

## ACTION FORM BRYAN CITY COUNCIL

<b>DATE OF COUNCIL MEETING:</b> September 8, 2015	<b>DATE SUBMITTED:</b> August 18, 2015
<b>DEPARTMENT OF ORIGIN:</b> Police Department	<b>SUBMITTED BY:</b> Eric Buske

MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	STRATEGIC INITIATIVE:
<input type="checkbox"/> BCD	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING	<input checked="" type="checkbox"/> PUBLIC SAFETY
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2ND READING	<input checked="" type="checkbox"/> SERVICE
<input checked="" type="checkbox"/> REGULAR	<input checked="" type="checkbox"/> STATUTORY		<input type="checkbox"/> ECONOMIC DEVELOP.
<input type="checkbox"/> WORKSHOP	<input type="checkbox"/> REGULAR		<input type="checkbox"/> INFRASTRUCTURE
			<input checked="" type="checkbox"/> QUALITY OF LIFE

**AGENDA ITEM DESCRIPTION:** Consideration of an agreement between the City of Bryan and the Brazos County Emergency Communications District (a.k.a. 911 District or 911) to provide emergency communications dispatching services, in the amount of \$1,582,564, for the City of Bryan for Fiscal Year 2016.

**SUMMARY STATEMENT:** This Council Action Form and related resolution is one of two 911 District agenda items for the City Council to consider on the same agenda. This item relates to the emergency communications dispatching services agreement for the services the 911 District provides to the City of Bryan. The other agenda item is the 911 District Fiscal Year 2016 proposed budget, which includes the funding for the dispatch services to the City of Bryan, dispatch services to Brazos County, and the 911 operations.

Under the terms of the proposed agreement the Brazos County Emergency Communications District (a.k.a. 911 District or 911) will serve as the “Emergency Communications Dispatching Authority” for the City of Bryan for the period of October 1, 2015, through September 30, 2016. In consideration for the services provided by the Brazos County Emergency Communications District, the City agrees to provide compensation in the amount of \$1,582,564. The 911 District has provided dispatch service to the City of Bryan for over twenty-five (25) years.

The requested FY2016 funding amount of \$1,582,564 reflects an increase of \$53,744 (or about 3.4%), which is mostly attributed to increases in personnel and benefit costs and the addition of one call-taker/dispatcher, when compared to amounts allocated in the Fiscal Year 2015 City of Bryan budget.

Historical agreement costs for services provided to the City of Bryan by the Brazos County Emergency Communications District are:

911 District Dispatch Agreement, COB Budget, and Actual Amounts						
Year	911 Total Budget	COB Agreement	COB Budget(1)	COB Actual(1)		
FY2010	\$3,293,250	\$1,295,248	\$1,297,114	\$1,274,692(2)		
FY2011	\$3,318,593	\$1,287,033	\$1,287,033	\$1,325,702(3)		
FY2012	\$3,428,087	\$1,343,721	\$1,352,492	\$1,346,138(4)		
FY2013	\$3,466,965(5)	\$1,381,763	\$1,381,763	\$1,381,763(6)		
FY2014	\$4,663,970(7)	\$1,456,959	\$1,456,959	\$1,456,959(6)		
FY2015	\$3,818,320	\$1,528,981	\$1,528,981	na		
FY2016(8)	\$4,032,634	\$1,582,564	\$1,582,564	na		

- (1) Budget amount and Agreement amounts may differ based on when the two were finalized
- (2) at year end, the 911 District made a true-up payment of \$20,556
- (3) at year end, the City of Bryan made a true-up payment of \$38,669
- (4) at year end, the City of Bryan made a true-up payment of \$2,417.44
- (5) adjusted in FY2014 to reflect approved budget change not previously captured
- (6) a true-up was not in the agreement
- (7) includes capital costs: facility improvements (~\$250K) & 911 equipment upgrades (~\$1M)
- (8) Proposed (a true-up is not in the agreement)

The agreement remains essentially unchanged from the previous year, including the non-inclusion of a true-up provision, which was in several previous years' agreements. While a true-up provision may result in the City of Bryan being reimbursed, historically this provision results in the City more likely making a year-end payment to the 911 District; that is, a cost greater than the original agreement amount. By not including a true-up provision, the 911 District is held accountable to a specific funding level or a baseline amount. The City of Bryan and Brazos County are the two entities that the 911 District provides dispatch services, and agreements both entities have with the 911 District closely mirror one another.

The following is a summary of the proposed agreement between the City of Bryan and the Brazos County Emergency Communications District (a.k.a. 911 District):

- **Section 1 (Services):** States that the 911 District shall serve as the City's "Emergency Communications Dispatching Authority." The term is from October 1, 2015, through and including September 30, 2016.
- **Section 2 (Fee):** States that the City shall compensate the 911 District for the services with a flat fee of \$1,582,564. This section also requires the 911 District to encumber and hold in reserve a fund equal to one month of operating expenses. Additionally, the 911 District will provide the City a quarterly report of actual revenues from installment payments by the City, expenditures, and a balance sheet for dispatch operations. This section states that the 911 District shall make its current year and at least three (3) prior fiscal years' financial records available to the City for review upon its request.
- **Section 3 (Records):** States that the 911 District is not the custodian of record for records such as those created by the Computer Aided Dispatch (CAD); those records are the City of Bryan's and public requests for such will be processed through the City of Bryan's Open Records process.
- **Section 4 (Employees):** States that 911 District employees are not City employees.
- **Section 5 (Governing Law):** States that the City and the District understand and agree to be subject to all the laws, ordinances and regulations which govern and affect Emergency Communication Districts and National Crime Information Computer network telecommunications as promulgated by the State of Texas or the United States Government or any of its appropriate Agencies, such as the Texas Department of Public Safety or the Federal Bureau of Investigation.
- **Section 6 (Hold Harmless):** This section is the Hold Harmless clause.
- **Section 7 (Authority):** This section empowers and authorizes the Chief Administrative Officer of each party to have signatory authority for required documentation to implement the proposed agreement.
- **Section 8 (Entire Agreement):** Denotes that this proposed agreement is the entire agreement. The agreement may only be modified or amended in writing by mutual consent of the parties.
- **Section 9 (Termination):** This section provides a termination process, which allows either party upon 90 days advance written notice to terminate the agreement. If the agreement is terminated, the City is responsible for fees on a pro-rated basis to the date of termination.
- **Section 10 (Notices):** This section provides notification information for both parties.

At the July 16, 2015, Brazos County Emergency Communications District Board Meeting, the Board approved forwarding the 911 District's FY2016 proposed budget to each entity covered by the 911 District. The Board also discussed the proposed agreement terms, including the funding levels for the two entities in which the 911 District provides dispatch services.

At the July 28, 2015, City Council Workshop, the City of Bryan's Fiscal Year 2016 budget was reviewed. This review included the requested funding to the 911 District.

Since the City of Bryan relies on the 911 District to provide dispatch services, the City is not equipped to operate a dispatch center. If the City of Bryan does not approve the agreement, the City will need to develop a plan to address dispatch services, including identifying a location, the purchase of equipment, and hiring personnel or negotiating terms with an entity that can provide such services. The City of Bryan's FY2016 proposed budget includes the proposed agreement amount \$1,582,564.

**STAFF ANALYSIS AND RECOMMENDATION:** Staff recommends approval of the agreement between the City of Bryan and the Brazos County Emergency Communications District, and funding for emergency communications dispatching services for Fiscal Year 2016. The funding for the emergency dispatching services agreement reflects an increase over the previous year's agreement; however, operating a dispatch center internally would likely cost the City considerably more than the agreement amount.

The agreement provides for quarterly reports of revenues and expenses. The agreement provides emergency dispatching services at a cost below that estimated for a City-operated emergency dispatching and communications center. The operation of emergency dispatching services through an agreement with the Brazos County Emergency Communications District limits the City's liability and provides resources only available through a combined communications center. However, an agreement limits the City's direct control over emergency dispatching operations.

The Brazos County Emergency Communications District Board has approved the District's FY2016 proposed budget, which includes the City of Bryan's funding amount, pending the City's approval of the dispatching services agreement. During the July 28 City Council Workshop, the 911 District's funding request was shared with the City Council. If the City of Bryan does not approve the proposed dispatch service agreement, the City will need to immediately develop a strategy to provide dispatch services, especially for public safety personnel.

**OPTIONS (In Suggested Order of Staff Preference):**

1. Approve the proposed emergency communications dispatching services agreement.
2. Modify the services agreement and/or funding amount and then approve, which may require City Council consideration at a future City Council meeting and additional negotiations with the Brazos County Emergency Communications District.
3. Do not approve the services agreement and provide direction to staff. Note, without an agreement, the City will need to determine a strategy to provide dispatch service.

**ATTACHMENTS:**

1. Proposed Agreement between the City of Bryan and the Brazos County Emergency Communications District to provide emergency communications dispatching for the City of Bryan.
2. Brazos County Emergency Communications District FY2016 proposed budget, which is titled "Fiscal Year 2016 Proposed Budget" and is dated 07/17/15, and related documents (pdf file)

**FUNDING SOURCE:** General Fund as budgeted in the FY2016 Proposed Budget

**APPROVALS:** Hugh R. Walker, 08/27/2015

**APPROVED FOR SUBMITTAL: CITY MANAGER** Kean Register, 8/27/2015

**APPROVED FOR SUBMITTAL: CITY ATTORNEY** Janis K. Hampton, 08/29/2015

## AGREEMENT

**THIS AGREEMENT** is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2015, by and between the City of Bryan, Texas (City) and the Brazos County Emergency Communications District (District) to provide an Emergency Communications Dispatching for the City of Bryan, a service provided by it as an independent contractor.

**WHEREAS**, pursuant to the Texas Emergency Telephone Number Act, Section 772.301 et seq., Texas Health and Safety Code, the District has been formed and is a political subdivision of the State of Texas; and,

**WHEREAS**, the City of Bryan, Texas is a Home Rule city duly organized and operating in accordance with the laws of the State of Texas; and,

**WHEREAS**, the City of Bryan, Texas is a “public agency” and the Bryan Police Department and the Bryan Fire Department are each a “public safety agency” pursuant to the Texas Health and Safety Code Section 772.001, and,

**WHEREAS**, the City Council finds that it is beneficial for the City to enter into an agreement for the District to perform for the City, its duties as a “Emergency Communications Dispatching Authority”; and,

**WHEREAS**, the District is willing to perform such services on behalf of the City.

**NOW THEREFORE, IN CONSIDERATION** of the mutual promises to each other made hereinafter, the undersigned parties agree as follows:

**1. SERVICES** Effective October 1, 2015, the District is hereby appointed the “Emergency Communications Dispatching Authority” for the City for the period October 1, 2015, through and including September 30, 2016. The District shall, in serving as the City’s “Emergency Communications Dispatching Authority”, do so in accordance with the policies and procedures developed by the Bryan Police Department and Bryan Fire Department to respond to such directives. Any changes, alterations or revisions of such policies and procedures by the Bryan Police Department and/or the Bryan Fire Department during the term of the Agreement shall be made in consultation with the District. No such changes, additions or alterations shall be made without the consent of the District, which shall not be unreasonably withheld or conditioned.

The District, on behalf of the Bryan Police Department, agrees to comply with the Chapter 81 standards of the Law Enforcement Accreditation Program, as outlined by the Commission on Accreditation for Law Enforcement Agencies (CALEA).

**2. FEE** The City agrees to pay and the District agrees to accept as compensation for the services provided a flat fee of One Million Five Hundred Eighty-Two Thousand Five Hundred Sixty-Four and NO/100 Dollars (\$1,582,564.00), payable in twelve monthly installments. Should additional or expanded services be requested by the City during the term of this Agreement, the parties agree to adjust the fee to accommodate such changes, if necessary. The City shall pay the amount due within thirty days of invoice from the District.

The District shall encumber and hold in reserve a fund equal to one (1) month of operating expenses. This reserve balance shall be reported to the Board of Managers on the District’s monthly financial statements. Beginning with the first quarter of the 2016 Fiscal Year (i.e., December 31, 2015),

the District shall provide to the City a quarterly report of actual revenues from installment payments by the City, expenditures and balance sheet and the approved annual budget for the dispatch operation no later than the 20<sup>th</sup> day after the end of each calendar quarter. The report should include a summary and detail. The District shall make its current year and at least three (3) prior fiscal years financial records available to the City for review upon its request. Such review would take place during normal business hours.

**3. RECORDS** The City acknowledges that, in the course of providing services as the City's Emergency Communications Dispatching Authority, the District creates Computer Aided Dispatch ("CAD") records. However, the District shall not act as and is not contractually designated hereby as the custodian of these CAD records. Nor is the District the custodian of any City of Bryan records that are or may be created under this agreement. Both parties acknowledge and understand that all records belong to the City of Bryan, and as such, shall not be released without prior written permission from the City. All requests received by the District, in accordance with the Public Information Act Texas Government Code § 552, for any City of Bryan records, including but not limited to CAD records and audio recordings, shall be forwarded immediately to the City Secretary for processing and response. The District shall also forward the responsive information to the City Secretary, no later than 2 days after receiving a request. The City shall indemnify and hold harmless the District from and against any and all claims, demands, damages, penalties and causes of action relative to such records requests and the responses hereto.

The District is to comply with the City's retention policy regarding such records. If the District wants to maintain records for training purposes, such request shall be made in writing to the City, accompanied with the records. The records will then be reclassified as "training records" and as such may only be retained for five (5) years. CAD records shall be retained for a seven (7) year retention period.

**4. EMPLOYEES** District employees shall not be considered as City employees.

**5. GOVERNING LAW** The City and the District understand and agree to be subject to all the laws, ordinances and regulations which govern and affect Emergency Communication Districts and National Crime Information Computer network telecommunications as promulgated by the State of Texas or the United States Government or any of its appropriate Agencies, such as the Texas Department of Public Safety or the Federal Bureau of Investigation.

This agreement is made in accordance with the Texas Emergency Telephone Number Act; Section 772.301 et seq., Texas Health and Safety Code.

**6. HOLD HARMLESS** Each of the parties to this agreement agrees to hold the other harmless for any and all claims of whatsoever nature or kind, which may arise as a result of that party's fulfillment or failure to fulfill the terms of this agreement, to the extent allowed by law.

**7. AUTHORITY** Each party hereby empowers and authorizes its Chief Administrative Officer to be signatory agents for any required documentation to implement the intent of this Agreement.

**8. ENTIRE AGREEMENT** This agreement contains all of the commitments and covenants of the parties and any oral or written promises not contained herein shall have no force or effect to alter any term or condition of this agreement. This agreement may only be modified or amended in writing by the mutual consent of the parties with said modification being attached to and incorporated into this agreement by this reference for all purposes.

9. **TERMINATION** This agreement may be terminated by either party upon 90 days advance written notice to the non-terminating party as set forth below. In the event of termination, the fee payable by the City to the District shall be pro-rated to the date of termination.

10. **NOTICES** All notices sent pursuant to this Agreement shall be in writing and may be hand delivered or sent registered or certified mail, postage prepaid, return receipt requested to each party as set below:

**Brazos County Emergency Communication District**  
Executive Director  
PO Box 911  
Bryan, Texas 77806

**City of Bryan**  
City Manager  
PO Box 1000  
Bryan, Texas 77805  
300 South Texas Avenue  
Bryan, Texas 77803

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**BRAZOS COUNTY EMERGENCY COMMUNICATION DISTRICT**

BY: \_\_\_\_\_  
Lloyd Wassermann  
Chairman, Board of Managers

**ATTEST:**

BY: \_\_\_\_\_  
Recording Secretary

**ATTEST:**

**CITY OF BRYAN, TEXAS:**

BY: \_\_\_\_\_  
Mary Lynne Stratta, City Secretary

BY: \_\_\_\_\_  
Jason P. Bienski, Mayor

**APPROVED AS TO FORM:**

BY: \_\_\_\_\_  
Janis K. Hampton, City Attorney