

**AGREEMENT BETWEEN THE CITY OF AURORA AND AURORA UNIVERSITY
POLICE DEPARTMENT FOR THE USE OF POLICE RADIO EQUIPMENT**

This AGREEMENT (the "Agreement") is made and entered into this ____ day of _____, 2018, pursuant to Resolution No. _____ by and between the CITY OF AURORA (the "City"), an Illinois home rule municipal corporation, and AURORA UNIVERSITY, specifically the AURORA UNIVERSITY POLICE DEPARTMENT (the "User"), a private university (collectively referred to as "Parties").

RECITALS

WHEREAS, the City of Aurora has a population of more than 25,000 persons and is, therefore, a home rule unit under subsection (a) of Section 6 of Article VII of the Illinois Constitution of 1970; and

WHEREAS, subject to said Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals and welfare; and

WHEREAS, Article VII, Section 10 of the Illinois Constitution of 1970 authorized units of local government to associate among themselves to exercise, combine or transfer any power or function, in any manner not prohibited by law or ordinance; and

WHEREAS, the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, authorizes and encourages public agencies, including, among others, units of local government, school districts, public community college districts, and agencies of the State of Illinois or United States, to enter into intergovernmental agreements with one another; and

WHEREAS, the University and the City wish to promote continued mutual cooperation in connection with the provision of police and other public safety services on the University campus and surrounding areas.

WHEREAS, the City currently owns and maintains several radio systems and accessory equipment, including, without limitations, Harris P7300 portable radios with two batteries and AC/charging dock ("Radio Equipment") ; and

WHEREAS, User and its personnel desires to use the Radio Equipment when performing official functions within the city limits; and

WHEREAS, the City is willing to allow User and its personnel to use the Radio Equipment if User agrees to accept full and complete liability for any injury to property that may arise from such use and Users personnel agree to release the City from any and all claims in relation to their use; and

WHEREAS, it is in the mutual best interests of the City and User to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings herein contained, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. INCORPORATION OF PREAMBLES: Each of the whereas paragraphs contained in the Recitals section above are incorporated herein and made a part of this Agreement.

2. PURPOSE: The purpose of this Agreement is to govern User's use of the Radio Equipment, subject to the terms and conditions set forth herein.

3. RADIO EQUIPMENT: Under this Agreement, City shall grant User a license to permit its personnel to use the Radio Equipment, subject to the conditions set forth herein and in the attached EXHIBIT "A". User and its Personnel must also comply with all applicable rules and regulations of the City and the Aurora Police Department, including its General Orders, relating to use of the Radio Equipment.

4. INDEMNIFICATION/HOLD HARMLESS BY USER: To the maximum extent permitted by law, User agrees to defend, indemnify, hold harmless, release and forever discharge the City and its former, current, and future officers, appointed and elected officials, Mayor, Council Members, employees, agents, volunteers, representatives, assigns, successors, transferees, licensees, invitees, attorneys, and engineers, including without limitations all members of the Aurora Police Department (collectively the "Released Parties") from and against any and all of the following:

A. Any and all claims, suits, actions and causes of actions for accidents, illness, injuries to or death of persons, workers compensation claims, or loss of or damage to property of any kind, economic and non-economic damages, insurance deductibles and reasonable attorneys' fees and litigation expenses, court costs and fines, that may directly or indirectly arise from or relate to any matter covered by this Agreement; and

B. Loss or damage of any kind resulting from User's failure to comply with any provision of this Agreement, or of any federal, state or local law or regulation applicable to User's use of the Radio Equipment or the performance of this Agreement.

C. User agrees that it is accepting responsibility under this Agreement for use of the Radio Equipment and the conduct of its Personnel in using the Radio Equipment. User accepts the Radio Equipment, in "AS IS, WHERE IS" condition, agrees that the City is not making any warranties or guarantees of any kind regarding the suitability or fitness for a particular purpose of the Radio Equipment, and agrees to waive any claims, suits, actions and causes of action of any kind that it has or could have against the City or the Released Parties relative to the Radio Equipment, including but not limited to any claims or causes of action related to the design, maintenance, and operation of the Radio Equipment.

5. TERM: This Agreement shall be and continue in effect until one of the parties

hereto shall give to the other thirty (30) days written notice of termination of this Agreement. Any termination shall not waive the Parties' indemnification obligations under this Agreement.

6. ADDITIONAL USER RESPONSIBILITIES: User shall assure the return of the Radio Equipment to the same condition as it was received. User shall be responsible for any costs associated with repairing the Radio Equipment as a result of damage caused by the Personnel or costs of replacing Radio Equipment in the event of loss.

7. STANDARD OF CONDUCT: The City and User shall not tolerate any unsafe, illegal, or inappropriate behavior or conduct, or any conduct that violates the provisions of this Agreement, by Personnel, and the City or User shall cause any persons that User knows to have engaged in such behaviors to immediately cease use of the Radio Equipment. Such conduct may result in the immediate termination of this Agreement without notice or opportunity to cure.

8. PRIORITY OF AURORA POLICE DEPARTMENT: The Aurora Police Department will be given first priority to use of the Radio Equipment should any conflict arise between User's schedule, other scheduled users, and the Police Department's schedule. The Police Department shall give notice of any conflict as soon as practical, and shall work in good faith with User to provide alternate equipment, if available.

9. NOTICE: All notices required to be provided under this Agreement shall be in writing and served either (a) personally during regular business hours; or (b) by registered or certified mail, return receipt requested, properly addressed with postage prepaid and deposited in the United States mail. Notices served personally shall be effective upon receipt, and notices served by mail shall be effective upon receipt as verified by the United States Postal Service.

All notices shall be addressed as follows:

The City:

City Clerk
City of Aurora
44 East Downer Place
Aurora, Illinois 60507

with copies to:
Corporation Counsel
City of Aurora
44 East Downer Place
Aurora, Illinois 60507

User

Aurora University
347 S. Gladstone Avenue
Aurora, Illinois 60506

10. ASSIGNMENT: User shall not assign, sublet, transfer, or convey this Agreement and its obligations hereunder to any person or entity.

11. GOVERNMENTAL REGULATIONS: User shall comply with all applicable

requirements of federal, state, county and local regulatory authorities, including the applicable provisions of the City's Code of Ordinances, with respect to the use of the Radio Equipment.

12. EXECUTION: This Agreement may be executed simultaneously in two (2) or more counterparts, each of which shall be deemed an original, and such counterparts together shall constitute one and the same Agreement.

13. ENTIRETY OF AGREEMENT: This Agreement, together with the Exhibits attached hereto, contains the entire understanding between the Parties concerning User's use of the Radio Equipment and supersedes any prior understanding or written or oral agreements between them with respect to the subject matter of this Agreement. There are no representations, agreements, arrangements or understandings, oral or written, between and among the Parties hereto relating to the subject matter of this Agreement which are not fully expressed herein. No oral modification, amendment, or change shall be allowed to this Agreement. Any modification, amendment, or change hereto shall be in writing and approved by the corporate authorities of the City and User.

14. NO DUTY TO THIRD PARTIES: This Agreement is entered into solely for the benefit of the contracting Parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person or entity who is not a party to this Agreement, or to acknowledge, establish or impose any legal duty to any third party.

19. AUTHORITY: The Parties represent and warrant to each other that they have the authority to enter into this Agreement and perform their obligations hereunder.

20. DISCLAIMER OF RELATIONSHIP: Nothing contained in this Agreement, nor any act of the City or User shall be deemed or construed by either of the Parties hereto or by third persons, to create any relationship of third party beneficiary, principal, agent, limited or general partnership, joint venture, or any association or relationship involving the City and User.

21. ENFORCEABILITY: If any provision of this Agreement, or any section, sentence, clause, phrase or word or the application thereof is held invalid, the remainder of this Agreement shall be construed as if such invalid part were never included and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law provided that the Agreement, in its entirety as so reconstituted, does not represent a material change to the rights or obligations of the Parties. In the event of any conflict or inconsistency between the terms set forth in the body of this Agreement and the terms set forth in any Exhibit hereto, the terms set forth in such Exhibit shall govern and control.

22. LAWS; CHANGE IN LAWS: Nothing herein shall be construed as an express and/or implied waiver of any common law and/or statutory immunities and/or privileges of User and/or the City, and/or any of their respective officials, officers and/or employees. The Parties agree to immediately notify each other of any change in conditions or change in federal, state or local law, or of any other event, which may significantly affect its ability to perform its obligations in accordance with the provisions of this Agreement.

23. JURISDICTION AND VENUE: This Agreement concerns property located within, and actions and activities to be performed within, the State of Illinois. Accordingly, this Agreement, and all questions of interpretation, construction and enforcement hereof, and all controversies hereunder, shall be governed by the applicable statutory and common law of the State of Illinois. The Parties agree that for the purpose of any litigation relative to this Agreement and its enforcement, venue shall be in the Circuit Court of Kane County, Illinois and the Parties consent to the *in personam* jurisdiction of said Court for any such action or proceeding.

24. CAPTIONS: The captions at the beginning of the several sections, respectively, are for convenience in locating the context, but are not part of the context.

25. EXHIBITS: True and correct copies of the attached Exhibits are incorporated herein and made a part of this Agreement and are identified as follows:

EXHIBIT "A" - Conditions/Terms of Use

26. EFFECTIVE DATE: After this Agreement has been signed by User, this Agreement shall be deemed dated and become effective on the date that the City's Mayor and City Clerk sign this Agreement which date shall be the date stated on the first page of this Agreement.

IN WITNESS WHEREOF, the Parties have entered into this Agreement.

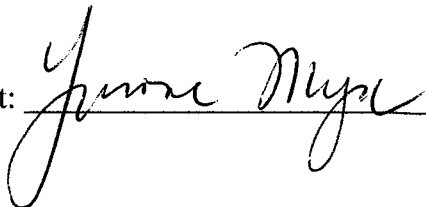
CITY OF AURORA

USER

By: _____
Richard Irvin, Mayor

By:  _____

Attest: _____
City Clerk

Attest:  _____

Date: _____

Date: _____

EXHIBIT "A"

CONDITIONS/TERMS OF USE

The following terms and conditions shall apply in addition to the terms and conditions set forth in the Agreement:

Equipment Use:

1. Portable police radios

The agreement is for the extended use of one (1) radio (currently P7300 Harris radios, with a value of approximately \$5,000 to \$8,000 per radio). APD retains the right to upgrade, change or discontinue the use of the current portable police radio. Should APD upgrade (with exception to software updates), change or discontinue the use of the current portable police radio make and model, this agreement shall become subject to expiration, review and revision.

2. Purpose and use

APD may provide the above mentioned portable police radio to the AUPD. This radio shall be the same model and type that the APD officers carry. They shall be for AUPD supervisors and/or acting supervisors use and to stay in communication with APD to maintain officer safety, improve mutual aid response, and overall efficiency. The User shall only use the Radio Equipment to conduct its official business within the city limits.

Supervision and Insurance:

1. AUPD will provide proper supervision and training in the use of the portable police radios.
2. AUPD shall assume all responsibility, care, custody and control of the portable radio that APD transfers to their possession. AUPD is solely responsible for the safety and security of the equipment.
3. AUPD will be solely financially responsible for any costs associated with the radio in their possession if it were to become damaged or lost.
4. AUPD will follow APD guidelines in the maintenance of the radio, and shall contact APD if the radio is in need of repair. The APD agrees to provide AUPD with copies of its guidelines and also with any updates to APD guidelines.
5. AUPD shall be obligated to provide property insurance coverage for any APD radio while in AUPD care, custody or control.

6. AUPD shall only use the Radio Equipment to conduct its official business within the city limits.
7. AUPD may use and hold the Radio Equipment as long as AUPD is conducting official business in the city limits.
8. AUPD will immediately notify City, in writing, of any loss, failure or damage to Radio Equipment.