

**SERVICE AGREEMENT
FOR EMERGENCY COMMUNICATION SERVICES**

This Agreement (“Agreement”) is made between Kitsap 911, a Washington public corporation (“Kitsap 911”), and the City of Bainbridge Island, a Washington municipal corporation (“Customer”), which are the parties to this agreement (“Party” or “Parties”).

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 Bainbridge Island 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 Title 35A RCW; and
- C. Kitsap 911 is obligated to enter into this Service Agreement with the Customer pursuant to Section IX of the Kitsap 911 Bylaws; and
- D. The 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 the 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 the Customer by radio or other appropriate means; and
- F. The Customer desires to engage the services of Kitsap 911 to provide such services; and
- G. The Customer and Kitsap 911 recognize the mutual benefit of utilizing Kitsap 911’s dispatching services to meet the Customer’s dispatching requirements and needs; and
- H. The 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 Attachment A attached hereto and incorporated herein, to have Kitsap 911 provide such services to the Customer.

NOW, THEREFORE, in consideration of the foregoing, and in consideration of the 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 the Customer twenty-four (24) hour enhanced emergency 911 communications including call receiving, monitoring, and emergency dispatching service for the Customer's citizens, visitors, and responders. Kitsap 911 shall be the primary public safety answering point for the Customer. Kitsap 911 shall ensure that all Federal Communications Commission (FCC) radio frequency licenses include authorization so that the Customer can use Kitsap 911's primary dispatch channels.
- B. Technical Assistance. Kitsap 911 may provide technical expertise to the Customer as may be required for the proper operation of the Customer's systems and for procurement of the Customer's communications equipment.
- C. Law Enforcement Agency Data Communications. If the 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 the Customer's personnel. The Customer shall be responsible for purchasing, maintaining, and repairing the Customer's base, mobile, and portable communications equipment including pagers and computers. The 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 Kitsap 911's 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. The Customer shall be billed in accordance with Attachment A for the upcoming calendar year. Unless otherwise agreed to by the Parties, the 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, the 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 the Customer and all participation of the Customer to the functions of Kitsap 911. However, the Customer shall be liable for its fees to Kitsap 911 through December 31 of the year of termination of the delinquent Party's services. The Customer acknowledges that the fee set forth on Attachment 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:

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 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.

Termination. Except as otherwise specifically provided herein, the Customer may terminate this Agreement upon at least one-hundred and eighty (180) days written notice to Kitsap 911. If the 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. The 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 the 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 the Customer, its agents, and/or employees.

3. Indemnification Clause – Kitsap 911. Kitsap 911 does hereby agree to save harmless and defend the 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 the Customer, including attorney’s fees, in the event Kitsap 911 fails or refuses to accept the tender of any claims brought against the 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, Title 51 RCW, 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 now in effect and may 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

City of Bainbridge Island Police Department
Matthew Hamner, Chief of Police
Jeffrey Horn, Deputy Chief of Police

- L. Compliance with All Laws. Kitsap 911 and the 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 of those pertaining to wages and hours, confidentiality, disabilities, and discrimination.
- M. Maintenance and Audit of Records. Kitsap 911 and the Customer shall maintain books, records, documents, and other materials relevant to their 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 law and policy as established by the Secretary of State of the State of Washington.
- 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, 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, 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 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, that 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 and shall be construed in all respects as if such invalid or unenforceable term or provision was omitted.

U. Counterparts. This Agreement may be executed by the Parties using duplicate counterparts.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the later of the signature dates included below.

KITSAP 911

CITY OF BAINBRIDGE ISLAND

Adopted this ___ day of _____, 2017

Adopted this 8th day of August, 2017

KITSAP 911 BOARD

BAINBRIDGE ISLAND CITY COUNCIL


Kitsap 911 Board Chair


Douglas Schulze, City Manager

Date: AUGUST 29, 2017

Date: August 9, 2017

ATTACHMENT A
2017 SERVICE FEES

City of Bainbridge Island

Agency Base Fee:	\$5,000
Units of Use:	14,013
Cost Per Unit:	\$6.2877
Surcharge Cost Per Unit:	\$0.4405
Total 2017 Service Fee:	\$99,282