

INTERGOVERNMENTAL AGREEMENT

This Agreement is entered into this 3rd day of June 2024, by, between, and among The Metropolitan Government of Nashville and Davidson County, a metropolitan government organized and existing under the laws and constitution of the State of Tennessee (hereinafter called “Metro”), the Electric Power Board of The Metropolitan Government of Nashville and Davidson County (hereinafter called “NES”), and the United States Marshals Service (hereinafter called “USMS”), a bureau within the United States Department of Justice, established under 28 U.S.C. § 561, *et seq.*

WITNESSETH:

WHEREAS, Metro and NES (collectively referred to as “System Owners”) have constructed a fully integrated, digital/analog 800 MHZ radio communications system (hereinafter the “System”); and,

WHEREAS, in December 1997, the Metropolitan Government and NES entered into a Memorandum of Understanding that included a provision for a joint committee to manage the access to and operation of the System (“the Committee”); and,

WHEREAS, Metro maintains the System; and,

WHEREAS, NES contributes funds to maintain the System; and,

WHEREAS, the System is used for public safety purposes to enhance dispatching services and improve response; and,

WHEREAS, the USMS, is a public agency, as that term is defined in Tennessee Code Annotated (T.C.A.), section 12-9-103; and,

WHEREAS, USMS has a duty to promote and provide public safety as set forth in 28 U.S.C. § 566 *et seq.*; and

WHEREAS, the USMS has requested to be granted interoperability with the System; and,
WHEREAS, the USMS has requested to be granted one or more talkgroups on the System to be dedicated solely for the use of the USMS; and,

WHEREAS, the Committee has approved the USMS access request; and,

WHEREAS, access to the System would enhance the USMS ability to discharge its public safety duties under 28 U.S.C. § 566 and would also benefit Metro's efforts to provide public safety; and,

WHEREAS, NES has no objection to the USMS use of the system for the stated purposes; and,

WHEREAS, T.C.A., section 12-9-101, *et seq.*, grants to public agencies in Tennessee the authority to enter into intergovernmental agreements to achieve common objectives subject to the approval of their respective governing bodies by resolution or as otherwise provided by law.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, the parties agree as follows:

1. Term of Agreement. This Agreement shall take effect upon approval of the Council of The Metropolitan Government of Nashville and Davidson County and shall extend through June 30, 2034, provided the USMS receives notice of the extension by the end of the fiscal year, or unless terminated earlier as provided herein.

2. Compensation. The USMS will pay Metro Radio Communications (MRC) for System access, usage, and all other services provided as billed on a monthly basis, using external user rates determined and revised annually by Metro's Office of Management and Budget (OMB).

(a) USMS will be responsible for the purchase of any new subscriber units for its own use;

(b) USMS will pay MRC the costs, including personnel, for any maintenance that Metro performs on USMS owned radio equipment and vehicles.

3. Termination. The parties hereto may terminate this Agreement prior to the date stated in Section 1 by providing the other parties with ninety (90) days written notice of termination.

4. Services Provided. The System Owners hereby agree to allow access to the System as provided in Attachment A to this Agreement. The definitions applicable to this Agreement are provided in Attachment B. For purposes of this Agreement, “interoperability” shall have the meaning stated in paragraph 76 of FCC Order No. 98-191, specifically, “An essential communications link within public safety wireless communications systems which permits units from two or more entities to interact with one another and to exchange information according to a prescribed method in order to achieve predictable results.”

A. Duties of USMS. The USMS shall use its access to the System solely for the purpose of providing public safety within its jurisdictional limits. Further, USMS shall not use the rights granted under this Agreement in any manner that disrupts or adversely affects in any way the System Owners’ operation of the System.

B. USMS and its employees, agents and representatives shall comply with any lawful directive of the System Owners' officers, employees, agents and representatives regarding the access to and use of the System Owners' System, and agrees to and will ensure compliance with all parts of the 800 MHz Radio System Standards, Protocols, and Procedures Manual as developed and maintained by MRAM.

C. USMS shall permit the System Owners and/or their authorized agents and representatives to inspect the equipment used to provide access to the System at any location where such equipment may be used.

D. USMS understands that use of a radio talk-group or groups is deemed to be a privilege and may be suspended, canceled or revoked at any time, with the exception of those related directly to public safety, such as police, fire, and emergency management functions.

E. USMS understands that the System is very well maintained and that total failure is unlikely, but due to the complex nature of the System, equipment failures, while infrequent, are indeed possible and could result in loss of radio communications. Many conditions beyond Metro/NES's control including weather, manufacturer defects, equipment failures from normal use, and other unforeseen conditions could result in a total loss of radio communications for an extended period of time. Additionally, the knowledge level of individual radio operators and/or the improper operation and/or the configuration of their radio equipment causing the loss of communication cannot be controlled by Metro/NES.

5. Notice. All notices, requests, demands, and other communications under this Agreement or in connection therewith shall be given to or be made upon the respective parties hereto as set forth on the page of this Agreement bearing the signature of the duly authorized officers of USMS, NES and Metro in execution of this Agreement, or to such other address and to the attention of such other officer or persons as each of the parties hereto may specify by notice in writing to the other.

6. Contingent Fees. USMS hereby represents that it has not been retained or retained any persons to solicit or secure a Metropolitan Government contract upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of

bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. Breach of the provisions of this paragraph is, in addition to a breach of this Agreement, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under Metropolitan Government contracts.

7. Gratuities and Kickbacks. It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therefor. It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order. Breach of the provisions of this paragraph is, in addition to a breach of this contract, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under Metropolitan Government contracts.

8. Assignment--Consent Required. This Agreement may not be assigned by any of the parties without the prior written consent of the other parties hereto. In the event of such assignment, no party shall be discharged or released from any of its obligations or duties contained

herein. NOTICE OF ASSIGNMENT MUST BE SENT TO THE ATTENTION OF METRO'S CHIEF ACCOUNTANT, DIVISION OF ACCOUNTS, DEPARTMENT OF FINANCE, P. O. Box 196300, NASHVILLE, TN 37219-6300, and to the Office of the General Counsel of Nashville Electric Service, 1214 Church Street, Nashville, TN 37203.

9. Entire Agreement. This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and shall govern the respective duties and obligations of the parties.

10. Force Majeure. No party shall have any liability to any other party hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by force majeure, meaning any act of God, storm, fire, casualty, work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of Government, act of public enemy, or other cause of similar or dissimilar nature beyond its control.

11. Governing Law. The validity, construction, and effect of this Agreement and any and all extensions and/or modifications thereof shall be governed to the extent permitted by applicable law.

12. Venue. Venue for any litigation arising out of this Agreement shall be in the courts of Davidson County.

13. Severability. Should any provision of this Agreement be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this contract.

14. Modification of Agreement. This Agreement may be modified only by written amendment executed by all parties and their signatories hereto.

15. Partnership/Joint Venture. Nothing herein shall in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto shall hold itself out in a manner contrary to the terms of this paragraph. No party shall become liable for any representation, act, or omission of any other party contrary to the terms of this paragraph.

16. Waiver. No waiver of any provision of this Agreement shall affect the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.

17. Liability. In no event shall USMS bear any liability for any loss, expense, attorneys' fees or claims for injury or damages arising out of any act or omission in the performance of this Agreement on the part of NES or the Metropolitan Government. Likewise, neither NES nor the Metropolitan Government shall bear liability for any loss, expense, attorneys' fees or claims for injury or damages arising out of any act or omission in the performance of this Agreement or operation of the System on the part of USMS, it being the express intention of the parties hereto that neither should bear liability for injury or loss caused by the other party.

18. Operation of the System. It is the contemplation of the parties that the System Owners shall be solely responsible for the procurement, design, and operation of the System.

19. Maintenance of Records. The books, records, and documents of USMS, as they relate to any work done or money received under this contract, shall be maintained for a period of three (3) years from the date of the final payment, and shall be subject to audit at any reasonable time by the System Owners, their internal auditor(s), or private audit firms under contract with and representing the System Owners or their duly appointed representatives. The records shall be maintained in accordance with generally accepted accounting principles.

20. Binding Effect. This Agreement shall not be binding upon the parties until it is approved by the Metropolitan County Council and the Electric Power Board and signed by all parties hereto.

[The remainder of this page intentionally left blank. Signature pages to follow.]

IN WITNESS WHEREOF, the authorized representatives of the parties have affixed their signatures below with the intent to make this Agreement effective as of the date first written above.

THE METROPOLITAN GOVERNMENT
OF NASHVILLE AND DAVIDSON
COUNTY:

UNITED STATES MARSHALS SERVICE

Freddie O'Connell, Mayor

By: Derry W. King
UNITED STATES MARSHAL
Title

ATTEST:

Metropolitan Clerk

APPROVED AS TO AVAILABILITY
OF FUNDS:

Signed by:
Kevin Crumbo / MLL

Kevin Crumbo, Director of Finance

APPROVED AS TO FORM AND LEGALITY:

DocuSigned by:
Erica Haber

Metropolitan Attorney

ITS Interim Director

DocuSigned by:
John Griffey

IFAC3E1D1AA03

APPROVED:

ELECTRIC POWER BOARD OF THE
METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY:

DocuSigned by:
Michael P. Vandenberg
68C08652F51A405...

Chairman

DocuSigned by:
Jessica Bryles-Aplin
6C850CEC2725404...

President and CEO

APPROVED AS TO FORM AND LEGALITY:

DocuSigned by:
Laura Smith
80A6A1C6A07048C...

General Counsel

ATTEST:

DocuSigned by:
David Frankenberg
0AE47D2A-9864AE...

Secretary

Attachment A – Terms Of Access – U.S. Marshals

The System Owners hereby agree to allow U.S. Marshals access to the System as provided in this agreement and in accordance with the following conditions:

a) U.S. Marshals agrees to and will ensure strict compliance with all parts of the 800MHz Radio System Standard Operating Procedures Manual, as developed and maintained by MRAM.

b) U.S. Marshals is encouraged to send representatives to attend the regularly scheduled meetings of MRAM and all related sub-committees; however, as set forth in Mayor Karl F. Dean's Executive Order No. 29, U.S. Marshals will have no voting privileges on those committees.

c) U.S. Marshals shall use its access to the System solely for the purpose of providing public safety and emergency services within its jurisdictional limits. Further, U.S. Marshals shall not use the rights granted under this Agreement in any manner that disrupts or adversely affects in any way the System Owners' operation of the System.

d) U.S. Marshals shall immediately notify MRC of any lost, misplaced, or stolen radio unit that is authorized to access the System under this agreement.

e) U.S. Marshals shall immediately notify MRC of any unauthorized or inappropriate use of a radio unit that is authorized to access the System under this agreement.

f) To the extent practical, U.S. Marshals shall maintain a complete and concise log of all persons who have possession and control of a radio unit that is authorized to access the System and provide MRC an updated copy of this record each calendar month.

g) U.S. Marshals shall make every effort to maintain secure custody and control of any radio unit authorized to access the System under this agreement and ensure that only authorized persons have access to those radio units.

h) MRC, or a vendor authorized by MRC will perform all programming, repairs, modifications, or alterations to any radio unit in U.S. Marshals' control that relate to operations on the System. In the event of failure to comply with this condition, U.S. Marshals shall be responsible for all costs related to remedying problems resulting from said noncompliance.

i) U.S. Marshals shall permit the System Owners and/or their authorized agents and representatives to inspect the equipment used to provide access to the System at any location where such equipment may be used. MRC may conduct random checks of any U.S. Marshals radio unit that is authorized to access the System.

j) As approved by MRAM, MRC will provide one (1) dedicated talkgroup for U.S. Marshals operations, based on system loading statistics and MRAM SOP.

k) U.S. Marshals is solely responsible for any and all network and equipment connectivity between the U.S. Marshals facilities and the Metro System, and all related costs to install and maintain the same.

l) U.S. Marshals is solely responsible for the purchase, installation, and maintenance of all radio equipment located within any of their facilities and shall ensure compatibility of the same with Metro's System.

m) U.S. Marshals understands that Metro's radio system coverage varies by location, and that Metro is not responsible for correcting any areas with inadequate signal coverage within the U.S. Marshals facilities or jurisdiction.

n) U.S. Marshals understands that failure to abide by any or all of these terms and conditions set forth in this Agreement shall result in the immediate suspension or revocation of access to the System.