

CITY OF CLEVELAND PARTICIPANT AGREEMENT
WITH

[NAME OF PARTICIPANT]

TO PARTICIPATE IN, AND OPERATE RADIO EQUIPMENT ON,
CITY OF CLEVELAND'S 800 MHZ DIGITAL RADIO SYSTEM

This Agreement is entered into on _____ (“the Effective Date”) by the City of Cleveland (“Cleveland”), a municipal corporation of the State of Ohio, through its Director of Public Safety, under the authority of Ordinance No. 652-11 passed by Cleveland City Council on July 20, 2011 (Exhibit A) and _____ (“Participant”), located at _____, pursuant to the requisite authority (attach as part of Exhibit A if resolution or ordinance is required), and through its authorized representative.

RECITALS:

1. Cleveland owns and operates an 800 MHz P25 Digital Trunked Radio System (“the Radio System” or “the System”) installed and maintained by Cleveland’s contractor, Motorola Solutions, Inc.
2. The Participant is an entity engaged in activities involving or related to law enforcement or other public services and desires to participate in using Cleveland’s Radio System and Cleveland has determined that such use is consistent with Radio System uses.
3. Through this shared use, Cleveland and Participant will realize efficiencies and asset utilization that will broadly benefit taxpayers and residents including the elimination of duplicate efforts and expense in the creation of similar radio systems; reduction of costs associated with updates, improvements and maintenance requirements; and, enhanced combined ability to provide effective public safety and disaster responses in Cleveland and in the Northeast Ohio Region.

In consideration of the above Recitals, and in consideration of the mutual promises set forth in this Agreement, the Parties agree as follows:

1. **TERM OF AGREEMENT.** This Agreement shall be in effect beginning on the date stated above and shall remain in effect for a term of _____ years unless earlier terminated by mutual agreement or as otherwise may be permitted under this Agreement.
2. **CLEVELAND RESPONSIBILITIES.**
 - a) Cleveland agrees to permit the Participant to use the City’s Radio System under the Terms and Conditions of this Agreement.
 - b) Cleveland will operate, maintain and update Cleveland’s Radio System to the extent determined by Cleveland.
 - c) Cleveland will permit Participant to use the System to the extent Participant is qualified to participate, complies with the terms of this Agreement and applicable laws, rules and regulations, and does not adversely affect the System, and to the extent Cleveland is not prohibited from allowing such use under any contractual agreement or law.
 - d) Cleveland will seek to resolve all Participant issue reports as Cleveland determines appropriate. Cleveland will provide Participant with an update of the status of a resolution of the

issue within 24 hours of receipt of the Participant's user issue report to Cleveland's Department of Public Safety's Assistant Director at the address identified in Section 10 of this Agreement or her designee person or office, whose address and 24-hour telephone number shall be supplied to Participant.

3. PARTICIPANT'S RESPONSIBILITIES.

a) Participant provides in Exhibit B the purpose(s) for which it will use Cleveland's Radio System and identifies the talk groups, dispatch consoles, and/or portable or mobile radios it desires to use. These constitute the sole authorized purpose(s), talk groups, and radios that can be used on the System by Participant. Any changes to Exhibit B must be done through a written amendment to this Agreement.

b) Participant shall be solely responsible for obtaining and maintaining its own radios and other equipment needed to operate Participant's radio equipment on the System. Participant shall comply with all technical standards and purchase and operate only equipment that has been designated by Cleveland as compatible with the System. Participant is solely responsible for any user issues that arise from radios or other equipment owned or under the control of Participant.

c) Participant shall be familiar with and comply with all applicable rules and regulations of the Federal Communications Commission relating to radio usage and shall abide by any other applicable laws pertaining to radio use. Participant shall also comply with all rules, regulations, procedures, and directives of Cleveland regarding use of the System.

d) Participant will promptly provide Cleveland with a written report concerning any issues Participant may have with the System and shall promptly provide Cleveland with any information and access Cleveland reasonably deems necessary to respond to the issue.

e) Participant shall provide security for radio equipment to prevent unauthorized use by authorized personnel and prevent any use by un-authorized persons or entities. Any unauthorized access to the System that Participant becomes aware of shall be promptly reported to Cleveland. Participant shall maintain a radio log or other radio inventory control system to track radios. Lost, missing, destroyed, or otherwise compromised radios shall be promptly reported to Cleveland so that they can be electronically deleted from accessing the System.

f) Participant shall ensure all dispatchers and other radio users receive adequate training to use the System.

g) Participant shall not provide access to the System to any unauthorized internal personnel or to any external person or entity without the prior written approval of the City's Public Safety Director.

4. PAYMENT BY PARTICIPANT.

a) Pursuant to Cleveland's sliding scale Options in Exhibit C attached hereto and incorporated herein, Participant selects Option _____, and shall pay Cleveland a fee of _____ Dollars per radio per month payable in advance on a calendar year basis. The year or partial year shall commence upon the Effective Date of this Agreement. If this Agreement is cancelled for any reason prior to this Agreement's _____ year term under the Option selected by Participant, Participant, if applicable, will pay Cleveland for its usage of the System at the higher rate it would have been charged for a lesser term under the sliding scale Options.

b) Fees shall be used as Cleveland determines for day-to-day operation of the System and for ongoing System maintenance and support, updates, and for future infrastructure improvements and/or expansion, and software upgrades.

c) Fees shall be payable by Participant to Cleveland in the form of a check or warrant sent to the Cleveland address indicate in Paragraph 10 of this Agreement within 30 days from receipt of Cleveland's annual invoice. Such invoice may be submitted by Cleveland to Participant at least 30 days prior to each full year. For a partial calendar year, Cleveland may submit an invoice at any time during that partial year. In the event of late or non-payment, Cleveland may, without notice, cancel this Agreement or deny Radio System access to Participant until such time as payment is made.

d) In no event shall the acceptance by the Cleveland of a payment from the Participant constitute or be construed as a waiver by the City of any breach of covenant, unauthorized use, or any default which may exist, on the part of the Participant.

5. TERMINATION OF AGREEMENT. Either party may cancel this Agreement by submitting written notification to the other 180 days prior to the date of cancellation except material breaches of this Agreement will result in the immediate termination of this Agreement.

6. NOT OBLIGATED TO THIRD PARTIES. No third-party beneficiaries are intended under this Agreement and the Parties are not and shall not be construed to be obligated or liable under this Agreement to any third-party.

7. WARRANTIES. CLEVELAND MAKES NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, IN CONNECTION WITH PARTICIPANT'S USE OF THE SYSTEM UNDER THIS AGREEMENT.

8. LIABILITY. Neither party will be liable to the other for any claims arising out of errors in accessing, using, or maintaining the Radio System.

9. MODIFICATION. This Agreement may be modified whenever such modifications are deemed necessary by mutual agreement of the Parties. Modifications to this Agreement shall be reduced to writing by way of an Amendment to this Agreement and shall be signed by both parties.

10. NOTICES. Any notices, payment, invoices, reports, etc. required by this Agreement shall be sufficient if sent by the parties in the U.S. Mail, postage pre-paid to the addresses noted below:

CLEVELAND - Assistant Director
 Department of Public Safety
 Office of Information and Technology
 205 W. St. Clair, 5th Floor
 Cleveland, Ohio 44113

PARTICIPANT - _____

11. EXTENT OF AGREEMENT. This Agreement represents the entire agreement between Cleveland and Participant and supersedes all prior negotiations, representations or agreements either written or oral.

12. EXHIBITS. The following Exhibits to this Agreement are attached hereto and expressly incorporated herein:

Exhibit "A" – City of Cleveland Ordinance 652-11 and Participant's Authorizing Ordinance or Resolution if required.

Exhibit "B" – Participant's Purpose for Use of System and Identification of Talk Groups, Dispatch Consoles, and Portable or Mobile Radios to be Used on the System.

Exhibit "C" - Sliding Scale Options

IN WITNESS WHEREOF, Cleveland and Participant execute this Agreement as of the date first written above.

CITY OF CLEVELAND

By: _____
Michael McGrath, Director
Department of Public Safety

PARTICIPANT

[Print Name]

By: _____
(Signature)

(Print Name and Title)

The legal form and correctness
of this document is hereby approved.

City of Cleveland
Barbara Langhenry, Director of Law

By: _____
Nancy Kelly, Assistant Director of Law

Date: _____

Participant: _____
Director of Law: _____

By: _____

Date: _____