

DATE: July 20, 2005

TO: John Szerlag, City Manager

FROM: Charles T. Craft, Chief of Police
William S. Nelson, Fire Chief

SUBJECT: AGENDA ITEM- Approval of Radio System Agreement with
Oakland County

BACKGROUND

In 1999, Oakland County, in partnership with most of the local units of government in the county, initiated a project to plan, fund, and construct an 800 Megahertz digital trunked radio system to provide communications for the public safety agencies in the county. Over the past four years frequencies were obtained, an RFP was issued, a vendor was selected, and the system construction began. The system is nearing completion and agencies are preparing to transition to the new system. As part of the process, the CLEMIS Radio Oversight Committee has requested participating agencies to enter into an agreement. The purpose of the agreement is to provide Oakland County with a commitment by the local governments prior to the ordering and distribution of radios. The agreement has been reviewed by the Law Department for form and legality.

It is unknown at this time if any recurring costs will be associated with participation in the system. The system is funded by a surcharge on wire line telephone service, which is scheduled to terminate at the end of 2006. If some level of surcharge is not continued past 2006 there will be some form of user charges to fund system maintenance.

The current police and fire radio communications infrastructure is from 15 to 25 years old and nearing the end of its useful life. In addition to enhancing interoperability with other police and fire departments, this system eliminates the need to replace the existing infrastructure in Troy with its associated costs.

RECOMMENDATION

It is recommended that the city enter into the attached Oakland County Radio System Agreement.

**RADIO SYSTEM AGREEMENT
BETWEEN
OAKLAND COUNTY
AND
[NAME OF MUNICIPALITY]**

This Agreement ("the Agreement") is made between Oakland County, a Constitutional and Municipal Corporation, 1200 North Telegraph, Pontiac, Michigan 48341 ("County"), and the City of Troy, 500 W. Big Beaver Rd. Troy, MI 48084 ("Municipality"), on behalf of the City of Troy police and fire departments ("Departments"). In this Agreement the County and the Municipality may also be referred to individually as "Party" or jointly as "Parties."

PURPOSE OF AGREEMENT. Pursuant to the Urban Cooperation Act of 1967, 1967 PA7, MCL 124.501, *et seq.*, the County and the Municipality enter into this Agreement for the purpose of delineating the relationship and responsibilities between the County and the Municipality regarding the new interoperable 800 MHZ Radio System in Oakland County. The creation of the new Radio System stemmed from major interoperability deficiencies of the current patchwork radio systems operated on 150 MHZ, 420 MHZ, and 800 MHZ frequencies by public safety agencies throughout Oakland County. The major interoperability deficiencies were illustrated in November 1996, by the inability of thirteen public safety agencies to effectively communicate at the scene of the Wixom Ford Plant shooting. This event and the need for homeland security underscores the need to unify public safety communications in Oakland County. Through this Agreement and with the operation of the new Radio System, each Party will be better prepared to serve its citizens.

In consideration of the mutual promises, obligations, representations, and assurances in this Agreement, the Parties agree to the following:

1. **ENTITIES PERFORMING UNDER THIS AGREEMENT.** All County responsibilities set forth in this Agreement shall be provided through the CLEMIS Division of the County Department of Information Technology. All Municipal services and obligations set forth in this Agreement shall be performed by the City of Troy. The Radio Oversight Committee of the CLEMIS Advisory Board shall provide direction, counsel, and recommendations concerning the operation and use of the Radio System.
2. **DEFINITIONS.** The following words and expressions used throughout this Agreement, whether used in the singular or plural, within or without quotation marks, or possessive or nonpossessive, shall be defined, read, and interpreted as follows.

- 2.1. **Agreement** means the terms and conditions of this Agreement, the Exhibits attached hereto, and any other mutually agreed to written and executed modification, amendment, or addendum.
- 2.2. **Municipality** means the City of Troy, a Municipal and Constitutional Corporation including, but not limited to, its Council, Board, any and all of its departments, its divisions, elected and appointed officials, directors, board members, council members, commissioners, authorities, committees, employees, agents, subcontractors, volunteers, and/or any such persons' successors.
- 2.3. **Claim** means any alleged loss, claim, complaint, demand for relief or damages, cause of action, proceeding, judgment, deficiency, liability, penalty, fine, litigation, costs, and/or expenses, including, but not limited to, reimbursement for reasonable attorney fees, witness fees, court costs, investigation expenses, litigation expenses, and amounts paid in settlement, which are imposed on, incurred by, or asserted against the County, its employees or agents, whether such Claim is brought in law or equity, tort, contract, or otherwise.
- 2.4. **CLEMIS** means the Courts and Law Enforcement Management Information System, a regional consortium of public safety departments, and the associated voice and data networks operated by the County to enhance public safety and criminal justice operations in Southeastern Michigan.
- 2.5. **CLEMIS Advisory Board** means the Board that provides direction, counsel, and recommendations to the County concerning the operation of CLEMIS.
- 2.6. **CLEMIS Division** means the CLEMIS and Public Safety Division of the Oakland County Department of Information Technology.
- 2.7. **County** means Oakland County, a Municipal and Constitutional Corporation including, but not limited to, all of its departments, divisions, the County Board of Commissioners, elected and appointed officials, directors, board members, council members, commissioners, authorities, committees, employees, agents, volunteers, and/or any such persons' successors.
- 2.8. **Day** means any calendar day beginning at 12:00 a.m. and ending at 11:59 p.m.
- 2.9. **FCC** means the Federal Communications Commission.
- 2.10. **Infrastructure Equipment** means all base stations, transmitters, combiners, antennae, amplifiers, coaxial cable, generators, shelters, network switches and all associated servers and routers (Network Switching center), network connectivity, consoles at public safety answering points, and gateways.
- 2.11. **Radio Oversight Committee** means the standing committee of the CLEMIS Advisory Board, which provides direction, counsel, and recommendations to

the CLEMIS Advisory Board regarding radio communication and the operation of the 9-1-1 Service Plan for Oakland County.

- 2.12. **Radio System ("the System")** means the County wide interoperable 800 MHZ voice radio system.
- 2.13. **Radio System Policies and Procedures** means the policies and procedures created by the Radio Oversight Committee and approved and adopted by the CLEMIS Advisory Board which shall govern the management, operation, and use of the Radio System.
- 2.14. **User Equipment** means mobile and portable radios and all accessories thereto, control stations, and V-Tacs.
3. **AGREEMENT EXHIBITS**. The Exhibits listed below and their properly promulgated amendments are incorporated and are part of this Agreement.
 - 3.1. **Exhibit A**. The Radio System Policies and Procedures
4. **OPERATION AND USE OF RADIO SYSTEM**.
 - 4.1. The County is the owner of the Radio System and the Infrastructure Equipment. The County shall maintain and provide insurance for the Radio System and the Infrastructure Equipment.
 - 4.2. The County is the license holder for all FCC licenses for the 800 MHZ frequencies used in the Radio System. The County shall maintain these licenses and/or modify the licenses as required to operate the Radio System.
 - 4.3. The Department or Municipality shall be the FCC license holder and maintain any legacy conventional frequencies used by the Department or Municipality, including those interfaced through the Radio System consoles and/or gateways.
 - 4.4. The County may monitor and audit the Municipality's and/or Department's compliance with the Radio System Policies and Procedures. The monitoring and auditing of the Radio System may be performed periodically at the discretion of the County and at the sole expense of the County.
5. **OPERATION AND USE OF USER EQUIPMENT**.
 - 5.1. The policies and procedures for the purchase, programming, repair, replacement, and maintenance of User Equipment will be set forth in the Radio System Policies and Procedures.
 - 5.2. The County shall not provide insurance for the User Equipment.

5.3. User Equipment purchased by the County shall remain the property of the County. User Equipment purchased by the Municipality shall remain the property of the Municipality.

6. **CLEMIS ADVISORY BOARD/RADIO OVERSIGHT COMMITTEE RESPONSIBILITIES.**

6.1. The Radio Oversight Committee shall provide direction, counsel, and recommendations to the CLEMIS Advisory Board concerning the operation of Radio System. The CLEMIS Advisory Board shall relay such direction, counsel, and recommendations to the County.

6.2. The Radio Oversight Committee shall create policies and procedures that govern the management, operation, and use of the Radio System. The Radio Oversight Committee shall present the policies and procedures to the CLEMIS Advisory Board for approval and adoption.

6.3. The Radio Oversight Committee shall review the Radio System Policies and Procedures at least once a year to determine if changes or amendments are necessary. All changes and amendments to the Radio System Policies and Procedures shall be presented to the CLEMIS Advisory Board for approval and adoption.

6.4. The County shall compile and send to the Municipality the Radio System Policies and Procedures and any changes or amendments to the Radio System Policies and Procedures after their approval and adoption by the CLEMIS Advisory Board.

7. **FINANCIAL RESPONSIBILITIES.** The costs and fees associated with the use, operation, and maintenance of the Radio System, the maintenance of the User Equipment, and the repair, replacement, or purchase of the new User Equipment shall be set forth in the Radio System Policies and Procedures. In the event there are any costs or fees imposed and due to the County in connection with this Agreement and/or for the use, operation, or maintenance of the Radio System or User Equipment, the County has the right to set off any amount past due and retain any amount of money due to the Municipality from the County equal to the past due amount, including, but not limited to, distributions from the Delinquent Tax Revolving Fund (DTRF).

8. **DURATION OF INTERLOCAL AGREEMENT.**

8.1. The Agreement and any amendments hereto shall be effective when executed by both Parties with concurrent resolutions passed by the governing bodies of each Party. The approval and terms of this Agreement and any amendments hereto shall be entered in the official minutes of the governing bodies of each Party.

8.2. This Agreement shall remain in effect until cancelled or terminated by either Party pursuant to Section 10.

9. **ASSURANCES.**

9.1. Each Party shall be responsible for its own acts and the acts of its employees, and agents, the costs associated with those acts, and the defense of those acts.

9.2. The County is not responsible for any Claims arising directly or indirectly from misuse of the Radio System by the Municipality, its employees, or its agents.

9.3. Neither the County nor Municipality shall be liable for any consequential, incidental, indirect, or special damages in connection with this Agreement.

9.4. The Parties have taken all actions and secured all approvals necessary to authorize and complete this Agreement. The persons signing this Agreement on behalf of each Party have legal authority to sign this Agreement and bind the Parties to the terms and conditions contained herein.

9.5. Each Party shall follow the Radio System Policies and Procedures and its changes or amendments.

9.6. Each Party shall comply with all federal, state, and local ordinances, regulations, administrative rules, and requirements applicable to its activities performed under this Agreement, including but not limited to, all FCC rules and regulations.

9.7. Violation of the Radio System Policies and Procedures shall first be addressed by the Municipality. If the violation is not addressed by the Municipality, the Radio Oversight Committee shall take the appropriate action to correct the violation or recommend to the County action the County should take to correct the violation, which could include termination of this Agreement.

9.8. Any costs, fees, or fines which result from violation of the Radio System Policies and Procedures and/or any federal, state, or local laws, administrative rules, regulations, or ordinances shall be the responsibility of the entity or entities committing the violation.

10. **TERMINATION OR CANCELLATION OF AGREEMENT.**

10.1. The Municipality may terminate or cancel this Agreement for any reason upon thirty (30) Days written notice to the County. Within Sixty (60) Days of termination or cancellation of this Agreement, the Municipality must return all User Equipment (not purchased by the Municipality), all consoles, and all control stations to the County

- 10.2. Upon thirty (30) Days written notice to the Municipality, the County may terminate or cancel this Agreement upon recommendation of the Radio Oversight Committee, as adopted by the CLEMIS Advisory Board, or if the Radio System ceases to exist.
11. **TRAINING**. The policies and procedures concerning initial and continual training regarding the use of the Radio System by the Municipality and/or Department will be set forth in the Radio System Policies and Procedures.
12. **LOCAL RADIO SYSTEM ADMINISTRATOR**. The Municipality and/or Department shall designate at least one person and an alternate to act as the Local Radio System Administrator. This individual(s) will act as a liaison between the Department and the County regarding the operation and use of the Radio System for that specific jurisdiction. The names of the Local Radio System Administrators shall be conveyed to the individual listed in Section 22.1.
13. **NO THIRD PARTY BENEFICIARIES**. Except as provided for the benefit of the Parties, this Agreement does not and is not intended to create any obligation, duty, promise, contractual right or benefit, right to indemnification, right to subrogation, and/or any other right, in favor of any other person or entity.
14. **DISCRIMINATION**. The Parties shall not discriminate against their employees, agents, applicants for employment, or another persons or entities with respect to hire, tenure, terms, conditions, and privileges of employment, or any matter directly or indirectly related to employment in violation of any federal, state or local law.
15. **PERMITS AND LICENSES**. Each Party shall be responsible for obtaining and maintaining, throughout the term of this Agreement, all licenses, permits, certificates, and governmental authorizations necessary to perform all its responsibilities under this Agreement. Upon request, a Party shall furnish copies of any permit, license, certificate or governmental authorization to the requesting Party.
16. **RESERVATION OF RIGHTS**. This Agreement does not, and is not intended to impair, divest, delegate, or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty, or immunity of the Parties.
17. **FORCE MAJEURE**. Each Party shall be excused from any obligations under this Agreement during the time and to the extent that a Party is prevented from performing due to causes beyond such Party's control, including, but not limited to, an act of God, war, acts of government (other than the Parties'), fire, strike, labor disputes, civil disturbances, reduction of power source, or any other circumstances beyond the reasonable control of the affected Party. Reasonable notice shall be given to the affected Party of any such event.
18. **DELEGATION/SUBCONTRACT/ASSIGNMENT**. The Municipality shall not delegate, subcontract, and/or assign any obligations or rights under this Agreement without the prior written consent of the County.

19. **NO IMPLIED WAIVER.** Absent a written waiver, no act, failure, or delay by a Party to pursue or enforce any rights or remedies under this Agreement shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Agreement. No waiver of any term, condition, or provision of this Agreement, whether by conduct or otherwise, in one or more instances, shall be deemed or construed as a continuing waiver of any term, condition, or provision of this Agreement. No waiver by either Party shall subsequently effect its right to require strict performance of this Agreement.
20. **SEVERABILITY.** If a court of competent jurisdiction finds a term, or condition, of this Agreement to be illegal or invalid, then the term, or condition, shall be deemed severed from this Agreement. All other terms, conditions, and provisions of this Agreement shall remain in full force.
21. **CAPTIONS.** The section and subsection numbers, captions, and any index to such sections and subsections contained in this Agreement are intended for the convenience of the reader and are not intended to have any substantive meaning. The numbers, captions, and indexes shall not be interpreted or be considered as part of this Agreement. Any use of the singular or plural number, any reference to the male, female, or neuter genders, and any possessive or nonpossessive use in this Agreement shall be deemed the appropriate plurality, gender or possession as the context requires.
22. **NOTICES.** Notices given under this Agreement shall be in writing and shall be personally delivered, sent by express delivery service, certified mail, or first class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occur: (1) the date of actual receipt; (2) the next business day when notice is sent express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.
- 22.1. If Notice is sent to the County, it shall be addressed and sent to: Oakland County Department of Information Technology, Manager of CLEMIS Division, 1200 North Telegraph Road, Building #49 West, Pontiac, Michigan, 48341 and Chairperson of the Oakland County Board of Commissioners, 1200 North Telegraph, Pontiac, Michigan 48341.
- 22.2. If Notice is sent to the Municipality, it shall be addressed to: John Szerlag, City Manager, 500 W. Big Beaver Rd., Troy, MI 48084
- 22.3. Either Party may change the address and/or individual to which Notice is sent by notifying the other Party in writing of the change.
23. **GOVERNING LAW/CONSENT TO JURISDICTION AND VENUE.** This Agreement shall be governed, interpreted, and enforced by the laws of the State of Michigan. Except as otherwise required by law or court rule, any action brought to enforce, interpret, or decide any Claim arising under or related to this Agreement shall be brought in the 6th Judicial Circuit Court of the State of Michigan, the 50th

District Court of the State of Michigan, or the United States District Court for the Eastern District of Michigan, Southern Division, as dictated by the applicable jurisdiction of the court. Except as otherwise required by law or court rule, venue is proper in the courts set forth above.

24. **AGREEMENT MODIFICATIONS OR AMENDMENTS**. Any modifications, amendments, recessions, waivers, or releases to this Agreement must be in writing and agreed to by both Parties. Unless otherwise agreed, the modification, amendment, recession, waiver, or release shall be signed by the same persons who signed the Agreement or other persons as authorized by the Parties' governing body.
25. **ENTIRE AGREEMENT**. This Agreement represents the entire Agreement and understanding between the Parties. This Agreement supercedes all other oral or written Agreements between the Parties. The language of this Agreement shall be construed as a whole according to its fair meaning, and not construed strictly for or against any Party.

IN WITNESS WHEREOF, _____ hereby acknowledges that he/she has been authorized by a resolution of the _____, a certified copy of which is attached, to execute this Agreement on behalf of the Municipality and hereby accepts and binds the Municipality to the terms and conditions of this Agreement.

EXECUTED: _____ DATE: _____

WITNESSED: _____ DATE: _____

IN WITNESS WHEREOF, Bill Bullard, Jr., Chairperson, Oakland County Board of Commissioners, hereby acknowledges that he has been authorized by a resolution of the Oakland County Board of Commissioners, a certified copy of which is attached, to execute this Agreement on behalf of the Oakland County, and hereby accepts and binds the Oakland County to the terms and conditions of this Agreement.

EXECUTED: _____ DATE: _____

Bill Bullard, Jr., Chairperson
Oakland County Board of Commissioners

WITNESSED: _____ DATE: _____

Ruth Johnson, Clerk, Register of Deeds
County of Oakland