

## **AGREEMENT TO ESTABLISH A REGIONAL COUNCIL OF GOVERNMENT**

This Agreement To Establish A Regional Council Of Government (this "Agreement") is entered into by and between the City of Dublin, an Ohio municipal corporation ("Dublin"), the City of Worthington, an Ohio municipal corporation ("Worthington"), the City of Hilliard, an Ohio municipal corporation ("Hilliard"), and Delaware County, a county validly existing under the laws of the State of Ohio ("Delaware") (Dublin, Worthington, Hilliard and Delaware individually referred to herein as a "Party" or collectively as the "Parties".)

### **Recitals**

WHEREAS, the Parties each arrange for the provision of police and fire services to the residents of their respective political subdivisions;

WHEREAS, each Party utilizes its own technology and resources in dispatching police and fire personnel to serve their respective residents;

WHEREAS, the Parties have determined that combining these resources and collaborating to create an improved system with enhanced technology, redundancy, spectrum efficiency, and interoperability will better serve the residents of each Party's political subdivision (the "System");

WHEREAS, Delaware has secured a certain EMA grant to assist in the funding of necessary equipment for the System; and

WHEREAS, the Parties desire to enter into this Agreement to create a regional council of government in order to most effectively and efficiently manage the System.

NOW, THEREFORE, the Parties hereby agree as follows:

### **Provisions**

**Creation of a Regional Council of Government.** In order to most effectively and efficiently manage the System, the Parties hereby agree to create a regional council of government (the "COG") in accordance with federal and state law, and pursuant to Ohio Revised Code § 167.01.

- 2. Powers of the COG.** The COG shall have the authority to perform all functions necessary to establish, improve, maintain, unwind and dispose of the System. Specifically, and notwithstanding the preceding sentence, the COG shall have the authority to:

Enter into contractual arrangements for services as deemed necessary and appropriate for the betterment of the System;

Enter into contractual arrangements with other political subdivisions for the provision of services;

- c. Employ staff to assist in the operations of the COG;
  - d. Purchase or lease or otherwise provide for supplies, materials, equipment and facilities deemed necessary and appropriate for the betterment of the System;
  - e. Accept and raise monies for the operation of the COG and for the betterment of the System; and
  - f. All other powers and authorities available to the COG as set forth in Chapter 167 of the Ohio Revised Code.
- 3. Governing Board of the COG.** The business of the COG shall be managed by a governing board consisting of one (1) representative from each Party and any subsequently added political subdivisions (the “Governing Board”). The representative from each Party shall be the highest ranking employee of that Party (e.g. City Manager, County Administrator) or a designee of that employee. The representative from the original members of the COG (Dublin, Worthington, Delaware) shall be the City Manager, County Administrator, or a designee of that employee. All representatives of the Governing Board shall have been appointed through formal action taken by a political subdivision.
- 4. Addition of Member Communities.** Additional political subdivisions may apply for membership in the COG. The addition of political subdivisions and the terms and conditions of the additional political subdivision’s entry into the COG shall require the unanimous consent of the representatives of the Governing Board.
- 5. Providing Dispatch Services to Political Subdivisions.** Those political subdivisions that the COG provides dispatch or any other services to shall not be members of the COG and shall not have a representative on the Governing Board of the COG unless added as a member to the COG pursuant to the requirements of this Agreement.
- 6. Withdrawal From the COG.** Any member of the COG may withdraw its membership in the COG by formal action of that political subdivision, and upon providing three hundred sixty-five (365) days advance written notice to the Governing Board. The withdrawing member shall be responsible for its share of financial obligations of the COG incurred up to the official date of withdrawal,

and shall not have any voting rights during the three hundred sixty-five day notice period.

**7. Dissolution of the COG.** The COG may be dissolved by formal action taken by the legislative authorities of the three original members (Dublin, Worthington, Delaware) of the COG. If one or more of these parties are no longer members of the COG, then the COG may be dissolved by formal action taken by the legislative authorities of each of the then current members of the COG. Any dissolution shall be subject to the licensing requirements of the Federal Communications Commission. Upon dissolution, any monies remaining in an account utilized for the operation of the COG shall first be employed to unwind and meet any debt or other obligation necessary for the dissolution of the COG. The remaining balance shall be distributed equally between the then remaining members of the COG.

**8. Adoption of the Code of Regulations.** The Parties hereby adopt the attached code of regulations of the COG (“Code of Regulations”), in its entirety, as the binding regulations of the COG and the Governing Board. The Code of Regulations may be amended by a majority vote of the Governing Board, provided that such amendments shall not conflict with the terms of this Agreement.

**9. Finances of the COG.**

**Budget and Cost-Sharing Approval.** Approval of the budget of the COG, and any associated cost-sharing proposals, shall require unanimous consent by the representatives of the Governing Board.

**b. Fiscal Year.** The COG shall conduct its operations based upon a calendar fiscal year (January 1<sup>st</sup> to December 31<sup>st</sup>).

**c. Acceptance of Funding.** The COG may accept funding from member political subdivisions, state and federal grant sources, and any other source. A majority of a quorum of the Governing Board shall be required to accept any such funding.

**d. Spending and Purchasing Within the Budget.** Expenditures to be made by the COG that are within the agreed upon budget shall require majority consent by a quorum of the Governing Board.

**e. Spending and Purchasing Outside of the Budget.** Expenditures to be made by the COG that are outside of the agreed upon budget shall require unanimous consent by the representatives of the Governing Board.

**Physical Assets of the COG.** Those physical assets that each COG member provides to the COG, for use by the COG, shall be classified as

either a Type 1 physical asset or a Type 2 physical asset. Type 1 physical assets shall remain with the COG member that initially provided the asset to the COG upon the withdrawal or removal of that member from the COG, or upon the dissolution of the COG. Type 2 physical assets shall be considered the physical assets of the COG, and upon the withdrawal or removal of the member initially providing the Type 2 asset to the COG, the Type 2 physical asset shall remain an asset of the COG. Upon dissolution of the COG, a Type 2 physical asset shall revert back to the member that initially provided the asset. The Governing Board shall maintain a schedule of those assets that are Type 1 assets, and those that are Type 2 physical assets. It is the responsibility of that member initially providing an asset for use by the COG to determine whether that asset is a Type 1 or Type 2 physical asset, and to ensure that this asset is listed on the appropriate schedule.

**10. Responsibilities and Technical Requirements for System Operations.** The Governing Body shall, by unanimous consent, adopt a policy manual setting forth the responsibilities and technical requirements that each member of the COG must adhere to in the interest of effective and efficient management of the System.

**11. Indemnification.**

**In General.** Any person who was or is a party or is threatened to be made a party to any threatened, pending or completed claim, suit or proceeding, whether civil, criminal, administrative or investigative, other than a suit by or in the right of the COG, by reason of the fact that the person is or was a representative of the Governing Board, officer, employee or agent of COG, or is or was serving at the request of the COG as a director, trustee, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, be indemnified by the COG for expenses, including reasonable attorney fees, judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding if done in good faith and in a manner reasonably believed to be in the best interests of the COG and, with respect to any criminal action or proceeding, had no reasonable cause to believe conduct was unlawful. Termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall not create a presumption that the person did not act in good faith and in a manner which was reasonably believed to be in the best interests of the COG and, with respect to any criminal action or proceeding, had reasonable cause to believe that the conduct was unlawful.

**b. Indemnification Against Expenses.** Any person who was or is a party or is threatened to be made a party to any threatened, pending or completed

claim, suit or proceeding by or in the right of the COG to procure a judgment in its favor by reason of the fact that the person is or was a representative of the Governing Board, officer, employee or agent of the COG, or is or was serving at the request of COG as a director, trustee, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall be indemnified by the COG against expenses, including reasonable attorney fees, actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if done in good faith and in a manner reasonably believed to be in the best interests of the COG. However, no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of duty to the COG unless, and only to the extent that, the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses as such court shall deem proper.

- c. Procedure.** Any indemnification under this Section (unless otherwise ordered by a court of competent jurisdiction) shall be made by the COG only as authorized in the specific case upon a determination that the indemnification of the officer, employee or agent is proper in the circumstances because the applicable standard of conduct set forth in this Section. Has been met. Such determination shall be made (a) by the Governing Board by a majority vote of a quorum consisting of representatives who were not parties to or threatened with such action, suit or proceeding; or (b) if such a quorum is not obtainable or even if obtainable, a quorum of disinterested members so directs, by independent legal counsel in a written opinion. Notwithstanding the provisions of this Section, to the extent that a representative of the Governing Board, officer, employee or agent of the COG has been successful on the merits or otherwise, in defense of any action, suit or proceeding referred to in such sections, or in defense of any claim, issue or matter, in any event the person be indemnified against expenses (including reasonable attorney fees) actually and reasonably incurred in that connection. Reasonable attorney fees shall not be paid by the COG if the person has obtained counsel apart from counsel designated by the Governing Board.
- d. Prior Payment.** Expenses incurred in defending a civil or criminal action may be paid by the COG before final disposition of such action. Such expenses may be authorized by the Governing Board in a specific case only upon receipt by the COG of a request on behalf of the Governing Board representative, officer, employee or agent to repay such amount unless it shall finally be determined that the person is entitled to be indemnified in such amount by the COG.

- e. **Non-Exclusive.** The indemnification provided by this Section shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled by any law of the State of Ohio, agreement or other means, both as to action taken in an official capacity and as to action in another capacity while holding such office and shall continue as to a person who has ceased to be a Governing Board representative, officer, employee or agent and such rights shall inure to the benefit of such person's heirs, executors and administrators.

**12. Miscellaneous.** The Parties agree to the following miscellaneous provisions:

The terms of this Agreement (including any exhibits, schedules and attachments hereto) constitute the entire agreement between the parties with respect to the matters set forth herein, and any amendment to this Agreement must be set forth in writing and agreed to by the Parties and any subsequently added member community.

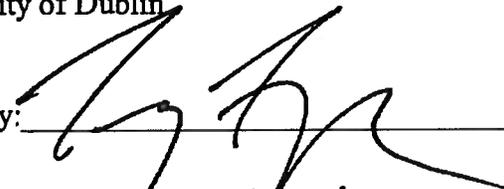
This Agreement and any amendment hereof may be executed and delivered in counterparts, including by a facsimile transmission thereof, each of which shall be deemed an original.

This Agreement shall be governed by the laws of the State of Ohio.

**[SIGNATURES APPEAR ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the Parties hereby enter into this Agreement as of the latter of the dates set forth in the signature blocks below.

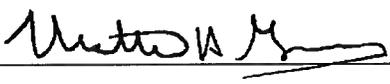
City of Dublin

By: 

Its: CITY MANAGER

Date: 11/02/09

City of Worthington

By: 

Its: City Manager

Date: 10/05/09

Delaware County

By: 

Its: Commissioner

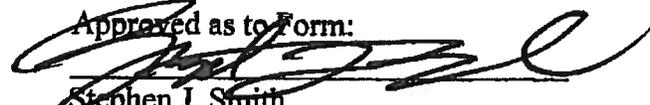
Date: 9-17-09

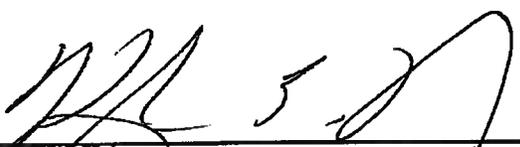
Approved As To Form

By: 

Michael E. Minister  
Director of Law

Approved as to Form:

  
Stephen J. Smith  
Law Director, City of Dublin

  
Delaware County Prosecutor's  
approve as to Form

**ADDENDUM  
TO  
AGREEMENT TO ESTABLISH A  
REGIONAL COUNCIL OF GOVERNMENT**

This Addendum to Agreement to Establish a Regional Council of Government ("Addendum") dated 01/31, 2014 is entered into by and between the City of Hilliard, an Ohio municipal corporation ("**Hilliard**"), and Central Ohio Interoperable Radio System ("**COIRS**"), an Ohio regional Council of Government established pursuant to Section 167.01 of the Ohio Revised Code. Capitalized terms used herein but not defined herein shall have the meanings ascribed to them in the Agreement to Establish a Regional Council of Government.

**Recitals**

**WHEREAS**, the City of Dublin, an Ohio municipal corporation ("Dublin"), the City of Worthington, an Ohio municipal corporation ("Worthington"), and Delaware County, a county validly existing under the laws of the State of Ohio ("Delaware") are parties to that certain Agreement to Establish a Regional Council of Government, dated as of November 2, 2009 (the "COIRS Agreement"), by which COIRS was created, a copy of which is attached as Exhibit A;

**WHEREAS**, COIRS is a functioning regional Council of Government, organized and existing under the laws of the State of Ohio, designed to create an improved public safety communications system with enhanced technology, redundancy, spectrum efficiency, and interoperability to better serve the residents of each Party's political subdivision (the "System");

**WHEREAS**, Hilliard is the owner of real estate and other resources that will contribute to the improvement and expansion of the System;

**WHEREAS**, pursuant to the COIRS Agreement, additional political subdivisions may apply for membership in COIRS;

**WHEREAS**, COIRS desires to add Hilliard as a full share member; and

**WHEREAS**, Hilliard desires to join COIRS as a full share member under the terms and conditions expressed herein.

**NOW, THEREFORE**, in consideration of the promises set forth herein and for other good and valuable consideration, the sufficiency of which is acknowledged, and intending to be legally bound hereby, the parties agree as follows:

## **Provisions**

- 1. Addition of Member to Regional Council of Government.** In accordance with Section 4 of the COIRS Agreement and all applicable laws, the Governing Board of COIRS hereby agrees to the addition of Hilliard as a full partner and share member in COIRS. As such a member, Hilliard shall be entitled to a single voting seat on the Governing Board of COIRS having all of the powers of any original member as more fully set forth in the COIRS Agreement and governing Bylaws.
  
- 2. Hilliard Terms and Conditions.** As a condition to Hilliard's admittance to COIRS, Hilliard hereby agrees to take the following actions on or before January 31, 2014:

  - a.** Make a one-time lump sum cash contribution to COIRS in the amount of Two Million Six Thousand Eight Hundred Sixty-Five Dollars and 00/100 (\$2,006,865.00), subject to appropriations by Hilliard City Council;
  - b.** Hilliard will enter into a separate document to lease necessary property interests to COIRS and provide COIRS access to land located at Roger A. Reynolds Municipal Park at no purchase or rental cost to COIRS for the accommodation of a radio tower and accompanying ground equipment thereon;
  - c.** Handle all zoning, permitting, and related administrative processes regarding placement of the radio tower at Roger A. Reynolds Municipal Park; and
  - d.** Acknowledge that as a COIRS member, Hilliard's membership and participation is subject to the terms and conditions set forth in the COIRS Agreement and Bylaws of the COIRS Council of Government, as such documents may be amended from time to time.
  
- 3. COIRS Terms and Conditions.** As a condition to Hilliard's admittance to COIRS and in exchange for its covenants set forth above, COIRS hereby agrees to take the following actions:

  - a.** After Hilliard completes the actions set forth in 2(a) and 2(d) above, and pursuant to the procedures contained in its Bylaws, COIRS shall admit Hilliard as a full partner share member in COIRS entitled to the benefits of full membership therein, including, but not limited to, having a single voting seat on the COIRS Governing Board.
  - b.** COIRS will contract with Motorola, or another party mutually acceptable to all full partner and share members, for the purchase, construction and installation of a radio tower, associated ground equipment, and site

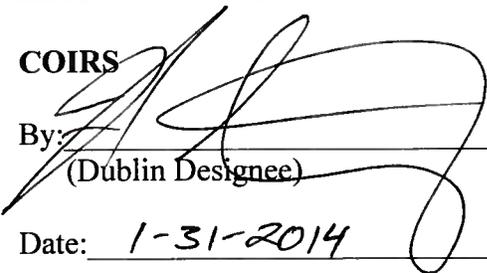
connectivity to be located on the grounds of the Roger A. Reynolds Municipal Park, which purchase and construction of the radio tower by COIRS satisfies the City's contribution as defined in Section 2(a) above; and

- c. Allow access to all public safety radios for Hilliard and Norwich Township to operate on the COIRS system in accordance with operating standards adopted by the COIRS Governing Board.

4. **Effect of Addendum.** Except as amended by this Addendum, the COIRS Agreement shall remain unchanged and in full force and effect until Hilliard is admitted as a full partner as described in paragraph 3(a) above. After admittance of Hilliard, the COIRS agreement may be changed or amended pursuant to the procedures in the COIRS agreement and by-laws. In the event of a conflict between a term or provision of this Addendum and a term or provision of the COIRS Agreement, the terms and provisions of this Addendum shall control. In the event Hilliard is not admitted by June 30, 2014 the COIRS agreement may be amended.

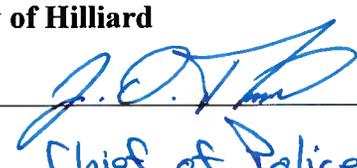
IN WITNESS WHEREOF, the parties have executed this Addendum on the date first set forth above.

**COIRS**

By:   
(Dublin Designee)

Date: 1-31-2014

**City of Hilliard**

By:   
Its: Chief of Police

Date: 01-31-2014

Approved as to Form:

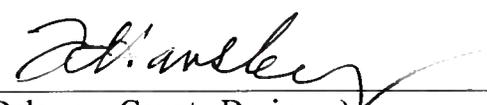
  
*Gregory J. Dunn Attorney for COIRS*

By:   
(Worthington Designee)

Date: 1/31/14

Approved as to Form:

  
Tracy L. Bradford, Law Director, Hilliard, OH

By:   
(Delaware County Designee)

Date: 1/31/14