

SERVICE AGREEMENT  
RE: EMERGENCY COMMUNICATION SERVICES  
Contract No. 013-17

This Agreement is made this day by and between Kitsap 911, a Washington Public Corporation, hereinafter "Kitsap 911" and the City of Port Orchard, a Washington State political subdivision, hereinafter "Customer".

I. RECITALS

- A. Kitsap 911 is a public corporation organized and existing under the Washington State Constitution and the laws of the State of Washington, and particularly those set forth at RCW 35.21.730 through RCW 35.21.759; and
- B. The City of Port Orchard is a Washington municipal corporation organized and existing under the Washington State Constitution and the laws of the State of Washington, and particularly those set forth at RCW Title 35; and
- C. Kitsap 911 is obligated to enter into this Service Agreement with Customer pursuant to Section IX of the Kitsap 911 Bylaws.
- D. Customer has requested that Kitsap 911 provide enhanced emergency 911 communications services including radio communication, dispatch, teletype service and telephone calls directed to the Customer and to refer those calls to Customer by radio or other appropriate means; and
- E. Kitsap 911 is willing to provide the requested enhanced emergency 911 communication services, including radio communication, dispatch and teletype services, and handle telephone calls as necessary and refer those to Customer by radio or other appropriate means; and
- F. Customer desires to engage the services of Kitsap 911, to provide such services; and
- G. Customer and Kitsap 911 recognize the mutual benefit of utilizing Kitsap 911's dispatching services to meet Customer's dispatching requirements and needs; and
- H. Customer will pay Kitsap 911 a fee based on the Service Fee Formula set forth in Exhibit IX of the Kitsap 911 Bylaws as more specifically set forth in Exhibit "A" attached hereto and incorporated herein, to have Kitsap 911 provide such services to Customer;

NOW, THEREFORE, in consideration of the foregoing, and in consideration of the premises and promises, terms and conditions set forth below, it is hereby agreed as follows:

II. AGREEMENT

- A. Communications Services. During the term of this Agreement, Kitsap 911 will provide Customer twenty-four (24) hour enhanced emergency 911 communications including call receiving, monitoring and emergency dispatching service for Customer's citizens, visitors and responders. Kitsap 911 shall be the primary public safety answering point for Customer. Kitsap 911 shall ensure all Federal Communications Commission (FCC) radio frequency licenses include authorization so that Customer can use Kitsap 911's primary dispatch channels.
- B. Technical Assistance. Kitsap 911 may provide technical expertise to Customer as may be required for proper operations of Customer's systems and for procurement of Customer's communications equipment.
- C. Law Enforcement Agency Data Communications. If Customer is a law enforcement agency, Kitsap 911 will provide information from the Washington State Patrol Law Enforcement Data Communications System.
- D. Customer Communications Equipment. Unless otherwise agreed to by the parties, Kitsap 911 agrees to be responsible for providing and maintaining all communications equipment necessary to receive radio communications from Kitsap 911, and for communicating with Kitsap 911 and between Customer's personnel. Customer shall be responsible for purchasing, maintaining, and repairing Customer's base, mobile, and portable communications equipment including pagers and computers. Customer shall retain the responsibility and authority for its operational departments and for such equipment and services as required at its place of operations to connect to Kitsap 911's operations. Interconnecting equipment may or may not be included in Kitsap 911's budget as the Board of Directors shall determine. However, if interconnecting equipment is included in the Kitsap 911 budget and provided to the Customer, Kitsap 911 shall retain ownership of such equipment.
- E. Operational Procedures. All operational procedures shall be determined and established by the Strategic Advisory Board (SAB) pursuant to Section VIII of the Kitsap 911 bylaws. Any disagreements regarding operational procedures that cannot be resolved by the SAB shall be sent for final determination to the Kitsap 911 Board.
- F. Billing and Non-payment. Customer shall be billed in accordance with Exhibit A for the upcoming calendar year. Unless otherwise agreed to by the parties, Customer shall make twelve equal monthly payments, which shall be due by the end of each month. Should Customer fall two (2) months in arrears Customer shall be considered delinquent, and in that event, and after providing the required notice and opportunity to cure as set forth in Section O. of this Agreement, Kitsap 911 shall have authority to terminate all services to Customer and all participation of Customer to the functions of Kitsap 911, however, said Customer shall be liable for its fees to Kitsap 911's through December 31<sup>st</sup> of the year of termination of the delinquent

Party's services. Customer acknowledges that the fee set forth on Exhibit A may change pursuant to and in accordance with Section IX(C) of the Kitsap 911 Bylaws.

G. Provisions for Use. The Advisory Council on Criminal Justice Services and the Washington State Patrol have requested that all participating communications centers, such as Kitsap 911, which are terminal users of the Washington State Patrol Law Enforcement Data Communications Systems have certain provisions in their regulations and enabling Agreements concerning responsibility for such communication, therefore, the following is specifically agreed to:

1. Responsibility. Kitsap 911 shall bear full responsibility for insuring that the law enforcement data communications network and any Criminal History Records Information received by means of such network shall be used solely for the purposes of the administration of the criminal laws or for the purposes enumerated in RCW 43.43.760(3) as it now exists or may hereafter be amended. Kitsap 911 shall establish rules and regulations governing access to, security for, and operation of the data communications network for any Criminal Justice Records Information received by means of such network.

H. Duration. This Agreement shall continue unless Kitsap 911 is dissolved or as otherwise provided in this section.

1. Termination. Except as otherwise specifically provided herein, Customer may terminate this Agreement upon at least one (1) year's written notice to Kitsap 911. If Customer terminates this Agreement, Kitsap 911 is not required to surrender any of its FCC licenses nor is Kitsap 911 obligated to agree to co-license the terminating party on any of Kitsap 911's licensed frequencies.

I. Insurance/Indemnification – Hold Harmless:

1. The parties to this Agreement shall maintain during the life of this Agreement such general liability insurance as will provide coverage for claims for damages for personal injuries, including death, as well as for claims for damages to property which may arise directly or indirectly from performance of the work under this Agreement. Policy limits shall be no less than \$1,000,000 per occurrence Combined Single Limit for Bodily Injury and Property Damage Liability. The parties shall provide each other a Certificate of Insurance or other appropriate documentation evidencing the coverage as set forth above if requested by a party.

2. Indemnification Clause – Customer. Customer does hereby agree to save harmless and defend Kitsap 911 from all claims and liability due to the negligent acts, errors, or omissions of Customer, its agents and/or employees. Such indemnity shall include, but

not be limited to all out-of-pocket expenses incurred by Kitsap 911, including attorney's fees, in the event Customer fails or refuses to accept the tender of any claims brought against Kitsap 911, the basis for which are negligent acts, errors or omissions of Customer, its agents and/or employees.

3. Indemnification Clause – Kitsap 911. Kitsap 911 does hereby agree to save harmless and defend Customer from all claims and liability due to the negligent acts, errors or omissions of Kitsap 911, its agents and/or employees. Such indemnity shall include, but not be limited to, all out-of-pocket expenses incurred by Customer, including attorney's fees, in the event Kitsap 911 fails or refuses to accept the tender of any claims brought against Customer, the basis for which are negligent acts, errors or omissions of Kitsap 911, its agents and/or employees.
  4. The foregoing indemnity is specifically and expressly intended to constitute a waiver of each party's immunity under Washington's Industrial Insurance Act, RCW Title 51, as respects the other party only, and only to the extent necessary to provide the indemnified party with a full and complete indemnity of claims made by the indemnitor's employees. The parties acknowledge that these provisions were specifically negotiated and agreed upon by them.
  5. Kitsap 911 shall comply with all notice and other requirements of RCW 42.56.590, as it is now in effect and may hereafter be amended, in the event of a breach of the security of the system as defined by RCW 42.56.590. Such compliance shall be at the sole expense of Kitsap 911.
- J. Amendments. It is mutually agreed and understood that no alteration or variation of the terms of this Agreement shall be valid, unless made in writing, and signed by the parties hereto, and that any oral understandings or agreements that are not incorporated herein, shall not be binding on either party.

K. Contacts.

Kitsap 911  
Richard Kirton, Executive Director  
911 Carver Street  
Bremerton, WA 98312

City of Port Orchard  
Robert Putaansuu, Mayor  
216 Prospect Street  
Port Orchard, WA 98366

L. Compliance with All Laws. Kitsap 911 and Customer shall comply with all federal, state and local laws, rules, regulations and ordinances applicable to the performance of this Agreement, including without limitation all those pertaining to wages and hours, confidentiality, disabilities and discrimination.

- M. Maintenance and Audit of Records. Kitsap 911 and Customer shall maintain books, records, documents and other materials relevant to its performance under this Agreement, which sufficiently and accurately reflect any and all direct and indirect costs and expenses incurred or paid in the course of performing this Agreement. These records shall be subject to inspection, review and audit by a party or its designee, the Washington State Auditor's Office, and authorized federal agencies. Each party shall retain all such books, records, documents and other materials as required by the Washington State Records Retention policy as established by the Washington Secretary of State.
- N. Waiver Limited. A waiver of any term or condition of this Agreement must be in writing and signed by the waiving Party. Any express or implied waiver of a term or condition of this Agreement shall apply only to the specific act, occurrence or omission and shall not constitute a waiver as to any other term or condition or future act, occurrence or omission.
- O. Default/Dispute Resolution. If either Kitsap 911 or the Customer fails to perform any act or obligation required to be performed by it hereunder, the other party shall deliver written notice of such failure to the non-performing party. The non-performing party shall have thirty (30) days after its receipt of such notice in which to correct its failure to perform the act or obligation at issue, after which time it shall be in default ("Default") under this Agreement; provided, however, that if the non-performance is of a type that could not reasonably be cured within said thirty (30) day period, then the non-performing party shall not be in Default if it commences cure within said thirty (30) day period and thereafter diligently pursues cure to completion.

In the event a default continues and/or any dispute arises (for anything other than non-payment) between the Parties, either Party may request in writing that the issue be resolved by mediation. If the parties are unable to resolve the dispute within ninety (90) days, then either party shall have the right to exercise any or all rights and remedies available to it in law or equity.

- P. Governing Law. This Agreement shall be governed exclusively by the laws of the State of Washington.
- Q. Venue. The venue for legal action brought by any party to this Agreement over non-payment, or any other dispute, shall be the Superior Court of Kitsap County, Washington.
- R. Assignment. The parties may not assign any rights or delegate any duties under this Agreement, whether by assignment, subcontract or other means. Any such attempted assignment or delegation shall be void and shall constitute a material breach of this Agreement. Provided however, this prohibition shall not apply to an assignment pursuant to a consolidation of a party to this Agreement with another party to this Agreement.
- S. Entire Agreement. This Agreement constitutes the entire agreement between the parties, and supersedes any and all previous agreements relating to the creation, funding, operation or

maintenance of a regional emergency dispatch and communications center. There are no understandings or agreements between the parties other than those set forth in this Agreement. No other statement, representation or promise has been made to induce the parties to enter into this Agreement.

- T. Invalid Provisions. The invalidity or unenforceability of any particular term or provision of this Agreement shall not affect the validity or enforceability of any other term or provision and this Agreement shall be construed in all respects as if such invalid or unenforceable term or provision was omitted.
- U. Independent Parties. The parties to this Agreement, in the performance of it, will be acting in their individual capacities and not as agents, employees, partners, joint ventures, or associates of one another. The employees or agents of one party shall not be considered or construed to be the employees or agents of the other party for any purpose whatsoever.
- V. Counterparts. This Agreement may be executed by the parties using duplicate counterparts.

FOR KITSAP 911

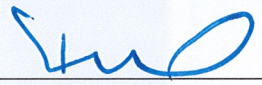
Adopted this 8 day of February, 2017

KITSAP 911 BOARD

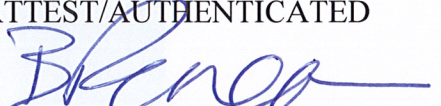
  
Kitsap 911 Board Chair

Adopted this 24 day of January, 2017

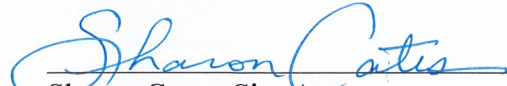
CITY OF PORT ORCHARD

  
Robert Putaansuu, Mayor

ATTEST/AUTHENTICATED

  
Brandy Rinearson, CMC, City Clerk

APPROVED AS TO FORM

  
Sharon Cates, City Attorney



FOR CUSTOMER

SERVICE AGREEMENT  
RE: EMERGENCY COMMUNICATIONS SERVICES

Exhibit A

Attachment A

2017 Service Fees

City of Port Orchard

Agency Base Fee: \$5,000

Units of Use: 22,228

Cost Per Unit: \$6.2877

Surcharge Cost Per Unit: \$0.4405

Total 2017 Service Fee: \$154,555