

**CONTRACT TO PROVIDE
E911 USER FEE AUDIT SERVICES
RELATIVE TO TELEPHONE PROVIDERS FOR THE
CITY OF SMYRNA, GEORGIA**

THIS CONTRACT, entered into this 2nd day of April, 2018 and effective immediately, by and between the Georgia Municipal Association (hereinafter referred to as "GMA") and City of Smyrna, a political subdivision of the State of Georgia (hereinafter referred to as "City"),

WITNESSETH THAT:

WHEREAS, the City receives certain E911 surcharge revenues from the operation of telecommunications services within incorporated areas of the City of Smyrna; and,

WHEREAS, the City desires to engage GMA and its agents to conduct a user surcharge compliance audit to ensure fair and reasonable payment of amounts due by various telecommunication providers; and,

NOW THEREFORE, the parties hereto mutually agree as follows:

1. **Employment of GMA.** The City agrees to engage GMA and GMA hereby agrees to perform the services as outlined herein. When used in this contract, "GMA" includes GMA and its agents, officers, subcontractors and employees. It is understood that GMA may utilize one or more third parties to assist in providing such services.

2. **Scope of Services.** GMA shall perform the following services:
 - A. A review and detailed analysis for the Review Period January 1, 2015 through December 31, 2017.
 - B. The review will initiate with the definitions and rules as set forth in the Georgia Emergency Management Agency's 911 Emergency Telephone Number Plan, in

the Georgia Emergency Telephone Number 911 Service Act of 1977, and in Georgia Code §46-5-134, and any additional applicable local ordinances and Georgia state laws;

- C. Generate a set of data requests/interrogatories based on the definitions and our knowledge of the E911 industry, the services provided and the rates and charges delineated by the operator's practice, and existing rules and regulations;
- D. Perform an analysis, quantitative and financial in nature, to determine the accuracy of E911 surcharge remittances to the City;
- E. Review the data and analysis for the review period with selected (largest) operators, and generate further data requests and challenges as necessary;
- F. If necessary, we will reset the scope of the telephony providers to be reviewed, with the aim of reviewing those providers representing approximately 80% of the surcharge fees to be audited;
- G. If applicable, prepare a draft demand letter for City which is inclusive of our findings, to allow the appropriate representatives of the City to comment and suggest changes in tone and tenor of the report; and
- H. Assist City in recovering any underpayment of E911 surcharges due.

3. **Time of Performance.** The services to be performed hereunder by GMA shall be undertaken and accomplished in such sequence as to ensure their expeditious completion with best expected results to carry out the purposes of the agreement. The project will be started within 15 days of an executed contract. The final report required will be delivered not later than 180 days from the start of field work, except for exigencies beyond the control of GMA.

4. **Confidential Information.** The City and GMA agree that, if required, they will enter into a confidential information agreement protecting the confidentiality of certain trade secrets and proprietary information to the extent allowed by Georgia law. Provided, however, that GMA acknowledges that documents and information in the possession of City will be treated as confidential, proprietary, or a trade secret only to the extent permitted by the Georgia Open Records Act; and, further, will only consider information in its possession

as a "trade secret" if the party claiming such trade secret protection has submitted an affidavit stating that specific information is a "trade secret" as defined by Georgia law (Article 27 of Chapter 1 of Title 10 of the Official Code of Georgia).

5. **Compensation.** The City agrees to pay GMA a total not to exceed \$25,000 for professional fees. In the event that the City becomes involved in litigation concerning GMA's activities, methodology or conclusions with respect to an E911 surcharge compliance audit under this contract, GMA shall provide any documents, evidence or testimony required by the City at a cost not to exceed reasonable attorney's fees and actual costs for documents and hourly rates of personnel required to provide evidence or testimony and shall provide such documents, evidence or testimony to any other party as required by a court of competent jurisdiction.

6. **Method of Payment.** For services described herein, payment shall be made to GMA within 30 days of receipt of the invoice by the City. The GMA invoice will be submitted as follows:
 - 50 percent of total audit cost --30 days after execution of the contract.
 - 50 percent of total audit cost -- upon acceptance of final report by the City.
 - Actual out of pocket expenses that are approved in advance will be included with the final invoice.

7. **Changes.** The City may from time to time require changes in the scope of the services to be performed hereunder. Such changes which are mutually agreed upon by and between the City and GMA shall be incorporated in written amendment to this agreement. Services performed pursuant to a written amendment shall be billed as outlined in such written agreement.

8. **Principal-Agent.** The relationship of GMA to the City shall be that of an agent. No other principal-agent or employer-employee relationship between the parties is created by this Contract. By entering into this Contract with the City, GMA acknowledges that it will, in the performance of its duties and under this Contract, be acting as an agent and that no

officer, agent or employee of GMA will be for any purpose an employee of the City and that no officer, agent or employee of GMA is entitled to any of the benefits and privileges of a City employee or officer under any provision of the statutes of State of Georgia and/or ordinances of the City.

9. **Services and Materials to be Furnished by the City.** The City will furnish GMA or its agents with all available necessary information, data, and material pertinent to the execution of this agreement. The City will provide adequate City office space and staff for liaison with GMA or its agents.
10. **Termination of Agreement.** Both the City and GMA shall have the right to terminate this agreement by giving written notice of such termination to the other party and specifying the effective date thereof. GMA shall be entitled to payment for services rendered to the City, and per diem and out-of-pocket expenses, through the effective date of termination.
11. **Matters to be Disregarded.** The titles of the several sections, subsections, and paragraphs set forth in this contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this contract.
12. **Completeness of Contract.** This contract and any additional or supplementary document or documents incorporated herein by specific reference contain all the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this contract or any part thereof shall have any validity or bind any of the parties hereto.
13. **Information and Reports.** GMA shall, at such time and in such form as the City may require, furnish periodic status reports concerning the status of the project. Upon completion of the project, GMA shall provide the City with one (1) original and one (1) copy of the final report.

14. **Venue.** This agreement shall be governed by and construed in accordance with the laws of the State of Georgia.
15. **Notices.** Any notices, bills, invoices, or reports required by this agreement shall be sufficient if sent by the parties in the United States mail, postage paid, to the address shown below:

Tammi Saddler Jones

City Administrator

City of Smyrna

Alan Dickerson

Director, Training and Member

Services Administration


Georgia Municipal Association

P. O. Box 105377

Atlanta, GA 30348

IN WITNESS WHEREOF, the City and GMA have executed this agreement as of the date first written above.

CITY OF SMYRNA

By: 
A. Max Bacon, Mayor

ATTEST:

By: 
City Clerk

GEORGIA MUNICIPAL ASSOCIATION

By: _____
Executive Director

Terri Graham

From: Scott Cochran <Scott@cochranedwardslaw.com>
Sent: Friday, April 06, 2018 4:40 PM
To: Scott Andrews
Cc: Tammi Saddler Jones; Terri Graham
Subject: RE: E-911 Surcharge

The agreement looks fine as long as they change the signature line from the adm to the mayor.

From: Scott Andrews <sandrews@smyrnaga.gov>
Sent: Thursday, April 05, 2018 11:38 AM
To: Scott Cochran <Scott@cochranedwardslaw.com>
Cc: Tammi Saddler Jones <tsjones@smyrnaga.gov>; Terri Graham <tgraham@smyrnaga.gov>
Subject: FW: E-911 Surcharge

Hello Scott,

I believe you have been in the loop on the E 911 services audit that we were considering with Greg Fender. Max is onboard but before he signs, can you please take a look at the attached agreement?

Also, I wanted to remind you to review the open container revision item for consideration for April 12th. We should be all set based on what Maxwell sent you, pending your approval.

Thanks Scott!

From: Tammi Saddler Jones
Sent: Monday, March 5, 2018 9:41 AM
To: Scott Andrews <sandrews@smyrnaga.gov>
Subject: FW: E-911 Surcharge

FYI – Scott Cochran’s email below.

From: Scott Cochran [<mailto:Scott@cochranedwardslaw.com>]
Sent: Friday, February 9, 2018 4:54 PM
To: Tammi Saddler Jones <tsjones@smyrnaga.gov>
Subject: FW: E-911 Surcharge

Tammi,

I think that this is something we should look at. This will probably result in us getting paid back fees.

SCOTT COCHRAN

attorney at law



2950 Atlanta Road, SE
Smyrna, Georgia 30080
t-770.435.2131
f-770.436.6877



CONTRACT ROUTING SHEET

CITY CLERK'S OFFICE
CITY OF SMYRNA

Four (4) originals will be prepared for all contracts initiated by a Project Manager. Otherwise three (2) originals will be generated by the Clerk's office for all Agreements, Contracts and MOU's.

Originals are to be distributed as follows:

4 Originals:

Three originals to Project Manager
One original to the City Clerk's office

2 Originals:

One original to contractor / vendor
One original to City Clerk's office

-Bids / Awards must be placed on an Agenda in Legistar for approval by the Mayor and Council in accordance with the current City purchasing policy. **Please** notify the Clerk's office with any items for the agenda as soon as possible.

-All Contracts, Agreements and MOU's need to be routed to the City Clerk's office for distribution, review and signature to the City Administrator, City Attorney and the Mayor. If your department has had the City Attorney help draft the item it still must be signed off on by the City Attorney before proceeding to the Mayor for final signature.

WORK MAY NOT BEGIN UNTIL THE MAYOR HAS SIGNED THE CONTRACT, AGREEMENT or MOU'S

-The Clerk's office and/or Project Manager will be responsible for distribution of all final signed copies.

The process can take as long as 2-3 business weeks to complete for all required reviews and signatures so please plan accordingly.

Agreement / Contract / MOU Title: R911 User Fee Audit Services

Contractor: Georgia Municipal Assn Requesting Department / Person: P.D. / Admin

Project Manager: Kristen Robinson Date given to Clerk: 4-4-18 # of Originals: 3

Agenda Date: _____ COUNCIL Meeting / COW Meeting

PO# _____

REQUIRED REVIEWERS / SIGNATURES:

City Administrator: _____ Date: _____
Signature of Content Review / Terms

Returned to City Clerk Date: _____

City Attorney: _____ Date: _____
Signature of Legal / As to Form Approval

Returned to City Clerk Date: _____

Signed by Mayor: YES / NO Date: _____

Returned to City Clerk Date: _____

Clerk's Office: _____ Date: _____
Signature of receipt of all originals, all signatures complete and sealed

Council Notification Spreadsheet Date: _____ Date: _____

Photocopies provided to requesting departments? _____ Date: _____
Clerk's Initials

SCANNED: _____ STAMPED ORIGINAL: _____ LASERFICHE: _____ Date: _____
Clerk's Initials Clerk's Initials Clerk's Initials