

**THIS INTERMUNICIPAL AGREEMENT** (the “Agreement”), made the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between:

**THE COUNTY OF WESTCHESTER**, a municipal corporation of the State of New York, having an office and place of business in the Michaelian Office Building, 148 Martine Avenue, White Plains, New York 10601 (hereinafter referred to as the "County",)

and

**BUCHANAN POLICE DEPT.**, a municipal corporation of the State of New York, having an office and place of business at 236 Tate Avenue, Buchanan, NY 10511 (hereinafter referred to as the "Municipality").

(The “County” and “Municipality” are referred to collectively as the “Parties”.)

**W I T N E S S E T H:**

**WHEREAS**, pursuant to Local Law No. 13-2020 adopted by the County Board of Legislators on September 14, 2020, the Parties entered into an intermunicipal agreement for police mutual aid pursuant to the Mutual Aid and Rapid Response Plan (the “Plan”); and

**WHEREAS**, the County operates public safety radio communication systems for the County Department of Public Safety (“DPS”), the Department of Emergency Services (“DES”), and the Department of Public Works and Transportation (“DPWT”) Bee-Line transit operations, as well as for the communication between the County and emergency first responders throughout Westchester County and the surrounding jurisdictions (the “County Radio Systems”); and

**WHEREAS**, the Municipality is in need of mobile radios for its municipal police vehicles programmed with radio communication systems that will allow it to communicate with the County, law enforcement, fire, EMS and other first responders for mutual aid purposes; and

**WHEREAS**, the County wishes to furnish the mobiles radios to the Municipality for installation in its municipal police vehicles, and the Municipality wishes to accept the mobile

radios according to the terms set forth herein.

**NOW, THEREFORE**, in consideration of the terms and conditions herein contained, the Parties agree as follows:

## ARTICLE I

### DISTRIBUTION, INSTALLATION AND PROGRAMMING OF THE MOBILE SUBSCRIBER RADIOS

**Section 1.1.** The County, acting through the Westchester County Commissioner of Department of Public Safety or his designee, (the “Commissioner”), shall furnish the Municipality with mobile radios, including hardware, supplies, cabling, antennas, microphones and accessories as described in Schedule “A” (the “Subscriber Equipment”), for the Municipality to install, at its sole cost and expense, in its municipally-owned police vehicles according to the terms set forth in this Agreement. Schedule “A” is also referred herein to as the “Subscriber Equipment List.”

**Section 1.2.** The County or its vendor shall distribute the Subscriber Equipment to the Municipality. The Municipality shall pick-up the Subscriber Equipment at the date, time and place designated by the County for pick-up. The Municipality shall sign for and acknowledge receipt of the Subscriber Equipment by executing a written receipt for same, which shall be on a form prepared by the County and include the recipient, quantity, make, model and serial number of each item of Subscriber Equipment. The Parties further agree that Schedule “A” shall be updated to reflect the information in the receipt, as well as the vehicle identification number for each police vehicle the Municipality installs a mobile radio. The County shall provide a copy of the updated Schedule “A” to the Municipality, and, upon the Municipality’s receipt of the updated Schedule “A”, it shall be deemed a part of this Agreement.

**Section 1.3.** The Municipality acknowledges that the distribution of Subscriber Equipment is subject to the availability of funding. It shall be within the County's sole and

complete discretion as to how much and what type of Subscriber Equipment to distribute to the Municipality.

**Section 1.4.** The Municipality shall be responsible for installing the Subscriber Equipment into the municipal police vehicles as set forth in Schedule “A” at its sole cost and expense. The Municipality shall complete the installation within 180 days of receiving the allocated Subscriber Equipment, which time period may be extended by written consent of the Commissioner. Upon installation of the Subscriber Equipment, the Municipality shall notify the County of the vehicle identification number for the police vehicle the Subscriber Equipment was installed into. If the Municipality fails to install the Subscriber Equipment within such time period, it shall immediately return the Subscriber Equipment to the County upon the County’s request and/or the County shall have the right to repossess the Subscriber Equipment with no fine, penalty or prosecution for such repossession.

**Section 1.5.** The County will provide the Subscriber Equipment, as well as the initial radio programming services, at no charge to the Municipality. The initial radio programming of the Subscriber Equipment shall be in the sole discretion of the County (the “Original Programming Template”). The Original Programming Template may include (a) the County designated channels on the County Radio Systems to enable access to countywide law enforcement interoperability channels, local fire and EMS channels, and national interoperability channels, for mutual aid purposes, and (b) the local radio communication systems of the municipalities who participate in the Plan, for the police and the County to communicate with each other, as well as with fire, EMS and other first responders for mutual aid purposes. The Original Programming Template, as well as the channels and systems included therein, shall be in the sole discretion of the County.

## **ARTICLE II**

### **TERMS OF USE OF THE SUBSCRIBER EQUIPMENT AND THE COUNTY RADIO SYSTEM**

**Section 2.1.** The Municipality agrees that the Subscriber Equipment, as well as all of the radio communication systems programmed into the Subscriber Equipment, shall be used only for mutual aid events and public safety communication.

The Municipality acknowledges that the Subscriber Equipment is not intended to replace the existing local law enforcement radios used for day-to-day operations, and the Municipality is encouraged to keep its existing local law enforcement radios for its municipal police vehicles.

**Section 2.2.** The County hereby grants to the Municipality, its officers, employees and agents, a non-exclusive, royalty-free, personal and non-assignable license to utilize the County designated channels on the County Radio Systems in accordance with the terms of this Agreement. The County shall retain control and responsibility for the County Radio Systems.

**Section 2.3.** The Municipality hereby grants to the County and the municipalities who participate in the Plan, their officers, employees and agents, a non-exclusive, royalty-free, personal and non-assignable license to utilize the Municipality's radio communication system in for purposes of mutual aid. The Municipality shall retain control and responsibility for its radio communication system.

**Section 2.4.** The Parties acknowledge and agree that they are going to obtain and hold the FCC licenses for their respective radio communication systems. Neither party shall take any action that causes the other party to be in violation of its FCC license.

**Section 2.5.** Each Party's radio communication system shall remain its property. It is expressly understood that this Agreement does not constitute a lease and that no ownership or property rights whatsoever are being transferred under this Agreement.

**Section 2.6.** The Municipality shall be responsible for the installation, operation, maintenance, repair, reprogramming, and use of the Subscriber Equipment, including all costs and expense associated thereto.

**Section 2.7.** The Municipality shall, at its sole cost and expense, maintain the Subscriber Equipment in good working order and condition, and shall be responsible for the repair or replacement of the Subscriber Equipment if damaged following the Subscriber Equipment warranty period, if any.

**Section 2.8.** The Municipality may reprogram the Subscriber Equipment for public safety purposes at its sole cost and expense, subject to receiving the prior written approval of the County, which approval shall be in the County's sole discretion. The Original Programming Template shall not be altered. If the Municipality wishes to add additional frequencies, they can be added as an additional zone with the prior written approval of the County, which approval shall be in the County's sole discretion. The Municipality acknowledges and agrees that the reprogramming of the Subscriber Equipment for any reason may only be performed by using a vendor who is authorized in writing by the County as an Authorized Vendor and at the sole cost and expense of the Municipality. Upon request, the County will provide the Municipality with a list of Authorized Vendors.

**Section 2.9.** The County has established mandatory user guidelines and operating procedures for all users of the County Radio Systems, which the County may change and update from time to time ("User Guidelines"). The Municipality agrees to abide by the User Guidelines. If the Municipality fails to abide by the User Guidelines, the Municipality acknowledges and agrees that the County may immediately disconnect, suspend or terminate the Municipality's use of the County Radio Systems. A copy of the User Guidelines will be supplied to the Municipality upon its request.

**Section 2.10.** The County will assign alias for the Subscriber Equipment for the Municipality to use when utilizing the Subscriber Equipment on the County Radio Systems.

**Section 2.11.** The Municipality shall be responsible for its use of the County Radio Systems and local radio communication systems, including all costs and expense associated thereto.

**Section 2.12.** The Municipality shall not add any new subscriber equipment to the County Radio Systems, modify the Subscriber Equipment or the County Radios Systems, or reassign the location or unit assignment of the Subscriber Equipment, without the prior written consent of the County. Once approved, all of the terms of this Agreement shall apply to such new subscriber equipment, modification or reassignment.

**Section 2.13.** The Municipality shall ensure that only qualified persons with appropriate training utilize the Subscriber Equipment. The Municipality shall ensure that all qualified persons comply with all applicable laws, rules and regulations, including, those promulgated by the FCC, when utilizing the Subscriber Equipment. The Municipality shall participate in any testing and training on the Subscriber Equipment that may be required by the County.

**Section 2.14.** The Municipality shall maintain custody and control of the Subscriber Equipment and shall not transfer custody and control of the Subscriber Equipment.

**Section 2.15.** The County Radio Systems shall be available to the Municipality for only as long as the County, in its sole discretion, makes the County Radio Systems available. The County retains sole and absolute discretion in determining whether to continue to make the County Radio Systems available and, if so, to what person(s) and/or entity/ies, in what geographic area(s), for what purpose(s), and under what terms of use. The County may cease making the County Radio Systems available to one or more users, or all users, at any time, for any reason or no reason, either temporarily or permanently. For as long as the County Radio Systems are made available to users, each user will have access to the County Radio Systems, in their then-current form. The County in its sole discretion may change the County Radio Systems as it deems necessary and proper.

**Section 2.16.** (i) The Parties acknowledge that the County entered into an agreement, dated December 27, 2018, with Motorola Solutions, Inc. (“Agreement IT- 1559”) through which the County purchased the Subscriber Equipment. The Municipality acknowledges and understands that through this Agreement it is an Authorized User (as the term Authorized User is

defined in Agreement IT-1559) of the Subscriber Equipment. The Municipality agrees to use the Subscriber Equipment in a manner that does not violate the terms of Agreement IT-1559.

(ii) The Municipality may use the Software (as defined in Agreement IT-1559) for Subscriber Equipment only for the Municipality's internal business purposes and only in accordance with the Documentation (as defined in Agreement IT-1559). Any other use of the Software is strictly prohibited. Without limiting the general nature of these restrictions, Municipality will not make the Software available for use by third parties on a "time sharing," "application service provider," or "service bureau" basis or for any other similar commercial rental or sharing arrangement.

(iii) The Municipality will take reasonable efforts to ensure it and any third party under the Municipality's direction or control will not (a) reverse engineer, disassemble, peel components, decompile, reprogram or otherwise reduce the Software or any portion to a human perceptible form or otherwise attempt to recreate the source code; (b) modify, adapt, create derivative works of, or merge the Software; (c) copy, reproduce, distribute, lend, or lease the Software or Documentation to any third party, grant any sublicense or other rights in the Software or Documentation to any third party, or take any action that would cause the Software or Documentation to be placed in the public domain; (d) intentionally remove, or in any way alter or obscure, any copyright notice or other notice of Motorola Solution Inc.'s proprietary rights; (e) provide, copy, transmit, disclose, divulge or make the Software or Documentation available to, or permit the use of the Software by any third party or on any machine except as expressly authorized by Agreement IT-1559; or (f) use, or permit the use of, the Software in a manner that would result in the production of a copy of the Software solely by activating a machine containing the Software.

(iv) Unless authorized by the County in writing, the Municipality will take reasonable effort to ensure it, and any third party under its direction or control will not (i) install licensed copies of the Software installed in one unit of a Designated Product (as defined in Agreement IT-1559) into a device for which the Software was not authorized for use.

**Section 2.17.** The Municipality agrees:

A. that except for the amount, if any, of damage contributed to, caused by, or resulting from the sole negligence of the County, the Municipality shall indemnify and hold harmless the County, its officers, employees, agents, and elected officials from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorney's fees or loss arising directly or indirectly out of the performance or failure to perform hereunder by the Municipality or third parties under the direction or control of the Municipality; and

B. to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of Section 2.16 (A) above and to bear all other costs and expenses related thereto; and

C. In the event the Municipality does not provide the above defense and indemnification to the County, and such refusal or denial to provide the above defense and indemnification is found to be in breach of this provision, then the Municipality shall reimburse the County's reasonable attorney's fees incurred in connection with the defense of any action, and in connection with enforcing this provision of the Agreement.

**Section 2.18.** The Municipality understands and acknowledges that the County has the right to reissue, remotely disable or retake possession and use of the Subscriber Equipment upon notice to the Municipality. In the event the County notifies the Municipality of such a reissuance, the Municipality will promptly return possession of the Subscriber Equipment to the County as directed by the Commissioner. The Municipality agrees to relinquish any claim in law or equity it may have concerning the Subscriber Equipment in the event of Subscriber Equipment redeployment or reissuance.

**Section 2.19.** The Municipality will allow the County to conduct periodic visits for the purposes of inspection of the Subscriber Equipment.



**Section 2.20.** Notwithstanding anything herein to the contrary, the provisions of this ARTICLE II shall survive termination or expiration of this Agreement.

### **ARTICLE III**

#### **TERM AND TERMINATION**

**Section 3.1.** The term of this Agreement shall commence on January 1, 2024 and expire five (5) years thereafter, unless sooner terminated.

**Section 3.2.** In the event the Municipality defaults in the performance of any term, condition or covenant herein contained and does not cure such default to the County's satisfaction within forty-eight (48) hours of written notice thereof from the County, the County, in addition to any other remedy it may have to seek damages, judicial enforcement or other lawful remedy, may terminate this Agreement immediately upon notice to the Municipality. Repeated breaches by the Municipality of its duties or obligations under this Agreement shall be deemed a default justifying termination for cause hereunder without the right to further opportunity to cure.

**Section 3.3.** The County on thirty (30) days notice to the Municipality may terminate this Agreement in whole or in part when it deems it to be in its best interest.

**Section 3.4.** The Municipality on thirty (30) days' notice to the County terminate this Agreement in whole or in part when it deems it to be in its best interest.

**Section 3.5.** Upon termination, all right of the Municipality to use the County Radio Systems shall cease and terminate, and the Municipality shall take all steps to disconnect the Subscriber Equipment from the County Radio Systems and promptly return the Subscriber Equipment to the County.

### **ARTICLE IV**

#### **MISCELLANEOUS**

**Section 4.1.** The Municipality shall not assign, sublet or transfer or otherwise dispose of its interest in this Agreement without the prior written consent of the County. Any purported delegation of duties, assignment of rights or subletting of this Agreement without the prior written consent of the County is void.

**Section 4.2.** The Municipality shall comply, at its own expense, with all applicable local, state and federal laws, rules, regulations, orders, codes, requirements and Executive Orders and obtain, at its own expense, all approvals, applicable to its performance under this Agreement.

**Section 4.3.** Pursuant to Section 308.01 of the Laws of Westchester County, it is the goal of the County to use its best efforts to encourage, promote and increase the participation of business enterprises owned and controlled by persons of color or women in contracts and projects funded by all departments of the County. Under this Agreement it is recognized and understood that the County encourages the Municipality to do similarly.

**Section 4.4.** The Municipality expressly agrees that neither it nor any contractor, subcontractor, employee, or any other person acting on its behalf shall discriminate against or intimidate any employee or other individual on the basis of race, creed, religion, color, gender, age, national origin, ethnicity, alienage or citizenship status, disability, marital status, sexual orientation, familial status, genetic predisposition or carrier status during the term of or in connection with this Agreement, as those terms may be defined in Chapter 700 of the Laws of Westchester County. The Municipality acknowledges and understands that the County maintains a zero tolerance policy prohibiting all forms of harassment or discrimination against its employees by co-workers, supervisors, vendors, contractors, or others.

**Section 4.5.** Nothing contained herein shall create a special relationship between the Parties. In addition, nothing contained herein shall be deemed to create any employment, agency, joint venture or partnership relationship between the Parties or any of their agents or employees or any other arrangement that would impose liability upon one Party for the act or failure to act on the other Party. The Municipality shall not use any logo of the County.

**Section 4.6.** Failure by either Party to insist, in any one or more instances, upon strict performance of any term or condition herein contained shall not be deemed a waiver or relinquishment of such term or condition, but the same shall remain in full force and effect.

**Section 4.7.** If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid or void or unenforceable, the remainder of the terms and provisions of this Agreement shall in no way be affected, impaired, or invalidated, and to the extent permitted by applicable law, any such term, or provision shall be restricted in applicability or reformed to the minimum extent required for such to be enforceable. This provision shall be interpreted and enforced to give effect to the original written intent of the Parties prior to the determination of such invalidity or unenforceability.

**Section 4.8.** All notices of any nature referred to in this Agreement shall be in writing and either sent by registered or certified mail postage pre-paid, or sent by hand or overnight courier, or sent by facsimile (with acknowledgment received and a copy of the notice sent by overnight courier), to the respective addresses set forth below or to such other addresses as the respective parties hereto may designate in writing. Notice shall be effective on the date of receipt.

To the County:  
Commissioner/Sheriff  
Department of Public Safety  
1 Saw Mill River Parkway  
Hawthorne, New York 10532

With a copy to:  
County Attorney  
Michaelian Office Building, Room 600  
148 Martine Avenue  
White Plains, New York 10601

To the Municipality:

Village of Buchanan

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236 Tate Avenue

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Buchanan, NY 10511

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**Section 4.9.** This Agreement and its attachments constitute the entire Agreement between the Parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings. It shall not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

**Section 4.10.** This Agreement shall be construed and enforced in accordance with the laws of the State of New York. In addition, the Parties hereby agree that any cause of action arising out of this Agreement shall be brought in the County of Westchester.

**Section 4.11.** This Agreement may be executed simultaneously in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 4.12.** This Agreement shall not be enforceable until signed by both parties and approved by the Office of the County Attorney.

[Intentionally Left Blank.  
Signature Pages to Follow.]

**IN WITNESS WHEREOF**, the County of Westchester and the Municipality have caused this Agreement to be executed.

**THE COUNTY OF WESTCHESTER**

By: \_\_\_\_\_  
Terrence Raynor  
Acting Commissioner/Sheriff  
Department of Public Safety

**MUNICIPALITY**

By: \_\_\_\_\_  
(Name and Title) Theresa Knickerbocker, Mayor

Authorized by the Municipality on \_\_\_\_\_.

Authorized by Act No. 2023-210 adopted by the Board of Legislators of the County of Westchester on the 2nd day of October, 2023.

Approved:

\_\_\_\_\_  
Associate County Attorney  
The County of Westchester  
k: noe/dps/IMA re Mobile Radios for Local Police Vehicles



**CERTIFICATE OF AUTHORITY**  
**(Municipality)**

I, Marcus Serrano  
(Officer other than officer signing contract)  
certify that I am the Village Administrator of the  
(Title)  
Village of Buchanan  
(Name of Municipality)

(the "Municipality") a corporation duly organized in good standing under the  
New York Village Law  
(Law under which organized, e.g., the New York Village  
Law, Town Law, General Municipal Law)

named in the foregoing agreement that Theresa Knickerbocker  
(Person executing agreement)

who signed said agreement on behalf of the Municipality was, at the time of execution  
Mayor of the Municipality,  
(Title of such person),

that said agreement was duly signed for on behalf of said Municipality by authority of its  
Village Board  
(Town Board, Village Board, City Council)

thereunto duly authorized, and that such authority is in full force and effect at the date hereof.

\_\_\_\_\_  
(Signature)

STATE OF NEW YORK )  
                                  ss.:  
COUNTY OF WESTCHESTER)

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me personally came \_\_\_\_\_  
Marcus Serrano whose signature appears above, to me known, and know to be the  
Village Administrator of the Village of Buchanan  
(title)

the municipal corporation described in and which executed the above certificate, who being by  
me duly sworn did depose and say that he, the said Marcus Serrano  
resides at 1550 Boulevard Peekskill, NY 10566, and that he is  
the Village Administrator of said municipal corporation.  
(title)

\_\_\_\_\_  
Notary Public            County

**SCHEDULE "A"**

**SUBSCRIBER EQUIPMENT LIST**

Subscriber Equipment Description	Serial Number	Police Vehicle Identification Number	Alias
EXAMPLE			
Motorola APX8500	681CUD1621		Car2021