



Bill No. 5010

Ordinance No. _____

INTRODUCED BY

ALDERMEN UTT, FINLEY, STALLMANN, HAUG, FLEMING, WEAVER, LEHMKUHL, SIEGEL

AN ORDINANCE AUTHORIZING A USER AGREEMENT WITH THE ST. LOUIS COUNTY EMERGENCY COMMUNICATIONS COMMISSION FOR SUBSCRIBER RADIOS FOR AN INTEROPERABLE RADIO SYSTEM FOR THE BALLWIN PUBLIC SAFETY DEPARTMENTS.

WHEREAS, the people of St. Louis County approved an emergency communications tax to fund, in part, an enhanced emergency communications system for all local public service agencies, including the City of Ballwin police and public works departments; and

WHEREAS, the Emergency Communications Commission established pursuant to that mandate of the people has now taken the steps necessary to initiate the creation and operation of an interoperable radio and communication system that will allow all public safety agencies – police, fire and public works departments - to communicate and coordinate response to emergency circumstances; and

WHEREAS, as part of the system the Commission is using the tax revenue approved by the voters to acquire, distribute and link new interoperable radios for use by public safety agencies as aforesaid, and it is the desire and intent of the Mayor and Board of Aldermen to enhance the safety of residents and assure the City’s participation in that system by approving an agreement to acquire and operate this new communication equipment; and

WHEREAS, the City of Ballwin and the St. Louis County Emergency Communications Commission previously entered into a User Agreement that was approved by Ordinance 13-01 and expires on 12/31/24 and the parties desire to renew the Agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BALLWIN, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

Section 1. The Mayor of the City of Ballwin is hereby authorized and directed to execute and enter into on behalf of the City of Ballwin one or more User Agreements for Subscriber Radios for an Interoperable Radio System with St. Louis County and the St. Louis County Emergency Communications Commission in substantial accord with the terms and conditions reflected on Exhibit A attached hereto and incorporated herein by this reference.

Section 2. The City Administrator is hereby also authorized and directed to take such administrative steps as may be necessary to execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance and to carry out, comply with and perform the duties of the City with respect to the Agreement aforesaid.



Bill No. _____
Ordinance No. _____

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

PASSED this ____ day of _____, 2024.

TIM POGUE, MAYOR

APPROVED this ____ day of _____, 2024.

TIM POGUE, MAYOR

ATTEST: _____
ERIC STERMAN, CITY ADMINISTRATOR

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

THIS AGREEMENT is 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 the City of Ballwin, 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, the ECC grants law enforcement and emergency services agencies access 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. 5010, and Ordinance 26,293 authorizes the County Executive to execute this Agreement on behalf of County;

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, as amended and renewed, 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 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 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 ended on December 31, 2021. The Agency is now and has been since December 31, 2021, 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 its 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
 Email: _____

With a copy to:

County Counselor

St. Louis County Government Center
41 S. Central Ave. 9th Floor
Clayton, MO 63105

AGENCY:

Name/Title: John Bergfeld/Chief of Police

Address: 302 Kehrs Mill Road, Ballwin, MO 63011

Email: jbergfeld@ballwin.mo.us

With a copy to:

Name/Title: Eric Sterman/City Administrator

Address: 1 Government Ctr., Ballwin, MO 63011

Email: esterman@ballwin.mo.us

or at such different address as the parties may give by written notice mailed, emailed 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, 2034 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, all claims or causes of action arising out of this Agreement shall be litigated in a court of competent jurisdiction.

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 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 by providing written notice of the assumption to ECC. The Agency shall be required to comply with ECC policy 17-20 Transfer of Subscriber Guideline Policy, including returning the Radios to ECC for reprogramming and competing transfer forms as instructed by 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the later of the dates below written.

St. Louis County

County Executive

Date Executed by the County: _____

Attest:

Administrative Director

Chair, Emergency Communications Commission

Approved as to legal form:

County Counselor

Approved:

Accounting Officer

Legal Review: _____

CE: Review: _____

By: _____

Print Name: _____

Title: _____

Date: _____

I, _____, affirm that I am the [title] _____
of _____, and that I signed this Agreement on behalf of said
agency, by authority of its board of directors, and that I acknowledged this Agreement to be the
free act and deed of the said agency.

Approved as to legal form:

Agency Attorney