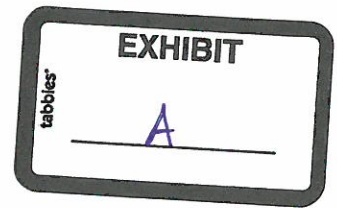


15-471



COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT (the “Agreement”) is entered into as of the ___ day of November, 2015 between the County of Summit, Ohio, a county and political subdivision organized and existing under the laws of the State and its Charter (the “County”), and the City of Akron, Ohio, a municipal corporation organized and existing under the laws of the State and its Charter (the “City”). Capitalized words and terms not defined elsewhere in this Agreement shall have the meanings assigned to them in Section 1.2 hereof.

RECITALS:

A. The County and the City are currently parties to an Interlocal Agreement dated effective on or about June 7, 2006, as amended by the First Amendment to Interlocal Agreement and the Renewal of Interlocal Agreement (the “Original Interlocal Agreement”), pursuant to which the County and the City jointly own and operate an 800 MHz Mixed Mode Trunked Simulcast Smart Zone Radio System with System I.D. 8D27 (the “Original System”).

B. The Original System is critical to the operations of the County and City and the ability of each to provide for necessary emergency and safety needs of the public, and further, the Original System has become a critical component of providing public safety and emergency services by every municipality and township within Summit County, all of whom utilize the system.

C. The County and the City have determined that the Original System will become outmoded by January 1, 2018 and is in need of replacement with a new radio communications system by that time.

D. The County has negotiated a certain Communications System Agreement, Equipment Lease-Purchase Agreement and System Upgrade Agreement with Motorola Solutions, Inc. (“Motorola”), copies of which are attached hereto as Exhibits A, B and C, respectively, pursuant to which the County will purchase and lease, and Motorola will install, upgrade and maintain new Motorola ASTRO 25 radio communication equipment, components and radios that are necessary to upgrade the Original System to an APCO P25-compliant radio system (“New System”).

E. The County intends to acquire the New System and to grant to the City the right to use the New System pursuant to the terms and conditions of this Agreement, and the City intends to use the New System pursuant to such terms and conditions.

NOW, THEREFORE, in consideration of the forgoing recitals, and for other good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, the County and the City hereby agree as follows:

Section 1. Definitions

1.1 Use of Defined Terms. In addition to the words and terms defined elsewhere in this Agreement or by reference to another document, the words and terms used in this Agreement are defined in Section 1.2.

1.2 Definitions. The following are defined terms in this Agreement:

“Agreement” means this Cooperative Agreement, as amended or supplemented from time to time.

“Bond Payment Dates” means each June 1 and December 1 while the County Bonds are outstanding.

“Bond Service Charges” means the payment of principal, interest and any premium when due on the County Bonds.

“City” means the City of Akron, Ohio, a municipal corporation organized under the laws of the State and its Charter.

“City Equipment” means that part of the New System more particularly described and enumerated on Exhibit D hereto which shall be acquired by the County under the Communications System Agreement for the exclusive use by the City under the Lease Agreement.

“Closing Date” means the date on which the County enters into the Communications System Agreement.

“Communications System Agreement” means the Communications System Agreement between Motorola and the County, as amended or supplemented from time to time in accordance with its terms, under which the County will acquire the New System, which agreement will be substantially in the form attached hereto as Exhibit A.

“County” means the County of Summit, Ohio, a county and political subdivision organized under the laws of the State and its Charter.

“County Bonds” means the County’s general obligation bonds that it intends to issue to finance the costs of Provision of the New System, including any bonds that are issued by the County to refund the County Bonds.

“County Equipment” means that part of the New System more particularly described and enumerated on Exhibit E hereto which shall be acquired by the County under the Communications System Agreement for the exclusive use by the County.

“County Fiscal Officer” means the Fiscal Officer of the County.

“Equipment Lease-Purchase Agreement” means the Equipment Lease-Purchase Agreement which the County will enter into with Motorola to provide for interim financing for

Provision of the New System, which agreement will be in substantially in the form attached hereto as Exhibit B.

“First-Half Tax Settlement Date” means the date of settlement of real property taxes and assessments pursuant to Section 321.24(A) of the Ohio Revised Code, as amended from time to time.

“First-Half Tax Distribution” means the distribution of funds to the City on the First-Half Tax Distribution Date pursuant to Section 321.24(F) of the Ohio Revised Code, as amended from time to time, provided such funds shall not include any amounts attributable to general or special assessments or payments in lieu of taxes.

“First-Half Tax Distribution Date” means date of the distribution of funds to the various taxing districts in the County with respect to the First-Half Tax Settlement Date pursuant to Section 321.24(F) of the Ohio Revised Code, as amended from time to time.

“Fiscal Officer” means the Fiscal Officer of the County.

“Interest Rate for Advances” means the interest rate equal to 3.0% per annum.

“Joint Equipment” means that part of the New System more particularly described and enumerated on Exhibit F hereto which shall be acquired by the County under the Communications System Agreement for the joint use of the County and the City.

“Lease Agreement” means the Lease-Purchase Agreement to be entered into between the County, as lessor, and the City, as lessee, as amended or supplemented from time to time, pursuant to which the County will lease to the City the right to use the New System, and at the end of the lease term own a portion of the New System, which Lease Agreement shall be in substantially the form of Exhibit G hereto.

“Legislative Authority” means, as to the County, the County Council of the County, and, as to the City, the City Council of the City.

“Motorola” means Motorola Solutions, Inc., its successors and assigns.

“New Interlocal Agreement” means the Interlocal Agreement to be entered into between the County and the City, as amended and supplemented from time to time, pursuant to which the County and the City will undertake the joint operation of the New System, which New Interlocal shall be in substantially the form of Exhibit H hereto.

“New System” means such term as defined in Recital D.

“Notice Address” means:

- (a) as to the City:
- City of Akron, Ohio
Municipal Building, Suite 200
166 South High Street
Akron, Ohio 44308
Attn: Mayor

with a copy to: Director of Law
City of Akron, Ohio
202 Ocasek Government building
161 South High Street
Akron, Ohio 44308

(b) as to the County: County of Summit
Ohio Building, 8th Floor
175 South Main Street
Akron, Ohio 44308
Attn: County Executive

with a copy to: Director, Department of Law, Insurance and Risk
Management
Ohio Building, 8th Floor
175 South Main Street
Akron, Ohio 44308

“Operative Documents” means this Agreement, the Communications System Agreement, the Equipment Lease-Purchase Agreement, the System Upgrade Agreement, the Lease Agreement, the New Interlocal Agreement, and each of the other documents delivered by the parties thereto in connection with any of the foregoing.

“Original Interlocal Agreement” means such term as defined in Recital A.

“Original System” means such term as defined in Recital A.

“Parties” means the County and the City.

“Person” means firms, associations, partnerships (including without limitation, general and limited partnerships), limited liability companies, joint ventures, societies, estates, trusts, corporations, public or governmental bodies, other legal entities, and natural persons.

“Provision” means, as applicable, the acquisition, construction, installation, renovation, improvement, and equipping of the New System.

“Rental Payment Date” means each May 15 and November 15, on which a Rental Payment is due the County by the City under the Lease Agreement.

“Rental Payments” means the Rental Payments to be made by the City when due under the Lease Agreement, which shall equal (i) the Bond Service Charges allocable to the City Equipment, plus (ii) one-half of Bond Service Charges allocable to the Joint Equipment.

“Second-Half Tax Distribution” means the distribution of funds to the City on the Second-Half Tax Distribution Date pursuant to Section 321.24(F) of the Ohio Revised Code, as amended from time to time, provided such funds shall not include any amounts attributable to

general or special assessments or payments in lieu of taxes.

“Second-Half Tax Distribution Date” means date of the distribution of funds to the various taxing districts in the County with respect to the Second-Half Tax Settlement Date pursuant to Section 321.24(F) of the Ohio Revised Code, as amended from time to time.

“Second-Half Tax Settlement Date” means the date of settlement of real property taxes and assessments pursuant to Section 321.24(C) of the Ohio Revised Code, as amended from time to time.

“Settlement Date” means, (i) as to the First Half Rental Payment Date, the County’s first half Tax Settlement Date occurring in the calendar year following the First Half Rental Payment Date, and (ii) as to the Second Half Rental Payment Date, the County’s second half Tax Settlement Date occurring in the calendar year following the Second Half Rental Payment Date.

“State” means the State of Ohio.

“System Upgrade Agreement” means the System Upgrade Agreement to be entered into between the County and Motorola to provide for the ongoing, maintenance, service and upgrade of the New System following the installation of the New System and continuing until such time as terminated pursuant to the terms of the System Upgrade Agreement, which Lease Agreement shall be in substantially the form of Exhibit C hereto.

“Tax Distribution” means, collectively, the First-Half Tax Distribution and the Second-Half Tax Distribution.

“Tax Settlement Date” means each settlement date on which the County Fiscal Officer pays to the City its share of real property taxes collected by the County Fiscal Officer.

1.3. Interpretation. Any reference herein to the City, or the County, to a Legislative Authority or to any member, official or officer of any of them includes entities or officials succeeding to their respective functions, duties, or responsibilities pursuant to or by operation of law or lawfully performing their functions.

1.4. Captions and Headings. The captions and headings in this Agreement are solely for convenience of reference and in no way define, limit, or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs, or clauses.

Section 2. Representations of Parties

2.1 Representations of City. The City represents that as of the Closing Date: (a) it is a municipal corporation duly organized and validly existing under the laws of the State and its Charter; (b) it is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to the City which would impair its ability to perform its obligations contained in this Agreement or the other Operative Documents to which it is a party; (c) it is legally empowered to execute, deliver and perform this Agreement and the other Operative Documents to which it is a party and to enter into and carry out the transactions contemplated by this Agreement and the other Operative Documents to which it is a party; (d)

the execution, delivery and performance do not and will not violate or conflict with any provision of law applicable to the City, including but not limited to, its Charter, and do not, and will not, conflict with or result in a default under any agreement or instrument to which the City is a party or by which it is bound which would have an adverse effect on the City's ability to perform its obligations under any of the other Operative Documents to which it is a party (other than such adverse effect which is not material); (e) its Legislative Authority has duly authorized the execution, delivery and performance of this Agreement and the other Operative Documents to which it is a party and the transactions contemplated herein and therein; and (f) this Agreement and the other Operative Documents to which it is a party, when executed and delivered by the City, will constitute the legal, valid and binding obligations of the City, enforceable against it in accordance with their respective terms, except as enforceability may be limited by the application of bankruptcy, insolvency, reorganization, moratorium, liquidation, fraudulent conveyance and other similar laws and equitable principles now or hereafter in effect or enacted respecting creditors' rights or remedies generally.

2.2 Representations of County. The County represents that as of the Closing Date: (a) it is a county duly organized and validly existing under the laws of the State and its Charter; (b) it is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to the County which would impair its ability to perform its obligations contained in this Agreement or the other Operative Documents to which it is a party; (c) it is legally empowered to execute, deliver and perform this Agreement and the other Operative Documents to which it is a party and to enter into and carry out the transactions contemplated by this Agreement and the other Operative Documents to which it is a party; (d) the execution, delivery and performance do not and will not violate or conflict with any provision of law applicable to the County, including but not limited to, its Charter, and do not, and will not, conflict with or result in a default under any agreement or instrument to which the County is a party or by which it is bound which would have an adverse effect on the County's ability to perform its obligations under any of the Operative Documents to which it is a party (other than such adverse effect which is not material); (e) its Legislative Authority has duly authorized the execution, delivery and performance of this Agreement and the other Operative Documents to which it is a party and the transactions contemplated herein and therein; and (f) this Agreement and the other Operative Documents to which it is a party, when executed and delivered by the County, will constitute the legal, valid and binding obligations of the County, enforceable against it in accordance with their respective terms, except as enforceability may be limited by the application of bankruptcy, insolvency, reorganization, moratorium, liquidation, fraudulent conveyance and other similar laws and equitable principles now or hereafter in effect or enacted respecting creditors' rights or remedies generally.

Section 3. Cooperative Arrangement

3.1. Cooperative Agreement. To promote and enhance public safety in the City and the County, the County and the City have determined to cooperate with one another in undertaking Provision of the New System in accordance with the terms of this Agreement and the other Operative Documents.

3.2. Provision of New System. In furtherance of the cooperative agreement of the County and the City, the County agrees to enter into the Communications System Agreement

and Equipment Lease-Purchase Agreement and to undertake Provision of the New System in accordance with the terms of each.

3.3 Financing Purchase of New System. The County currently intends to pay for the costs of the Provision of the New System by issuing the County Bonds. The Parties acknowledge and agree that in anticipation of the issuance of the County Bonds, the County, in its sole discretion, may advance from its own funds amounts required to pay costs due under the Communications System Agreement and the Equipment Lease-Purchase Agreement to provide financing for the New System on an interim basis. The principal amount of the County Bonds shall include (i) the amounts due under the Communications System Agreement at the time of issuance of the County Bonds, (ii) reimbursement to the County for any funds advanced by the County for purchase of the New System under the Communications System Agreement or payments made under any Equipment Lease-Purchase Agreement, (iii) any necessary capitalized interest costs, and (iv) the costs of issuance of the County Bonds, including, but not limited to, attorney fees, financial advisor fees, underwriter fees and any rating agency fees. The County, in its sole discretion, may determine when it is necessary and appropriate to issue the County Bonds, provided that the County Bonds will be issued no later than January 1, 2018. The County shall further have the right, in its sole discretion, to determine the term and maturity of the County Bonds, the amount and timing of annual debt service payments, the inclusion of capitalized interest in the principal amount, and other material terms of the County Bonds; provided, however, that the final maturity of the County Bonds shall not be shorter than the approximate anticipated useful life of the New System or the components thereof.

3.4 Lease Agreement with City. On the Closing Date, the Parties shall enter into the Lease Agreement.

3.5 New Interlocal Agreement. On the Closing Date, the Parties shall enter into the New Interlocal Agreement to govern the operation of the New System and to replace and terminate the Original Interlocal Agreement.

3.6 System Upgrade Agreement. In furtherance of the cooperative arrangement of the County and the City under this Agreement, the County agrees to enter into the System Upgrade Agreement to provide for the ongoing maintenance, service and upgrade of the New System. The County and City agree that any costs under the System Upgrade Agreement relating to the maintenance, service and upgrade the New System shall paid (i) as to the Joint Equipment, by the collection of user fees from the users of the Joint Equipment; (ii) as to the County Equipment, by the County; and (iii) as tor the City Equipment, by the City. The costs to maintain, service and upgrade the New System under the System Upgrade Agreement shall be determined, allocated and distributed in the same manner as other costs to maintain, service and upgrade the New System under the New Interlocal Agreement.

Section 4. Covenants of City

4.1 Covenant to Make Rental Payments; Perform Obligations. The City covenants and agrees that it shall (i) make each Rental Payment when due on each Rental Payment Date under the Lease Agreement, and (ii) observe and perform each of the obligations to be observed or performed by it under the Lease Agreement and the other Operative Documents to which it is

a party. The City further covenants and agrees that, provided the County is not in default of the payment of Bond Service Charges on the County Bonds, its obligation to make the Rental Payments shall be absolute and unconditional and shall not be terminated for any cause, and there shall be no right to suspend or set off such Rental Payments for any cause, and the obligation to pay any unpaid Rental Payments shall survive the termination of the Lease Agreement.

The obligation of the City to make Rental Payments under the Lease Agreement is a continuing obligation pursuant to Ohio Revised Code Section 5705.44. All of the obligations of the City under this Agreement and the Lease Agreement are hereby established as duties specifically enjoined by law and resulting from an office, trust, or station upon the City within the meaning of Section 2731.01 of the Ohio Revised Code and shall be enforceable by mandamus.

4.2 Right of County to Receive Payment from Real Property Tax Settlement. Pursuant to the Lease Agreement, the City covenants and agrees, and pledges to the County, that, provided the County is not in default of the payment of Bond Service Charges on the County Bonds, in the event the City fails to make a Rental Payment when due on any Rental Payment Date, that the County and the Fiscal Officer shall be authorized to take the following actions:

(a) if the City fails to make a Rental Payment in full on or before a Rental Payment Date, regardless of the reason, then the County may direct the Fiscal Officer to withhold, from the City's First-Half Tax Distribution occurring on the next succeeding First-Half Tax Distribution Date, an amount equal to the then unpaid portion of such Rental Payment plus interest accrued to the First-Half Tax Distribution Date on such unpaid portion at the Interest Rate for Advances, and to pay such to the County; and

(b) In the event that the funds distributed from the City's First-Half Tax Distribution in any given year are insufficient to reimburse the County for any unpaid Rental Payments, the County may direct the Fiscal Officer to withhold from the City's Second-Half Distribution occurring on the next succeeding Second-Half Tax Distribution Date an amount equal to the unpaid portion of such Rental Payments, plus accrued interest as set forth above. Thereafter, the right to withhold funds from either the City's First-Half Tax Distribution or Second-Half Tax Distribution shall be ongoing in subsequent years until all Rental Payments are paid in full.

In the event the City pays in full any previously unpaid Rental Payments prior to the City's First-Half Tax Distribution or Second-Half Tax Distribution, such payment shall satisfy the City's obligation to pay said Rental Payment and the County shall not proceed to withhold funds pursuant to this Section.

The City hereby covenants and agrees that it shall not contest the validity of the right of the County or the Fiscal Officer to withhold delinquent Rental Payments from the City's First Half Tax Distribution and its Second Half Tax Distribution as provided above in this Section 4.2, and the City hereby forever irrevocably waives any right it may have to make such contest. The City further hereby irrevocably waives any right to compel the distribution of any portion of the City's First-Half Tax Distribution or its Second-Half Tax Distribution that is withheld by the

County or the Fiscal Officer pursuant to this Section 4.2 in any manner inconsistent or contrary to such Section, whether by filing an action for a writ of mandamus, writ of procedendo, request for declaratory judgment, or any action or means whatsoever.

4.3 Legal Fees. The City agrees to reimburse the County for one-half its legal fees incurred in connection with the preparation of this Agreement and the other Operative Documents. The City's obligation under this section shall not exceed \$12,500.

Section 5. Miscellaneous Provisions

5.1 Term of Agreement. This Agreement shall remain in full force and effect from the date hereof until all of the outstanding County Bonds shall have been fully paid or defeased.

5.2 Notice. Any notice, consent, approval, election or waiver required or permitted to be given under this Agreement shall be in writing and sent to a Party by registered or certified mail, return receipt requested, or by personal delivery, courier, express or overnight delivery at such Party's Notice Address. The date such notice shall be deemed to have been given shall be on the business day of receipt if received during business hours, the first business day after the business day of receipt if received after business hours on the preceding business day, the first business day after the date sent by courier, express or overnight ("next day delivery") service.

5.3 Assignment. Neither this Agreement nor any rights, duties or obligations described in it may be assigned by either Party without the prior express written consent of the other Party; provided, however, that the County may assign or pledge its rights to receive Rental Payments if the County determines it to be necessary in connection with the issuance of the County Bonds.

5.4 Extent of Covenants; No Personal Liability. All covenants, obligations and agreements of the Parties contained in this Agreement and the other Operative Documents shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future officer, official, employee or agent of the City or the County, or their respective Legislative Authorities, in other than their official capacities, and neither the members of any Legislative Authorities nor any official executing this Agreement or the other Operative Documents shall be liable personally on this Agreement or such other Operative Documents.

5.5 Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and permitted assigns.

5.6 Amendments and Modifications. This Agreement may not be amended or modified except by written instrument signed by the Parties.

5.7 Counterparts. This Agreement may be executed in counterpart and in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

5.8 Severability. If any provision of this Agreement, or any covenant, obligation or agreement contained herein, is determined by a court to be invalid or unenforceable, that

determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

5.9 Governing Law. This Agreement shall be construed, interpreted, enforced, and the rights of the Parties determined, in accordance with the laws of the State of Ohio.

(signatures on following page)

IN WITNESS WHEREOF, this Agreement has been executed on behalf of each Party by a duly authorized officer as of the date first written above.

CITY OF AKRON, OHIO

By: _____
Jeff Fusco, Mayor

Approved as to form and correctness:

Patricia Rubright
Director of Law
City of Akron, Ohio

COUNTY OF SUMMIT, OHIO

By: _____
Russell M. Pry, Executive

Approved as to form and correctness:

Deborah Matz
Director, Department of Law, Insurance
and Risk Management
County of Summit, Ohio

FISCAL OFFICER'S CERTIFICATE
County of Summit, Ohio

The undersigned Fiscal Officer of the County of Summit, Ohio hereby certifies that the moneys required to meet the obligations of the County during the year 2015 under this Cooperative Agreement have been lawfully appropriated by the County Council of the County for such purpose and are in the treasury of the County or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Fiscal Officer
County of Summit, Ohio

Dated: _____, 2015

FISCAL OFFICER'S CERTIFICATE
City of Akron, Ohio

The undersigned fiscal officer of the City of Akron, Ohio hereby certifies that the moneys required to meet the obligations of the City during the year 2015 under this Cooperative Agreement have been lawfully appropriated by the City Council of the City for such purpose and are in the treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Director of Finance
City of Akron, Ohio

Dated: _____, 2015

LIST OF EXHIBITS

- Exhibit A – Communications System Agreement
- Exhibit B – Equipment Lease-Purchase Agreement
- Exhibit C - System Upgrade Agreement
- Exhibit D - City Equipment
- Exhibit E – County Equipment
- Exhibit F – Joint Equipment
- Exhibit G – Lease Agreement
- Exhibit H – New Interlocal Agreement