

SURCHARGE DISTRIBUTION AND USE AGREEMENT

This Surcharge Distribution and Use Agreement is made as of December 15, 2016, between the County of Kent, a Michigan municipal corporation the principal business address of which is 300 Monroe Ave NW, Grand Rapids, MI 49504 (the "**County**"), and the Kent County Dispatch Authority, a Michigan public body corporate formed pursuant to the Urban Cooperation Act of 1967, 1967 (Extra Session) PA 7, MCL 124.501 *et seq.*, the principal business address of which is 1155 28th Street, SW, PO Box 905, Wyoming, MI 49509 (the "**KCDA**").

RECITALS

A. The County created a 9-1-1 service district and first adopted a 9-1-1 plan in 1987 pursuant to the Emergency 9-1-1 Service Enabling Act, 1986 PA 32, MCL 484.1101 *et seq.* (the "**9-1-1 Act**").

B. Subsection 301(3) of the 9-1-1 Act, MCL 484.1301(3), allows a county to delegate functions to an emergency 9-1-1 district board and subsection 320(3) of the 9-1-1 Act, MCL 484.1320(3) allows a county to appropriate funds to an emergency 9-1-1 district board.

C. The KCDA was formed in 2006 by the County and the cities of Grand Rapids, Grandville, Walker and Wyoming, all of which at that time operated Public Safety Answering Points ("**PSAPs**"), and the KCDA operates pursuant to the 2006 Amended and Restated Agreement to Establish a Kent County Dispatch Authority (the "**KCDA Formation Agreement**"), pursuant to which the KCDA (i) provides 9-1-1 dispatch services within the County via the two remaining PSAPs, one of which is operated by the County (the "**County PSAP**") and the other of which is operated by the City of Grand Rapids (the "**City PSAP**"), (ii) is responsible for the "technological integration and operational compatibility of emergency dispatch systems", and (iii) is to "approve, purchase, own, and provide maintenance, vendor and administrative/technical support for new or additional technology for emergency dispatch systems within the County."

D. The KCDA Formation Agreement created the KCDA Administrative Policy Board and it is comprised to comply with the requirements of subsection 320(2) of the 9-1-1 Act, MCL 484.1320(2), for the composition of an emergency 9-1-1 district board and the KCDA was acknowledged in the 2010 amendment to the County's 9-1-1 plan as having been delegated certain 9-1-1 functions.

E. The KCDA Formation Agreement also provides that the amounts collected by the County pursuant to the 9-1-1 Act shall be transmitted to the KCDA within 30 days after the County receives those funds and that the KCDA is to use the funds for "the implementation of technology integration and operational compatibility for the dispatch of emergency police, fire, and ambulance services and for other purposes permitted by this Agreement."

F. This distribution and use complies with section 401b of the 9-1-1 Act, 1986 PA 32, MCL 484.1401b(6), requiring that the County must collect the surcharge and distribute the monies collected for use for PSAPs within the County and section 406 of the 9-1-1 Act, MCL 484.1406(1), requiring that those funds be distributed pursuant to any agreement a county has for their distribution and that they be used only to provide 9-1-1 services.

G. On November 8, 2016, County voters approved an increase in the monthly surcharge on communication service suppliers' billings to service users within the County for the period beginning July 1, 2017 and continuing through June 30, 2036, to provide dedicated funding for an enhanced 9-1-1 dispatch system including (i) technology upgrades (including communication towers and new equipment for dispatch and existing police, fire, and public safety agencies), and (ii) annual funding for fire dispatch as provided in the County 9-1-1 service plan.

H. In anticipation of voter approval of the monthly surcharge increase, the KCDA has obtained from Michigan's Public Safety Communications System ("**MPSCS**") proposed agreements needed to join that 800MHZ communications system that provides improved emergency communications capabilities and has also obtained from Motorola Solutions, Inc. ("**Motorola**") a proposal (the "**Motorola Proposal**") for the acquisition, construction, modification, and installation of antennas, towers, dispatch consoles, radios, and other equipment needed to join and utilize the MPSCS (the "**Project**").

I. It is intended that the KCDA will serve as the County's agent for the Project.

- J. Under the Formation Agreement, the KCDA lacks authority to issue debt or levy taxes.
- K. The parties intend that the County will issue up to \$30 million of tax exempt capital improvement bonds to fund the acquisition, construction and installation of the Project pursuant to the Motorola Proposal (the "**County Bonds**") and desire to provide for the payments to be made on those bonds.
- L. The County has also been collecting funds from various local governments within the County used to defray certain costs of dispatching their fire department personnel and other local governments have directly paid for fire dispatching.
- M. The voter approved increase in the surcharge is to be used in part to defray the costs of fire dispatching.
- N. The parties wish to establish the terms and conditions for the distribution and use of 9-1-1 surcharge monies and to address related issues.

TERMS AND CONDITIONS

In exchange for the consideration in and referred to by this Agreement, the parties agree as follows:

1. Surcharge Collection. The County will collect the entire surcharge levied pursuant to the 9-1-1 Act in accordance with the 9-1-1 Act and with all other applicable state requirements. The monies collected shall be used and distributed as provided in this Agreement. The KCDA shall annually budget an amount sufficient to pay the costs of an audit or other review of accuracy and sufficiency of the surcharge remittances paid by service providers and either the County or KCDA may request the initiation of such an audit or other review as may be conducted under applicable law.

2. Project. As the County's agent for the Project, the KCDA, by actions approved by the KCDA Administrative Policy Board that serves as the County's emergency 9-1-1 district board, shall:

A. Contract with Motorola for the acquisition, construction, and installation of the Project in accordance with the Motorola Proposal as the Motorola Proposal is finally approved by the KCDA Administrative Policy Board. The KCDA will ensure the contract with Motorola pursuant to the Motorola Proposal:

1. Requires that the Project is completed 30 months after the date of this Agreement.
2. Requires that Motorola complies with the County's requirements and procedures for payment of invoices.
3. Requires that Motorola comply with all laws, rules and regulations applicable to the Project.
4. Provides for any required licenses and other permissions to use the Project and associated software by the KCDA, the PSAPs, and all police departments, fire departments, public safety agencies and other service providers who have joined the MPSCS 800MHz communications system in the County. This provision does not provide any radios or other equipment to the privately owned (non-profit or for profit) service providers, but ensures that if those privately owned service providers obtain the radios and other needed equipment they will be covered by the software and other licenses and permissions needed be inter-operable with the Project.
5. Provides that no radios or other equipment paid for with funds resulting from the increase in the surcharge approved in November 2016 or other County funds, including, without limitation, Bond Proceeds (as defined below), are distributed to any private person or entity. This does not preclude private persons or entities from acquiring radios or equipment using their own funds and does not preclude private persons or entities providing ground ambulance service providers from using the PSAPs and dispatching services or from being connected to and using the MPSCS with their own radios and other equipment.

B. Provide project oversight to ensure the Project complies with the Motorola Proposal, MPSCS requirements, any applicable covenants related to the County Bonds, and all applicable laws, rules and regulations, including, without limitation, those applicable to the tax-exempt status of the bonds.

C. To the extent radios and other equipment are provided as part of the Project to police departments, fire departments or other local public safety agencies, the KCDA shall require recipients to agree in writing to:

1. Ensure that each recipient local government acknowledges that it is solely responsible for providing, without cost to the County or the KCDA, for any maintenance, repair, replacement, upgrades or other needs to keep the radios and other equipment operable and functional for use with the PSAPs and the MPSCS.

2. Maintain an inventory of radios or other equipment provided as part of the Project that details the user(s) of the radios and other equipment, including without limitation, the disposition of equipment no longer in the recipient's service.

3. Annually certify to the KCDA and the County, on a form acceptable to County Corporation Counsel, that no radios or other equipment provided as part of the Project have been provided to any private person or entity.

D. Enter into such easement, lease or licensing agreements with the County as are necessary to locate antennas and other equipment on existing County-owned towers or other County-owned structures, on towers or structures leased by the County, or on new towers or other structures to be built or installed on County-owned property. Such agreements shall (i) compensate the County for such use and (ii) hold the County harmless from and indemnify the County for any personal injuries, property damage, or other claims for losses resulting from such use of County property or facilities.

E. The KCDA shall annually certify in writing to the County that the KCDA's acquisition, construction, installation, use, operation, repair, and replacement of the Project and any Project components complies with (i) all applicable laws, rules and regulations, (ii) the 9-1-1 Plan as it may from time-to-time be amended, (iii) this Agreement, (iv) the KCDA Formation Agreement, (v) any agreements entered into as provided in subsection 2.C and 2.D of this Agreement, (vi) any terms and conditions of the County Bonds, and (vii) any laws, rules and regulations applicable to the County Bonds and Bond Proceeds.

3. County Bonds.

A. The County will use its reasonable best efforts to issue the County Bonds in an amount and at such interest rates and other terms as determined by the County, after consultation with the KCDA's Policy Board Chair, to be reasonably needed and acceptable to pay the costs of the Project together with the costs of issuing the County Bonds, any needed capitalized interest, and other costs incidental to the County Bonds.

B. If the bonds cannot be issued at an interest rate and with other terms acceptable to the County, after consultation with the KCDA's Policy Board Chair, the parties will evaluate the circumstances to determine whether market conditions or other circumstances may change so that the County Bonds can be issued at an interest rate and with other terms acceptable to the County and to the KCDA.

C. The proceeds from the issuance of the County Bonds ("**Bond Proceeds**") will be disbursed by the County to pay Project costs only (i) with the prior approval of the KCDA, and (ii) in accordance with the County's requirements and procedures for paying invoices. All Bond Proceeds must be expended for the Project or as otherwise provided by law within 36 months of the date of this Agreement.

D. No radios or other equipment acquired with Bond Proceeds will be provided to any private person or entity and no private person or entity shall be provided any use of any radios or other equipment acquired with Bond Proceeds. This provision shall not prevent the PSAPs from dispatching privately owned ambulance or EMS service providers and shall not prevent privately owned ambulance or EMS service providers from using their own radios and other communications equipment to communicate over the MPSCS.

E. The KCDA shall hold the County (defined for purposes of this provision to include all County departments, agencies, officers and employees) harmless from, indemnify it for, and defend it (with legal counsel reasonably acceptable to the County) against any and all demands, claims, lawsuits, or

any other actions resulting from the issuance of the County Bonds, use of the Bond Proceeds, distribution of the surcharge monies pursuant to this Agreement, or loss of the tax exempt status of the County Bonds due to actions of the KCDA or any person or entity receiving or using any portion of the Project or Bond Proceeds.

F. The KCDA shall not use or allow the use of anything purchased with Bond Proceeds and shall take measure to ensure other governmental entities receiving radios or other equipment acquired with Bond Proceeds do not take any actions that result in the interest on the County Bonds (as defined below) becoming taxable or result in any other default on the County Bonds. The KCDA hereby agrees to indemnify the County for any damages or loss the County incurs due such a default on the County Bonds caused by the KCDA. The KCDA shall also require that all public agencies and entities receiving any radios or other equipment prevent any use of the radios and other equipment by any person or entity and prevent them from taking any other actions that results in the interest on the County Bonds becoming taxable or results in any other event of default on the County Bonds. That requirement shall also include an obligation of each governmental agency or entity to which any radios or other equipment is provided to indemnify the County for any damages or loss the County incurs due such a default caused by the action of that public agency or entity.

4. Surcharge Distribution. The monies collected by the County pursuant to the 9-1-1 Act will be distributed as follows:

A. The County shall first retain an amount that, when added to other amounts the County has retained for such purposes from previously collected surcharges, is sufficient to fully meet the next 2 semi-annual payments of interest and the next annual payment of principal on the County Bonds, together with such other amounts as may be required by the terms of the County Bonds. Thereafter, the County shall each year retain from annual surcharge revenues an amount equal to 1/5 of the total of the average annual installments of principal and interest due on the County Bonds until it has retained an amount equal to 1 additional year's annual installments of principal and interest. Thus, within 5 years, the County will have retained a debt service reserve equal to the average annual debt service on the County Bonds in addition to the amounts being collected to pay the debt service on the County Bonds for the current year.

B. After retaining the amount provided in subparagraph 4.A of this Agreement, the remaining monies collected by the County pursuant to the 9-1-1 Act will be transmitted to the KCDA and the KCDA shall distribute and use those funds in accordance with a subsequent agreement that shall address the following:

1. From the voter approved \$0.70 per month per phone line surcharge increase the KCDA will pay the PSAPs for dispatching firefighting personnel and departments in the County according to a methodology agreed upon by the KCDA and the PSAPs that uses a uniform cost and metric.

2. The surcharge monies resulting from the levy of the surcharge at the rate provided prior to the November 2016 election shall be used, distributed, and expended by the KCDA pursuant to the County's 9-1-1 plan, any applicable agreements, the KCDA's annual budget, and applicable state requirements.

5. Term. This Agreement shall remain in effect until the County Bonds, including any refunding of the County Bonds, are paid in full or until December 31, 2037, whichever is later.

6. Miscellaneous.

A. This Agreement may only be amended or modified in a writing which is signed by both the County and the KCDA after approval of the County's Board of Commissioners and the KCDA's Administrative Policy Board.

B. The parties both had the advice of legal counsel in entering into this Agreement and both had input into its contents. The captions are for reference only and shall not affect its interpretation. However, the recitals are an integral part of this Agreement.

C. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Neither party may assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other party.

D. There are no intended third party beneficiaries to this Agreement.

E. If there is any conflict between this Agreement and any other agreement between the parties, the terms of this Agreement shall control.

The parties have signed this Agreement as of the date first written above.

COUNTY OF KENT

By: James R. Saalfeld
James R. Saalfeld, Chairperson
Board of Commissioners

By: Mary Hollinrake
Mary Hollinrake, Clerk

Date signed: December 15, 2016

GRAPIDS 58014-1 424659v11

KENT COUNTY DISPATCH AUTHORITY

By: Curtis Holt
Curtis Holt, Chairperson
Administrative Policy Board

Date signed: December 15, 2016