision Equipment on the System provided that such protocols, terminology, codes, and identifiers do not conflict with the rules for the use of the System and Subscriber Equipment for IS Purposes and potential ET Purposes. Protocols, terminology, codes, and identifiers for Local Purpose use shall be developed and designed to facilitate the efficient use and operation of the Network Equipment and the Subscriber Equipment, including subsequently acquired radios and related communications equipment. Repeated and unjustified violations of System rules, guidelines, procedures, protocols or violation of this Agreement or FCC laws or regulations may result in a joining political subdivisions curtailment, suspension or termination from System use or feature access. In order to protect the integrity, security, safety, functionality and efficient operation of the System for all participating political subdivisions, the County and all participating political subdivisions agree to take corrective action against any of its employees who violate System standards, rules, protocols, terminology, codes, or identifiers.

12. Rules, protocols, terminology, codes, and identifiers adopted by the Advisory Board or the Sheriff for the use of the System , Subscriber Equipment and Joining Political Subdivision Equipment for IS Purposes and potential ET Purposes shall not interfere nor conflict with the rules, protocols, terminology, codes, and identifiers for Local Purpose use of the Network Equipment and Subscriber Equipment any more than is necessary for the safe, orderly, understandable, and reliable use of the Network Equipment, Subscriber Equipment and Joining Political Subdivision's Equipment. To the extent feasible, common terminology shall be retained. Protocols, terminology, codes, and identifiers for IS Purposes and potential ET Purposes shall be developed and designed to facilitate the efficient use and operation of the Network Equipment and the Subscriber Equipment and Joining Political Subdivision's Equipment. Repeated and unjustified violations of System rules, guidelines, procedures, protocols or violation of this Agreement or FCC laws or regulations may result in a joining political subdivisions curtailment, suspension or termination from System use or feature access. In order to protect the integrity, security, safety, and efficient operation of the System for all participating political subdivisions, the County and each joining political subdivision agree to take corrective action against any of its employees who violate System standards, rules, protocols, terminology, codes, or identifiers.
13. The making and amendment of substantive rules, protocols, terminology, codes, and identifiers adopted by the Advisory Board for the use of the System and Subscriber Equipment for IS Purposes and potential ET Purposes are not terms and conditions of employment and will not be made subject to public employee collective bargaining between a joining political subdivision and its employees.
14. All use of the System , Subscriber Equipment, and Joining Political Subdivision's Equipment by all participating political subdivisions shall at all times comply with FCC regulations, the System's licenses, and other controlling state and federal laws and

regulations. Except as otherwise agreed in writing by the Commissioners, except for radio frequencies which do not belong to the Commissioners, and except for a Joining Political Subdivision's Equipment (for which the Commissioners do not assume responsibility), the Commissioners shall be responsible for taking action, from time to time, in order to meet the changing requirements of FCC and FAA Regulations impacting the System.

15. Access to the System for Subscriber Equipment for non-police, fire and emergency medical services (hereafter "non-public safety") purposes will be granted and continued on terms and conditions established by the Sheriff upon the recommendation of the Advisory Board which must be consistent with Article IX of this Agreement. Except in the case of an actual and existing emergency, such non-public safety use shall remain subordinate to a public safety use. However, in times of actual and existing community-wide emergency or disaster, non -public safety use of the system in the area of the community-wide emergency or disaster to promote public, health and safety may be temporarily altered to provide non-public safety in the area of the emergency or disaster with a higher priority access to the System in order to meet the needs of such an emergency. Likewise, when the System encounters heavy channel usage, the Sheriff shall notify all users of the System of heavy radio channel volume or community-wide emergency within the county, and request all joining political subdivisions to reduce radio communication usage as much as possible to resolve the overload.
16. The System shall operate on a 24/7/365 basis. The members of the Sheriff's staff responsible for the System shall provide the joining political subdivisions with emergency or planned activation or special event Talkgroups. Additionally, members of the Sheriff's staff responsible for the System shall, upon request, provide Radio checks for unresponsive Radios, inhibit lost or stolen Radios, and provide communications troubleshooting.
17. Anyone who detects possible Network Equipment or Subscriber Equipment malfunction or radio communication coverage loss shall contact the members of the Sheriff's staff responsible for the Network Equipment for an evaluation of the problem. The Sheriff's Staff will investigate and take corrective action immediately to restore the System's level of service to that which existed before the malfunction or coverage loss was discovered and to alleviate any coverage loss or network infrastructure malfunction discovered, and shall promptly alert all participating political subdivisions of any System or Network Equipment problem discovered and the corrective action taken, or needed to be taken, to overcome the problem. System or Network Equipment problems which require temporary or permanent alteration or reduction of radio coverage or System capabilities shall, except in the event of an emergency declared by the Sheriff, not be implemented without at least twenty-four hours notice to all participating political subdivisions.
18. If the Sheriff or any joining political subdivision detects its own or any other joining political subdivision's Subscriber Equipment or Joining Political Subdivision's

Equipment is malfunctioning or causing interference, the detecting party shall notify the Sheriff's radio staff, who shall notify the joining political subdivision using the problematic Subscriber Equipment or Joining Political Subdivision Equipment in writing of the malfunction, identify the malfunction if possible, and instruct that user to remedy the malfunction. Each joining political subdivision agrees that, upon being notified by the Sheriff of its use of malfunctioning or interfering Subscriber Equipment, it will immediately remove the equipment from use and cause such equipment to be repaired so as to eliminate any interference with or degradation of radio communications over the System or any part thereof. If the joining political subdivision fails or refuses within a reasonable period of time to cause the malfunctioning Subscriber Equipment or Joining Political Subdivision Equipment to be removed from service and repaired so as to eliminate any interference with or degradation of radio communications over the System or any part thereof, then the Sheriff shall have the right and duty to disable or inhibit the malfunctioning Subscriber Equipment from the System.

19. When Motorola deems the System completed and operational, the Commissioners will cause Motorola, pursuant to the terms of the Motorola Contract, to place the System and Subscriber Equipment, including the Master Site, through a rigorous quality assurance process to make sure all components are installed and configured properly and operating up to the representations and specifications set forth in the Motorola Contract and as represented and/or warranted by Motorola. After the System is accepted by the County and is working as engineered and designed, the Sheriff and Commissioners shall undertake their respective responsibilities as defined in R.C. 307.63.
20. No joining political subdivision shall permit any person to use System or Subscriber Equipment, or a Joining Political Subdivision's Equipment until the person has received and completed approved Motorola and joining political subdivision user training. Failure to comply with this provision shall be grounds for enforcement action to be taken against the violating political subdivision including, but not limited to, inhibiting the radio of an inadequately trained person and/or refusing to add an additional radio(s) access to the System for inadequately trained personnel.
21. Except as otherwise agreed in writing, the County will pay any and all necessary and incidental operating cost of the Network Equipment, including maintenance.
22. So long as this Agreement remains in effect, the County shall, at its own expense, provide and keep in force general public liability and casualty property insurance with the County Risk Sharing Authority ("CORSA") or other commercial insurance provider authorized to business in Ohio insures against any liability for injury or death to persons and/or damage to property resulting or arising from, the operation of the System infrastructure including, without limitation, the prime site, towers and all equipment associated with the towers, as well as any equipment which remains exclusively within the County's possession or control on a County owned or rented premises. The County need not, however, insure Subscriber Radio Equipment regardless of location. The County shall determine the

limits and deductibles for such insurance. Such insurance shall name all joining political subdivisions and all participating political subdivisions as an additional insured.

23. So long as this Agreement remains in effect, the County shall, at its own expense, provide and keep in force general public liability and casualty property insurance with the County Risk Sharing Authority ("CORSA") or other commercial insurance provider authorized to business in Ohio insures against all physical loss including without limitation by fire, windstorm, explosion, flood and earthquake and with all-risk coverage and against all such other risks as are insured against by other public safety entities with respect to property of a similar character in an amount to be determined by the County in consultation with its insurance provider.

**Article V. Insuring, Maintaining, Repairing, Replacing, Upgrading, Improving, Removing, and Returning Subscriber Equipment;**

1. Except as otherwise agreed in writing, each joining political subdivision shall be responsible for maintenance, repair, replacement, reprogramming, upgrading, improving, insuring, adding or removing features or functionality, removing from service, and returning to service the Subscriber Equipment set forth in Exhibit A belonging to the Commissioners as well as its own Joining Political Subdivision's Equipment. Throughout the term of this Agreement, the Commissioners may, in the exercise of good faith judgment, determine Subscriber Equipment belonging to the Commissioners is no longer capable of maintenance, repair, replacement, reprogramming, upgrading, or improving at a reasonable cost, and in such an event they remove it from service and need not replace it. The Commissioners have no responsibility to maintain, repair, replace, reprogram, upgrade, improve, add or remove features or functionality to, remove from or return to service any Joining Political Subdivision's Equipment or Subscriber Equipment which belongs to a joining political subdivision. However, the Commissioners are under no obligation to, but shall have the discretion to decide whether to, upgrade, improve, add or remove features or functionality to Subscriber Equipment and the Network Equipment.
2. Except as otherwise agreed in writing with the Commissioners, Subscriber Equipment provided by the Commissioners which suffers misuse, damage or destruction while in the possession of a joining political subdivision shall be repaired or, if not repairable, replaced by joining political subdivision at such subdivision's expense and the replacement equipment shall be considered Subscriber Equipment and not a Joining Political Subdivision's Equipment.
3. Unless otherwise agreed in writing by the Commissioners, any Exhibit A Subscriber Equipment whose legal title remains in the Commissioners but whose possession has been entrusted to a joining political subdivision shall be maintained by the joining



political subdivision at its expense until it is no longer serviceable, at which time it will immediately be replaced by the joining political subdivision.

4. The Commissioners are not obligated to replace any Subscriber Equipment provided to any joining political subdivision. The Commissioners are not obligated to repair or replace any Joining Political Subdivision's Equipment.
5. The Commissioners, Sheriff, and Advisory Board shall cooperate to ensure that the Network Equipment's automated performance standards and diagnostics remain fully functional and operational on a 24/7/365 basis.
6. The Commissioners shall provide complete monitoring, inspection, and maintenance programs or processes for all Network Equipment that meet or exceed manufacturers' recommendations and FCC and FAA Regulations. The Commissioners shall develop and carry out a preventative maintenance plan and procedure for all Network Equipment and, in that regard, the Commissioners shall ensure that the Network Equipment shall remain in as good an operating condition as on the Completion Date (normal wear and tear and subsequent obstructive private construction activity excepted) and (subject to testing and modifications deemed necessary or appropriate by the Commissioners in good faith) capable of operating at design standards and capacity and in compliance with all applicable federal laws and regulations.
7. The Sheriff and Commissioners in cooperation with the Advisory Board shall develop and maintain an emergency management plan for the System, including without limitation the Network Equipment, that provides for an alternate source of electrical power for uninterrupted service, separate computer resources, and necessary back-up equipment.
8. The Sheriff and the Commissioners warrant and represent to the joining political subdivisions and will secure similar warranties from any contractor undertaking any modification, addition, or integration to the System that any modification, addition, or integration to the System will be compatible and perform individually and as an integrated system in accordance with or improve upon the specifications and representations stated in the Motorola Contract and not degrade the performance of the existing System.
9. Pursuant to the terms and conditions of the Motorola Contract, Motorola is providing (i) a warranty on the functionality of the System, (ii) a three (3) year warranty on Subscriber Equipment, and (iii) a one (1) year warranty on computers. During the applicable Warranty Periods and any extensions thereof, the Commissioners will diligently manage and promptly enforce all warranty related obligations and claims made by or on behalf of the Sheriff and each joining political subdivision with respect to the Network Equipment, the Subscriber Equipment and computers, as applicable. The County has the obligation to resolve all warranty claims respecting Subscriber Equipment to the reasonable

satisfaction of the Sheriff or the joining political subdivision making the claim or alleging a breach of warranty, without any charge or expense being made against such joining political subdivision. In the event the Sheriff or Commissioners cannot resolve any warranty dispute or claim made to either of them by any joining political subdivision respecting Subscriber Equipment, the Commissioners hereby constitute such joining political subdivision as the agent and attorney-in-fact of the Commissioners for the purpose of exercising and enforcing, and with full right, power and authority to exercise and to enforce, all of the right, title and interest of the Commissioners in, under and to the warranties and obligations of Motorola under the Motorola Contract or the warranties and obligations of any other supplier of goods and services in respect of the System, Subscriber Equipment and/or computers. The Commissioners further agree to execute and deliver such further instruments as may be necessary to enable such joining political subdivision to obtain goods or services furnished for the System, the Subscriber Equipment and computers by Motorola or other suppliers at its own expense. The Sheriff will be the primary point of contact for all warranty and maintenance issues during the Warranty Period. After the expiration of the applicable Warranty Period(s) and any extension(s) thereof, the Sheriff will also receive a maintenance call or an alarm on the System and the County will have primary maintenance and repair responsibility and will promptly dispatch appropriate technicians, agents or service providers accordingly.

10. Each joining political subdivision shall insure its Subscriber Equipment against all physical loss, damage or destruction in an amount sufficient to allow such subdivision to repair or replace such Subscriber Equipment should it be lost, stolen, damaged in use, or damaged while out of use for any reason.
11. Throughout the term of this Agreement, at County's expense, the county shall provide and keep in force general public liability and casualty/property insurance with the County Risk Sharing Authority ("CORSA") or other commercial insurance provider authorized to conduct business in Ohio and which insurance policies name the joining political subdivisions and all participating political subdivisions as an additional insured and insures against any liability for injury or death to persons and/or damage to property resulting or arising from, the operation of the System infrastructure, including, without limitation, the Network Master Site, towers and all equipment associated with the towers, as well as any equipment which remains exclusively within the County's possession or control on a County owned or rented premises. The County need not, however, insure Subscriber Equipment, Subscriber Replacement Equipment or Joining Political Subdivision Equipment which is located on the premises of a Subscriber which has executed this Agreement. The County policies shall be written with limits of liability determined by the Commissioners. The County hereby releases the joining political subdivisions (and their respective departments, employees, agents, representatives, officials and elected officials) from all liability in connection with losses covered by County's insurance. The County agrees that each of the County's insurance policies will include a provision giving effect to the foregoing.

12. County shall keep the System infrastructure, including, without limitation, the Network Master Site, towers and all equipment associated with the towers, as well as any equipment which remains exclusively within the County's possession or control on a County-owned or rented premises insured against all physical loss caused by or resulting from, including without limitation, fire, windstorm, explosion, flood and earthquake. Such policy of insurance shall be an "all-risk" coverage and insure against all such other risks as are insured against by other public safety entities with respect to property of a similar character in an amount not less than the replacement cost of the System and all equipment and facilities comprising the System. Additionally, such insurance shall (i) cover all materials, equipment, tools and supplies stored on the construction site and to become part of the System and inventory, (ii) cover all portions of the System while in transit, (iii) include coverage against loss caused by explosion and breakdown, and (iv) waive any condition requiring that the System be in use or ready for any use.

**Article VI. Adding or Removing Features or Functionality  
to the System and Subscriber Equipment;**

1. Except as otherwise provided in this Agreement, and provided it is not necessary to make any addition to, deletion from, modification to, or alteration of any portion of the Network Equipment or any Subscriber Equipment which is not a part of the joining political subdivision's Subscriber Equipment or its Joining Political Subdivision's Equipment, a joining political subdivision may, at any time and at its own expense, obtain additional communication consoles and/or additional features or functionality for its own Local Purposes.
2. Simply because a joining political subdivision obtains additional Joining Political Subdivision's Equipment, communication consoles, and/or additional features or functionality, does not mean the Commissioners are obligated to purchase, or all participating political subdivisions have the right, at Commissioner expense, to be provided at County expense with like Subscriber Equipment communication consoles, and/or additional features or functionality. There is no guarantee that all participating political subdivisions will have identical radio features, capabilities, or functionality
3. After the initial distribution of Subscriber Equipment provided in Exhibit A, the Commissioners have the right, but not a duty, to obtain and provide for all participating political subdivisions Subscriber Equipment, Subscriber Equipment Upgrades, Motorola Software Upgrades, communications consoles, and/or additional features or functionality.
4. The Commissioners may from time to time, at their discretion and expense, and without first consulting with or securing the approval of any joining political subdivision or the Advisory Board, undertake an upgrade, modification, or enhancement to the System, Network Equipment, and/or the Master Site, (such as, but not limited to, computer software, hardware, and equipment upgrades, modifications or enhancements to the

System, to the Master Site, or the Network Equipment), which is required to be undertaken by state or federal law or FCC regulations in order to continue to legally operate the System. A legally required upgrade, modification, or enhancement to the System, Network Equipment, and/or the Master Site shall be deemed an involuntary System change and, consequently, shall not impose any obligation on the Commissioners to first seek joining political subdivision concurrence or to provide financial assistance to any joining political subdivisions to keep its Subscriber Equipment operational on the System. However, the Commissioners, in their discretion, may provide financial or other assistance to one or more joining political subdivisions to assist them in undertaking any modification of Subscriber Equipment or Joining Political Subdivision Equipment to allow it to continue to operate on the System.

5. The Commissioners may from time to time, at their discretion and expense, and without first consulting with or securing the approval of any joining political subdivision or the Advisory Board, undertake an upgrade, modification, or enhancement to the System, Network Equipment, and/or the Master Site, (such as, but not limited to, computer software, hardware, and equipment upgrades, modifications or enhancements at the Master Site or the Towers), which is required to be undertaken because some or all of the System, Network Equipment, and/or the Master Site's existing equipment, software, hardware, features or functionality will no longer be supported by Motorola. An upgrade, modification, or enhancement to the System, Network Equipment, and/or the Master Site required to be undertaken because it will no longer be supported by Motorola shall also be deemed an involuntary System change and, consequently, shall not impose any obligation on the Commissioners to first seek approval from the joining political subdivisions or provide financial assistance to any joining political subdivisions to keep its Subscriber Equipment operational on the System. Such an involuntary upgrade, modification, or enhancement to the System need not first be approved by any joining political subdivision or the Advisory Board. However, the Commissioners, in their discretion, may provide financial or other assistance to one or more joining political subdivisions to assist them in undertaking any modification of Subscriber Equipment or Joining Political Subdivision Equipment to allow it to continue to operate on the System.
6. The Commissioners may from time to time have the opportunity to voluntarily undertake an upgrade, modification, or enhancement to the System, Network Equipment, and/or the Master Site which will not make it necessary for the Subscriber to incur additional Subscriber Equipment or Joining Political Subdivision Equipment expense in order to make it possible for it to be capable of taking advantage of the upgrade, modification, or enhancement. Where this is the case, the Commissioners may proceed with the upgrade, modification, or enhancement to the System, Network Equipment, and/or the Master Site without first consulting with or obtaining the approval of the Advisory Board or the joining political subdivisions since the upgrade, modification, or enhancement will be brought about at no cost to the joining political subdivisions.
7. The Commissioners may from time to time have the opportunity to voluntarily undertake

an upgrade, modification, or enhancement to the System, Network Equipment, and/or the Master Site which will make it necessary for each Subscriber to incur Subscriber Equipment or Joining Political Subdivision Equipment expense in order to make that equipment capable of taking advantage of the upgrade, modification, or enhancement. Where the failure of any joining political subdivision to incur expense to alter its Subscriber Equipment or Joining Political Subdivision Equipment will cause it to lose System access (as contrasted with being unable to utilize an upgrade, modification or enhancement feature or functionality), then no such upgrade, modification or enhancement shall occur unless a super majority vote (67%) of the Advisory Board shall first approve the upgrade, modification, or enhancement in writing.

8. The Commissioners shall retain the discretion and authority on behalf of the Subscribers to negotiate for and make available new or additional Subscriber Equipment, or new features, functionality or capability for Subscriber Equipment which a joining political subdivision shall have the discretion to purchase or not purchase, and which the Commissioners shall have no duty to provide to any joining political subdivision.

#### **Article VII. Termination or Withdrawal from Participation**

1. At any time after the Completion Date, (i) should the System , as a whole, become obsolete or be destroyed or damaged to such an extent that it would be too costly to repair or restore, (ii) should one or more of the events described in Article II, Section 3, of this Agreement occur, or (iii) should more than sixty (60) percent of the joining political subdivisions withdraw from this Agreement, the Commissioners may, without any liability to the joining political subdivisions, terminate this Agreement and cease operation of the System in whole or in part.
2. Should a joining political subdivision, at any time, decide that it no longer wishes to participate in the System, it shall provide the Commissioners and the Sheriff at least thirty (30) days advance written notice of its intention to withdraw from participation in the System. Upon withdrawal from participation in the System, and except as otherwise agreed in writing, the departing political subdivision shall return to the Sheriff, or the Sheriff's designee, its initial inventory of Subscriber Equipment as well as any replacement or additional Subscriber Equipment provided by the Commissioners to the withdrawing subdivision in the same condition as it was delivered to the joining political subdivision except for ordinary wear and tear from use. As for any Subscriber Equipment not returned to the Sheriff upon withdrawal, the withdrawing subdivision shall provide an accounting to the Commissioners for any Subscriber Equipment not returned, and the Commissioners and the withdrawing subdivision shall come to a satisfactory resolution of the non-return.
3. A joining political subdivision may terminate its participation in the System and terminate this Agreement should the County default upon its obligations under this

Agreement. Should a joining political subdivision believe the County has defaulted upon its obligations under this Agreement, it shall provide the County with one hundred and eighty (180) days written notice of its intention to terminate its use of the System and terminate its participation in this Agreement. Within the foregoing period, the County and the notifying subdivision shall consider whether any alleged default has occurred and can be remedied or whether termination shall occur. As a part of this process, a determination on the future possession of the joining political subdivision's Subscriber Equipment after the notice period shall be made by the County Commissioners.

#### **Article VIII. Future Financial Commitment**

1. Exhibit B, which is attached hereto and incorporated herein as if fully reprinted here, contains the understanding of the parties with respect to the Commissioners and Subscriber's future financial responsibility with respect to the Network Equipment and Subscriber Equipment.

#### **Article IX. Non-Public Safety Use of the System**

1. Except as otherwise agreed in writing, non-public safety use (non-police, non-fire, and non-EMS) of the System is subject to the following terms and conditions.
2. The Sheriff shall approve and maintain a list of radio models ("Approved Radio Model") which will be considered acceptable for operation on the System by non-public safety forces of Participating Political Subdivisions.
3. After having executed a Participation Agreement, each joining political subdivision which wishes to allow its non-public safety forces to use the System will be responsible, at its own expense, for purchasing or leasing, programming, talk group templating, operating, maintaining, repairing, and replacing its own Approved Radio Model(s) which it uses on the System.
4. Non-public safety use is subject to an access charge to be established by agreement between the joining political subdivision and the Board of Butler County Commissioners.
5. If radio traffic congestion on the System reaches a point where the Advisory Board concludes the operation of the System is being degraded to an unacceptable level, the Sheriff shall inform the Board of County Commissioners of the Advisory Board's concern and ask the Commissioners to declare a moratorium on the addition of any new non-public safety radio users until the congestion is relieved.
6. All radio programming and talk group templating of non-public safety user radios is subject to the approval of the Sheriff before radios are used on the System but the Sheriff

will not unreasonably withhold approval.

7. Except under exceptional circumstances, non-public safety radios will be assigned a lower right to radio channel priority than public safety radios.
8. Use of the System by non-public safety employees of a Participating Political Subdivision is subject to the same rules as govern public safety use. Repeated and unjustified violations of FCC rules or regulations, System rules, guidelines, procedures, protocols or violation of this Agreement, may result in the curtailment, suspension or termination from System use or feature access of individual violators or, in extreme cases, larger numbers of radios.

### **Article X. Public Records Requests**

1. Ohio Revised Code 149.011(G) defines a “record” and Ohio Revised Code 149.43(A)(1) defines a “public record”. A “record” is any document, device, or item, regardless of physical form or characteristic created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office. A “public record” is a “record” kept by any public office, including, but not limited to, state, county, city, village, township, and school district units.
2. Ohio Revised Code 149.40 provides the head of each public office shall cause to be made only such records as are necessary for the adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and for the protection of the legal and financial rights of the state and persons directly affected by the agency's activities.
3. The Commissioners, as owners of the System, and Sheriff, as operator of the System have determined that the System’s recording capability will not be used to record the Local Purpose talkgroups of any joining political subdivision unless **the Sheriff is** asked to record such a talkgroup by the subdivision using it. Exhibit C attached hereto, indicates the Subscriber talkgroups which it wishes to have the Sheriff record at the prime site.
4. Common talkgroups which are used by multiple political subdivisions and which are not encrypted will be recorded by the System. However, common talkgroup radio traffic which is encrypted will not be recorded.
5. Each joining political subdivision has the right, but not an obligation, at its own expense and using its own equipment to record and keep in a form of its own choosing, free from interference by any other joining political subdivision or the Sheriff, a record of all or any part of its own talkgroups. With the exception of the Sheriff recording talkgroups for

political subdivisions for which the Sheriff serves as dispatcher which have requested System recording, no joining political subdivision will record the encrypted or unencrypted talkgroups of any other joining political subdivision.

6. To the extent each joining political subdivision records its own talkgroups, that subdivision hereby recognizes and agrees that it has a duty to comply in good faith with the Ohio open records law with respect to such records. Any such record made and kept by that joining political subdivision is subject exclusively to that joining political subdivision's records retention schedule.
7. If a joining political subdivision decides to exercise its right at its own expense to record its own Local Purpose talkgroups, that joining political subdivision further agrees with respect to such communication: (a) to adopt uniform rules for the radio communication on the System that it is going to record and keep; (b) to uniformly apply the rules so adopted; (c) to determine for itself the manner and method of recording and keeping that information; (d) to designate a person or office responsible for making records of such radio communication of the System available in response to a records request; (e) to formulate and follow a policy on responding to requests for its radio communication on the System for records it keeps; (f) to have its local records commission adopt a record retention schedule for its records of radio communication on the System; and (g) to abide by the record retention schedule so adopted.
8. In order to have a uniform rule and policy among all participating political subdivisions with respect to requests for public records for radio communication on the System which involves a political subdivision that has elected to exercise its right to record and keep its own radio communication records, every other joining political subdivision agrees to refer persons requesting records to the joining political subdivision's person or office responsible for responding to public records requests when: (a) the requester seeks a different joining political subdivision's Local Purpose communication than the one contacted, or (b) an IS Purpose or ET Purpose communication is being sought and that communication was initiated by a different joining political subdivision initiated.

#### **Article XI. Miscellaneous Provisions**

1. This Agreement contains the entire understanding between the Commissioners and the joining political subdivision whose officials have executed it.
2. Each joining political subdivision signing a Participation Agreement acknowledges to Butler County, its Commissioners and Sheriff that neither Butler County, its Commissioners, or its Sheriff, nor any of its agents or employees have made any representations or warranties to such other joining political subdivision that are not expressly set forth in this Agreement. This Agreement and its attachments along with rules, regulations, protocols, etc. promulgated under authority of this Agreement



constitute the entire agreement between Butler County and Subscriber.

3. This Agreement may not be altered or modified, and no term of this Agreement may be waived except by a written agreement signed by the joining political subdivision and the Commissioners.
4. If any term of this Agreement is held by a court of competent jurisdiction or other authority to be invalid or unenforceable, the remainder of the terms of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
5. The Agreement section headings and the numbering of paragraphs are for the convenience of the joining political subdivision only and are not a meaningful part of this Agreement.
6. Butler County and all other joining political subdivisions using the System are hereby declared to be intended beneficiaries of the System.
7. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party who caused this Agreement to be drafted.
8. Each signatory may enforce this Agreement by a decree of specific enforcement or a mandatory injunction.
9. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument.
10. Time is of the essence in the performance of this Agreement.
11. In the event of any breach or threatened breach by a joining political subdivision of any of the terms of this Agreement, Butler County or any the other joining political subdivision shall be entitled to obtain an injunction or other equitable relief (on an ex parte basis if such other Party so elects) without the need to procure any bond or provide any undertaking.

IN WITNESS WHEREOF the Board of County Commissioners of Butler County, Ohio and the Sheriff of Butler County, Ohio have affixed their signatures along with the duly authorized representative of @@ on this \_\_ day of \_\_\_\_, 2009.

**Board of Butler County Commissioners**

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Donald L. Dixon, President

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Gregory V. Jolivette, Vice-President

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Charles R. Furmon, Member

**Butler County Sheriff**

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Richard K. Jones

Exhibit A  
Subscriber's Initial Inventory of Subscriber Equipment

Exhibit B  
Future Financial Responsibility for the Network Equipment and Subscriber Equipment.

Exhibit B

<b>Cost/Event/Situation</b>	<b>Radio Network Item</b>	<b>Non-Radio Network Item</b>	<b>County Radio Fund Expense</b>	<b>County Gen Fund Expense</b>	<b>Political Subdivision Expense</b>	<b>Joint Expense</b>
Tower/Tower Site Damage/Loss/Maintenance	X		X			
Prime Site/Network Equipment Location Damage/Loss/Maintenance	X		X			
Prime Site Network Personnel and Operating Expense	X		X			
Tower Site Electricity and Operating Expense	X		X			
FCC Compliance for network facilities	X		X			
System hardware repair/maintenance/replacement	X		X			
System software repair/maintenance/replacement	X		X			
Network equipment casualty insurance	X		X			
Emergency repair/replacement of tower/tower site/ network equipment/prime site	X		X			
Political Subdivision and County dispatch center fiber optic connectivity build out	X		X			
Political Subdivision and County dispatch center fiber optic connectivity maintenance and repair	X		X			
Political Subdivision dispatch center fiber optic connectivity replacement	X				X	
County Dispatch center fiber optic connectivity replacement	X			X		

<b>Cost/Event/Situation</b>	<b>Radio Network Item</b>	<b>Non-Radio Network Item</b>	<b>County Radio Fund Expense</b>	<b>County Gen Fund Expense</b>	<b>Political Subdivision Expense</b>	<b>Joint Expense</b>
Console maintenance expense @ a subdivision location		X			X	
Console maintenance expense @ sheriff's dept.		X		X		
Subdivision opens new public safety facility example- fire house		X			X	
New public safety equipment put in service by subdivision. example- new fire truck		X			X	
New public safety facility opened by county- new jail		X		X		
County relocates its dispatch center		X		X		
Increase # public safety employees by political subdivision need radios		X			X	
Political subdivision dispatch relocation expense		X			X	
Political subdivision creates new dispatch location expense and needs console		X			X	
Loss/destruction/damage to political subdivision subscriber radio or console, subdivision needs repair or replacement for it		X			X	
Loss/destruction/damage to county subscriber radio or console, county needs repair or replacement for it		X		X		
Repair/replacement of subdivision radio holsters, mikes, antennas, batteries		X			X	
Repair/replacement of county radio holsters, mikes, antennas, batteries		X		X		

<b>Cost/Event/Situation</b>	<b>Radio Network Item</b>	<b>Non-Radio Network Item</b>	<b>County Radio Fund Expense</b>	<b>County Gen Fund Expense</b>	<b>Political Subdivision Expense</b>	<b>Joint Expense</b>
Maintenance of all 1 <sup>st</sup> issue subscriber radios provided to political subdivision by county after one year maintenance period expires		X			X	
Maintenance of all 1 <sup>st</sup> issue subscriber radios provided to sheriff by county after one year maintenance period expires		X		X		
Political subdivision buys additional radios or consoles for its use to increase its # of radios or consoles		X			X	
Maintenance of political subdivision radio or console it bought for its use, not in replacement of county equipment		X			X	
Maintenance for political subdivision radios or console bought for its use, in replacement of county equipment given to county		X			X	
Political subdivision radio or console wears out and needs to be replaced		X			X	
County radio or console wears out and needs to be replaced		X		X		
Political subdivision radio or console needs to be upgraded		X			X	
County radio or console needs to be upgraded		X		X		
Political subdivision wants to change its talkgroup template and it may or may not affect other radios and consoles		X			X	

<b>Cost/Event/Situation</b>	<b>Radio Network Item</b>	<b>Non-Radio Network Item</b>	<b>County Radio Fund Expense</b>	<b>County Gen Fund Expense</b>	<b>Political Subdivision Expense</b>	<b>Joint Expense</b>
County wants to change its talkgroup template and it may or may not affect other radios and consoles		x		x		
Political subdivision wants to add to new Motorola features or functionality to its radios		x			x	
County wants to add to new Motorola features or functionality its radios		x		x		
Motorola releases new or different 800 megahertz radio technology which political subdivision wants		x			x	
Motorola releases new or different 800 megahertz radio technology which county wants		x		x		
Total System Upgrade wholesale system changeout	x	x				x
Obligation to Insure Political Subdivision Non-Radio Network Equipment		x			x	
Obligation to Insure County's Non-Radio Network Equipment		x		x		



**EXHIBIT C**

**@@**

**REQUEST THAT PRIME SITE RECORD TALKGROUP COMMUNICATION**

The undersigned requests that the Butler County 800 megahertz radio System record the following talkgroups used by @@'s public safety forces. The requesting agency shall be considered the agency having custody of such records for purposes of the Ohio open records law.

Butler County agrees not to program the System to record a @@ talkgroup that is not requested to be recorded here and the requesting agency agrees to assume full responsibility and any and all liability which may be created or aggravated by a failure to record a talkgroup.

Any @@ encrypted talkgroup(s) will not normally be recorded by the System. A request that an encrypted talkgroup be recorded by the system be requested here as well.

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Public Safety Director

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Fire Chief

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Police Chief

\_\_\_\_\_  
@@  
EMS Chief

**EXHIBIT D**  
**COMMISSIONERS' RESOLUTIONS ON ADVISORY BOARD**

**EXHIBIT E**  
**RULES ADOPTED BY ADVISORY BOARD**