RESOLUTION NO.   67-2009   Offered by All of Council

A RESOLUTION AUTHORIZING THE MAYOR AND THE FINANCE DIRECTOR TO ENTER INTO A REGIONAL 800 MHZ RADIO SYSTEM USER/MAC USER AGREEMENT

BE IT RESOLVED by the Council of the Village of Richfield, Summit County, State of Ohio:

SECTION 1.   That the Mayor and the Finance Director be, and they hereby are, authorized and directed to enter into a Regional 800 MHz Radio System User/Mac User Agreement, a copy of which Agreement is attached hereto as Exhibit "A" and incorporated herein fully as if by reference.

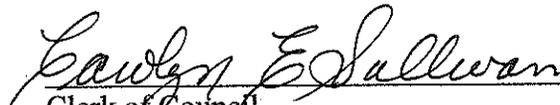SECTION 2.   This Resolution shall take effect and be in force from and after the earliest period allowed by law.

PASSED: _12/15/09_

_____
President of Council

_____
Mayor

Dated: _12/15/09_

ATTEST:

_____
Clerk of Council

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SUMMARY OF CHANGES TO 800 MHz AGREEMENT

- Expands users to include public and private users other than political subdivisions.

- A set termination date is inserted so all user agreements terminate simultaneously (April 30, 2019), which will allow agreements to be negotiated as a group rather than on individual termination dates.

- Membership fees will be applied to the salary of the radio system administrator. Currently, user fees can only be used for 800 MHz infrastructure equipment. However, any shortfall regarding the operations of the 800 MHz system, including infrastructure, is borne equally by the City of Akron and County. Even if user fees are applied to the RSA, and a shortfall exists for operations, the City/County share that shortfall.

- Membership fees can be raised on the fifth anniversary of originally joining the system which is consistent with the terms of the old agreement.

005285

REGIONAL 800MHz RADIO SYSTEM

USER/MAC USER AGREEMENT

THIS AGREEMENT is entered into by and among the **COUNTY OF SUMMIT**, Office of the County Executive, 175 South Main Street, 8th Floor, Akron, Ohio 44308, as authorized by County Council Resolution No._____ and the **CITY OF AKRON**, Mayor's Office, Municipal Building, 166 South High Street, Akron, Ohio 44308, as authorized by City of Akron Ordinance No. 498-2005, hereinafter collectively referred to as the "County/City", and _____, with an address at _____ ("User/MAC User").

WHEREAS, the County/City own and operate a consolidated County-wide 800 MHz Regional Radio System which provides for public safety radio communications ("System"); and

WHEREAS, the parties to this Agreement, as well as other public safety agencies, public service departments and certain private entities desire to enter into an agreement governing the use and maintenance of the System as originally authorized by County Council Resolution No. 2005-385 and City of Akron Ordinance No. 498-2005; and

WHEREAS, this equipment is for the benefit of all Summit County residents to coordinate interoperability and communications for public safety departments and other users.

NOW, THEREFORE, in consideration of the mutual promises and considerations set forth herein, the parties agree as follows:

1. **Definitions**

   a. "MAC" (Mutual Aid Channels) – A suite of twelve talk-groups identified as MAC Call and MAC 2-12 programmed on the System to provide interoperability and communications for purposes of routine and emergency mutual aid between Users of the System and monitored for twenty-four (24) hours a day by the Summit County Sheriff's Office (Sheriff) dispatch center.

   b. "User" – Any political subdivision or private entity that utilizes the System to conduct day-to-day, emergency and non-emergency operations.

   c. "MAC User" – Any political subdivision or private entity that utilizes the System's Mutual Aid Channels for the limited purpose of conducting routine mutual aid between Users of the System for emergency and non-emergency operations.

   d. "Public Safety User" – Users/MAC Users that are law enforcement, fire, emergency medical services (EMS) and rescue agencies.

   e. "Public Service User" – All other public and/or private Users/MAC Users not otherwise identified.

2. **Responsibility for Maintenance of the Communications Equipment**

The County/City shall maintain in good operable condition and repair the necessary 800MHz radio backbone communications equipment for the System. **THE COUNTY/CITY MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES EXPRESS OR IMPLIED AS TO THE FITNESS FOR A PARTICULAR PURPOSE OF THE 800 MHZ COMMUNICATIONS EQUIPMENT AND SYSTEM.**

3. **User/MAC User Maintenance of Field Equipment**

It is the intent of the User/MAC User to incorporate the System into its communications center, and User/MAC User recognizes and agrees that the incorporation of the System does not require discontinuation of the current operation of User/MAC User's existing communications center. User/MAC User shall be solely responsible for all costs associated with the maintenance, programming, repair or replacement of its field radios, Embassy switch hardware/software, microwave, T-1 (if applicable), field/subscriber equipment, communication center equipment, any associated network connections or any devices in the custody of the User/MAC User and all associated non-infrastructure equipment. Maintenance shall be performed by certified technicians. In the event User/MAC User fails to adequately maintain or otherwise provide for the proper maintenance of its field equipment or fails to acquire proper maintenance on equipment that has been identified as affecting infrastructure resources of other System users then within four (4) hours of being notified of such, the County/City shall have the right to designate a certified technician to repair said equipment and the User/MAC User whose equipment is repaired shall promptly reimburse upon demand and receipt of invoice the County/City for the expenses involved in repairing the identified equipment.

4. **Channel Authorization for MAC Users**

   a. MAC Users shall follow and abide by the guidelines established under the Summit County Comprehensive Communications Plan; MAC Zone document and guidelines established by the County/City. MAC Users shall not have any personal channels on the system.

   b. In addition to the twelve MAC channels, upon receiving the User Community's prior written consent and the written approval by the County/City, the MAC User may also have programmed on their radio the primary operating dispatch channel of both police and fire departments of any User community bordering their corporate boundaries.

   c. A MAC User may request a MAC channel by contacting the Sheriff's Office on the MAC Call channel.

5. **Term**

This Agreement shall be in effect commencing on the last date signed by all parties and shall terminate on April 30, 2019. This Agreement may be renewed for additional, consecutive five (5) year terms, upon the prior written consent of all the parties. Neither the User/MAC User nor the County/City shall have a right to terminate this Agreement during the original term or renewal term, if exercised, except as provided in Paragraph 12 (Termination, Breach or Default).

6. Membership Fees

User/MAC User agrees to pay to the County/City an annual membership fee as set forth in Exhibit A, attached hereto and incorporated herein by reference. The membership fee will be applied to the expenses of the System, including but not limited to, the payment of the salary of the Radio System Administrator and for the management and maintenance of the infrastructure equipment. The membership fee will not be applied to the cost of maintenance or operation of any field/subscriber equipment, communication center equipment, any associated network connections, any devices in the custody of the User/MAC User or any costs that are the User/MAC User's responsibility as set forth in Paragraph 3 herein. On the fifth anniversary of the User/MAC User having first joined the System membership fees may increase annually at a percentage not to exceed the Municipal Cost Index (or equivalent benchmark) for the previous year. No annual membership fee will be charged to or paid by the County or the City because of their contributions of manpower and equipment in establishing the System and the responsibilities set forth in this Agreement.

7. Ownership of System Infrastructure Equipment

The County of Summit and the City of Akron own all System infrastructure equipment.

8. Communications System Administrative Committee

The Summit County Emergency Management Executive Committee (SCEMEC) shall formally establish a Communications System Administrative Committee pursuant to the original Summit County Emergency Management Agency Agreement established in 1991 under the authority of the County Executive. This committee shall meet on a monthly basis and address use and maintenance issues associated with the System. This committee shall have one representative from each User and each representative will have equal representation for maintenance issues brought before the Communications System Administrative Committee. The County of Summit and the City of Akron will each have one representative on this committee. MAC Users shall not have any representation on the System Administration Committee.

9. Radio System Administrator

The County/City (as the owners of the System) shall contract on behalf of the SCEMEC for a Radio System Administrator to manage and provide administrative and technical direction for the System and to oversee the System's planning, management, maintenance and daily operations. The System Administrator will be a member of the Communications System Administrative Committee.

10. Dispute Resolution/Grievance Procedure

In the event the Communications System Administrative Committee cannot resolve a problem to the satisfaction of all Users, Users have a right to appear before the full SCEMEC and request resolution by a majority vote of the members of the SCEMEC. Should the SCEMEC recommend expenditures of public money beyond this Agreement, then those expenditures can only be approved by the County/City's elected officials or legislative bodies.

11. Expansion or Reduction of Capacity or Coverage

The County/City may expand or reduce channel capacity or coverage of the System as awarded to Motorola on November 15, 2000 or any of its successor or assigns. Any proposal to expand or reduce capacity or coverage of the System must be reviewed by the Radio System Administrator and by the Summit County Communications System Administrative Committee.

12. Termination, Breach or Default

a. Termination

i. This Agreement shall terminate unless renewed for additional terms in accordance with Paragraph 5 (Term) herein.

ii. If User/MAC User engages in illegal conduct or causes a potential harmful situation, then the County/City at its sole discretion may suspend or terminate this Agreement immediately effective as of the date notice is mailed.

b. Default

i. County/City Default

All User/MAC Users shall have equal access to the System in terms of both frequencies and priority levels. All Public Safety Users shall have priority queuing over Public Service Users and private entities. County/City's non-compliance shall result in reimbursement of one month's maintenance fees to the affected User/MAC User in the form of a credit on the next month's charges following the month of default.

ii. User/MAC User Default

User's/MAC User's failure to pay the required membership fee, failure to maintain field equipment as required hereunder or failure to comply with the terms of this Agreement shall constitute a default on the part of the User/MAC User. The acceptance by the County/City of any late payments due hereunder or County/City's delay in exercising any rights hereunder will not constitute or be construed as a waiver by the County/City of any default by User/MAC User and shall not in any way impair or prejudice any right or remedy available to the County/City in respect to such default. Either the County or the City shall send written notice of the default to the User/MAC User and request the User/MAC User to remedy the default within thirty (30) days of receipt of such notice. If the User/MAC User is taking steps to remedy the default and needs additional time, the County/City will grant the User/MAC User an additional thirty (30) days to remedy the default. If the default is still not remedied after sixty (60) days, the County/City may then immediately terminate this Agreement.

13. Billing

The County/City shall invoice the membership fee to User/MAC User in advance, on a semi-annual basis. The User/MAC User shall pay the invoice from the County no later than thirty (30) days from receipt of the invoice. Failure to do so is a default hereunder and may result in the loss of services to the User/MAC User and/or immediate termination of this Agreement.

The revenues shall be deposited into a special fund established by the County/City and designated for any System purposes. The County will be the fiscal agent with respect to the revenues and expenses contained in this Agreement.

14. Entire Agreement

This Agreement replaces and supersedes any prior agreements between the parties related to the System. All prior user agreements with User/MAC User shall be deemed rescinded, null and void.

15. Modification

Any modification of this Agreement must be in writing and signed by County/City and User/MAC User.

16. Jurisdiction

This Agreement is governed by the laws of the State of Ohio without regard to conflict of laws principles. Any litigation arising under this Agreement must be litigated in Summit County, Ohio.

17. Release

The User/Mac User is solely responsible to its employees and agents use of the System and the County/City have no responsibility or control over User/Mac Users employees or agents. Each party is responsible for their own employees and agents and none of the parties shall be liable for any negligence or wrongful acts, by omission or commission, chargeable to the other parties. The User/Mac User agrees to release and not hold liable the County/City for any liabilities, negligence or expenses arising from or related to this Agreement. This release shall survive the termination of this Agreement.

18. Notice

All Notices shall be sent by U.S. Certified Mail, return receipt requested, postage prepaid to the address of all the other parties as set forth in the first paragraph of this Agreement.

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Intending to be legally bound, the parties have signed this Agreement as of the date set forth below:

COUNTY OF SUMMIT   User/MAC User - **ELECTED OFFICIAL**

_____   _____
Russell M. Pry   Date   Name:_____
Executive   Title:_____
                                          Date:_____
Approved as to Legal Form: Community:_____

_____
Richard Dobbins, Director of Law

                                          OR

CITY OF AKRON   User/MAC User - **Township Trustees for:**

                                          Community: _____

_____
Mayor Donald L. Plusquellic   Date   _____
                                          Trustee   Date

Approved as to form and correctness:
                                          _____
                                          Trustee   Date

_____
Max Rothal, Director of Law   _____
                                          Trustee   Date

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EXHIBIT A

Maintenance Fees Structure	Monthly Cost Per Radio

1. User/MAC User $12.00

2. User specific talk groups identified in the Major Emergency Regional Communications (MERC) network of the Regional 800MHz Radio System shall be placed on any community's radios without monthly cost. These talk groups will only be used in accordance with the MERC Preservation Policy.

3. There shall be a $.50 per radio per month per frequency reduction to any licensee whose 800MHz frequency(s) are used on the Regional 800MHz Radio System. These frequencies shall remain in the existing license holder's name; however any costs associated with re-licensing shall be the responsibility of the license holder.

4. Should a community have a signed automatic response agreement with either the City of Akron or Summit County Sheriff, those channels will remain on the community's radios for continued operation.

5. Any and all costs for radio programming shall be the responsibility of the User/MAC User