

AMERICAN MESSAGING SERVICES, LLC
CUSTOMER AGREEMENT



This Account Agreement ("Agreement") is made and entered into as of the date of execution by Customer ("Effective Date") by and between American Messaging Services, LLC with its headquarters located at Lewisville OPS Center, 1720 Lakepointe Drive, Suite 100, Lewisville, TX 75057 ("Carrier") and Cooperative Cities, with a billing address located at <Address> ("Customer"). All eligible agencies as listed under <http://www.govbids.com/scripts/mitn/public/ParticipatingAgency.asp> have the ability to purchase from this agreement by completing a Subscriber Form (example included as Attachment 2).

- 1. Services to be Performed by Carrier:** Carrier and/or its affiliates shall provide services and may provide equipment to Customer subject to the terms and conditions of this Agreement and Attachment 1, and all applicable federal, state and local laws, rules and regulations.
- 2. Term:** The term of this Agreement shall begin on the Effective Date and continue for a period of five (5) years unless earlier terminated pursuant to the terms of this Agreement ("Term").
- 3. Pricing:** Equipment and services provided under this Agreement shall be provided in accordance with the Pricing set forth on this Agreement and Paging plans. Carrier reserves the right to increase pricing equal to the consumer price index of the preceding year, one time per Calendar year, with mutual consent of both parties. Optional offerings may be referenced in this agreement and/or may be offered to Customer and all such offerings shall be governed by this Agreement and by the terms provided to customer that are associated with such offerings. The optional offerings include but are not limited to: Pager Replacement Program, Automatic Payment Plan, Pager Exchange Program, and Employee Pager Program.
- 4. Billing and Payments:** Customer will be billed on a monthly basis or according to Customer's Billing Cycle, and Customer's bill will reflect the rates in effect under the applicable price plan at the time charges are incurred, plus any other charges that apply. Any unused call/packet counts from one month may not be transferred to another. Call/packet counts may not be aggregated as between wireless devices on the same account. Payment is due thirty (30) days from the date of invoice. Customer waives any billing errors if Customer does not notify Carrier of such errors within sixty (60) days from date of the invoice containing such error. If Customer defaults, Carrier may: (a) require Customer to return all Carrier owned equipment to Carrier, and/or (b) be entitled to a judgment against Customer. A LATE FEE PAYMENT OF THE GREATER OF UP TO ONE AND ONE-HALF PERCENT (1.5%) PER MONTH (18 PERCENT ANNUALLY) OR ONE DOLLAR AND 50 CENTS (\$1.50) PER ACCOUNT APPLIES TO BALANCES THAT REMAIN UNPAID. HOWEVER, IF THIS LATE FEE EXCEEDS THAT ALLOWED BY APPLICABLE LAW, THEN THE MAXIMUM FEE ALLOWED BY LAW SHALL APPLY (In California, Customer will be charged at 1.5%). Customer shall pay all reasonable costs of collection, including payment of attorneys' fees and court costs. These remedies shall be cumulative and in addition to any other remedies Carrier has at law or in equity. If service is interrupted due to non-payment, and Carrier reactivates Customer account, Customer will be required to pay a reconnection fee.
- 5. Wireless Equipment:** Customer bears the risk of loss or damage to wireless equipment, whether leased or purchased, once received. If Customer has purchased the equipment the same shall be deemed accepted within fifteen (15) days of receipt or when the equipment is activated and provided with service, whichever occurs earlier. Acceptance of the equipment shall be deemed a complete discharge of Carrier's obligations as it concerns the purchased equipment. However, Customer shall have thirty (30) days from the date the equipment is received to discover alleged defects in such equipment and to return the equipment to Carrier for a replacement of similar type. Leased equipment remains the property of Carrier. If this Agreement is terminated, Customer will return all leased wireless equipment and accessories provided under this Agreement in reasonably good condition or reimburse Carrier at current retail rates for similar equipment and/or accessories. Lease charges will continue to accrue until all wireless equipment is returned or paid for by Customer.
- 6. Relationship of the Parties:** Both parties agree and understand that the services performed under this Agreement are performed by Carrier as an independent contractor and not as an employee of the Customer.
- 7. Limitation of Liability:** Carrier shall not be liable to Customer, its employees, agents, or any third party for injuries to persons or property arising from Customer's use of the services, the wireless equipment or related equipment, or for any defect in the services or equipment. Furthermore, Carrier shall not be liable for the installation, repair or maintenance of the services or equipment by any parties who are not employees of Carrier, or subcontractors of Carrier. Carrier's performance hereunder shall be excused if affected by equipment failure, acts of God, strikes, severe weather conditions, fire, riots, war, earthquakes, equipment or facility shortage or any other event or causes beyond Carrier's reasonable control. **IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES, HOWEVER CAUSED, WHICH ARE INCURRED BY THE OTHER PARTY AND WHICH ARISE OUT OF ANY ACT OR FAILURE TO ACT RELATING TO THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE CLAIM OR POTENTIAL CLAIM OR OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL CARRIER BE LIABLE FOR LOSSES, DAMAGES, OR CLAIMS ARISING OUT OF THE USE OR ATTEMPTED USE OF EMERGENCY SERVICES, NOR SHALL CARRIER BE LIABLE FOR THE INABILITY TO ACCESS EMERGENCY SERVICE.**

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8. **INFORMATION REGARDING WARRANTIES:** Carrier agrees to assign to Customer any of the manufacturers' consumer warranties received by Carrier and intended for the end user with respect to the wireless equipment. CUSTOMER ACKNOWLEDGES THAT CARRIER IS NOT THE MANUFACTURER OF THE WIRELESS EQUIPMENT AND CUSTOMER AGREES THAT CARRIER HAS NOT MADE AND MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, DIRECTLY OR INDIRECTLY, EXPRESS OR IMPLIED, AS TO THE SUITABILITY, DURABILITY, FITNESS FOR USE, MERCHANTABILITY, CONDITION OR QUALITY OF THE WIRELESS EQUIPMENT. WITH RESPECT TO CARRIER, CUSTOMER PURCHASES OR LEASES THE WIRELESS EQUIPMENT "AS IS". CARRIER SHALL NOT BE LIABLE TO CUSTOMER FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED DIRECTLY OR INDIRECTLY BY THE WIRELESS EQUIPMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE OF THE WIRELESS EQUIPMENT, OR FOR ANY LOSS OF BUSINESS OR DAMAGE WHATSOEVER AND HOWSOEVER CAUSED UNLESS LOSS OR DAMAGE IS DIRECTLY CAUSED BY CARRIER'S WILLFUL MISCONDUCT. CUSTOMER ACKNOWLEDGES THAT DISSATISFACTION WITH THE WIRELESS EQUIPMENT WILL NOT RELIEVE CUSTOMER OF ANY OBLIGATION UNDER THIS AGREEMENT. NOT WITHSTANDING THE ABOVE, CUSTOMER MAY RETURN THE EQUIPMENT PER THE TERMS OF SECTION 5 HEREIN.
9. **Intellectual Property:** Carrier shall have no liability for violation of any patent, copyright, trademark or trade secret or for violation of any license or franchise arising out of or resulting from (a) the use of the services or wireless equipment in combination with any other product or service not supplied by Carrier, or (b) modification of the services or wireless equipment by, or on behalf of, Customer.
10. **Indemnity:** Each party agrees to be responsible for any personal injury or property damage caused by negligent acts or negligent omissions by or through itself or its agents, employees and contracted servants and each party further agrees to defend itself and themselves and pay any judgments and costs arising out of such negligent acts or negligent omissions, and nothing in this Agreement shall impute or transfer any such responsibility from one to the other.
11. **Confidential Information:** Customer shall hold in strictest confidence information provided to it by Carrier that is marked confidential or proprietary ("Confidential Information") for the Term of this Agreement and for a period of two years following the expiration or termination of this Agreement. Carrier acknowledges that Customer is subject to release of public records under the Freedom of Information Act. Customer will make a good faith effort to inform Carrier immediately of any third party requests for access to information defined as confidential under the this Agreement. Carrier acknowledges that the Freedom of Information Act requires a five (5) day response to a request for information. Carrier agrees to provide a response to Customer within three (3) days as to its position regarding the release of the requested information. If Carrier requests that the information not be released, Carrier agrees to specify in writing to Customer, the applicable exception to release of the information in the Freedom of Information Act. If it is Customer's decision to release the information to the third party, Customer will notify Carrier prior to its release and may exercise its options under law. Carrier agrees that is shall not initiate any action against Customer based upon Customer's release of information under the Freedom of Information Act. Nothing herein is intended to preclude Carrier from seeking an injunction for any other relief to prevent release of such information. Customer acknowledges that Carrier would suffer irreparable damage in the event of any material breach of these provisions. Accordingly, in such event, Carrier would be entitled to obtain preliminary and final injunctive relief, as well as any other applicable remedies at law or in equity as the result of a breach or threatened breach of this section.
12. **Termination:** Customer has the option to terminate this agreement during the first 30 days of service without penalty. A non-breaching party may terminate this Agreement if the other party commits a material breach of any term or condition of this Agreement and fails to cure such breach within a thirty (30) day period after receiving notice of such breach. Except as provided above, if Customer has less than ten (10) wireless devices in service and terminates service to any wireless devices within the Term of this Agreement or Carrier terminates Customer's service for good cause, then Customer shall pay \$75.00 per unit to Carrier for each such termination as an early termination fee. If Customer has ten (10) or more wireless devices in service and at any time terminates service on twenty (20) percent of the contracted units in service, then Customer shall pay Carrier the monthly fee for each terminated device multiplied times the number of months remaining in the Term of this Agreement. Furthermore, if Carrier determines that Customer is misusing the equipment or service in a manner that negatively impacts Carrier's network, then Carrier may terminate and/or suspend service without notice to Customer.
13. **Availability of Service:** Messaging and paging services use radio transmissions, so Carrier cannot provide service when Customer's wireless equipment is not in range of one of our transmission sites, or a transmission site of another company that has agreed to carry Carrier's service, or if there is not sufficient network capacity available at the moment. Also, there are places, particularly in remote areas, with no service at all. Weather, topography, buildings, Customer's wireless equipment, and other conditions Carrier does not control may also cause missed pages or other problems.
14. **Response Procedure:** If service is unavailable in Carrier's service area for more than twenty-four (24) continuous hours due to Carrier's fault, Carrier will give Customer a pro rata daily credit for the period Customer is without service. To receive such

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credit, Customer must notify Carrier in writing within thirty (30) days after the first bill is received for the period during which the interruption started.

15. **Assignment:** Neither Party may assign this Agreement, except in the case of a merger or sale of all or substantially all its assets, without the prior written consent of the other party, which shall not be unreasonably withheld. Subject to these restrictions, this Agreement shall apply to, inure to the benefit of, and be binding upon the successors and assignees of the respective parties.
16. **Notices:** All notices required or permitted to be given hereunder shall be in writing and shall be valid and sufficient if dispatched by (a) registered or certified mail, postage prepaid, in any Post Office in the United States; (b) hand delivery; (c) overnight courier; or (d) facsimile transmission upon confirmation of receipt by the recipient.

If to Carrier:

Contract Support Group
American Messaging Services, LLC.
1720 Lakepointe Drive, Suite 100
Lewisville, TX 75057

If to Customer:

To the billing address of record maintained by
Carrier.

17. **Severability:** Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Agreement shall be held by a court of competent jurisdiction or by a duly appointed arbitrator to be invalid or unenforceable under applicable law, such provision shall be ineffective only to the extent of its invalidity or unenforceability, and the remainder of such provision and the remaining provisions of this Agreement shall remain in full force and effect.
18. **Wireless Number And/Or Internet Address:** Carrier will assign one wireless telephone number (also referred to as an "access number", "pager number", or "wireless number"), cap code and/or internet address, if applicable, to each unit in service. Customer agrees that it does not have any property right or ownership in the wireless number, cap code or Internet address or in the personal identification number ("PIN(s)") the Customer or Carrier may establish. Carrier may change the Customer's wireless number if Carrier determines it is necessary to comply with regulatory and/or commercial requirements; however, Carrier shall not arbitrarily change Customer's wireless number and in the event of change Carrier shall specifically advise Customer of the reason for such change.
19. **Charges:**
- 19.1. **Charges:** Refer to Attachment 1 – Pricing for Cooperative Cities
- 19.2. **Tax:** If any federal, state or local government tax, fee, duty, or surcharge (collectively referred to as a "Tax") is required by applicable law to be collected from Customer by Carrier, then (a) Carrier shall bill Customer for such Tax, (b) Customer shall timely remit such Tax to Carrier, and (c) Carrier shall, where applicable, remit such collected Tax to the appropriate taxing authority. If Carrier does not collect a Tax because Customer has provided Carrier with evidence of exemption, and if such as an exemption is later determined to be inadequate, then, as between Carrier and Customer, Customer shall be liable for such uncollected Tax and for all interest, penalties and additions to Tax which are determined to be due with respect to such uncollected Tax.
20. **Authority:** The parties hereby represent that they have full power and authority to enter into and perform this Agreement and know of no contracts, agreements, promises or undertakings that would prevent the full execution and performance of this Agreement.
21. **Reservation of Rights:** Either party's waiver of any of its remedies for a breach by the other party shall not operate to waive any other remedies available to it, nor shall such waiver operate to waive rights to any remedies for a future breach, whether of a like or different character.
22. **Entire Agreement:** This Agreement, together with the Attachment 1 and the Renewal Form, if applicable, contains the full and complete understanding between the parties, supersedes all prior agreements and understandings, whether written or oral pertaining to the services and cannot be modified except by a written instrument signed by both parties.
23. **Governing Law:** Except as provided below, this Agreement shall be governed by the laws of the State of Michigan regardless of any conflicts of laws or rules that would require the application of the laws of another jurisdiction. Disputes requiring arbitration shall be resolved in the State of Michigan.
24. **Execution of Agreement:** This Agreement may be executed in several counterparts, a copy of which shall be considered an original for all purposes whatsoever.

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25. IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date of signature by Customer.

CUSTOMER:

Cooperative Cities

By: Louise E. Schilling

Name: Louise E. Schilling

Its Authorized Representative

Title: Mayor

Dated: 12/1/2009

("Effective Date")

By: Tonni L. Bartholomew

Name: Tonni L. Bartholomew

Its Authorized Representative

Title: City Clerk

Dated: 12/1/2009

("Effective Date")

CARRIER:

American Messaging Services, LLC

By: Jeff Chalmer

Name: Jeff Chalmer

Its Authorized Representative

Title: Senior Vice President

Dated: 12/1/2009



ADDENDUM NO. 1
TO
AMERICAN MESSAGING SERVICES, LLC CUSTOMER AGREEMENT

This Addendum supplements the messaging services account agreement (the "Agreement") between American Messaging Services LLC dba American Messaging and Cooperative Cities ("Customer") made and entered into on or around the 1st day of December, 2009 ("Effective Date"). The parties to this Addendum hereby agree to the additions to the Agreement as follows:

1. The following language will be added to Section 12. Termination:

"12. a) Non-appropriation. - In the event that funds to enable a customer to effect continued payment under this agreement are not appropriated or otherwise made available. The Carrier acknowledges that, since this agreement extends for several fiscal years, continuation of this Agreement is subject to appropriation or availability of funds for this contract. If funds are not appropriated or otherwise made available, the customer shall have the right to cancel this Agreement without penalty at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of cancellation to the Carrier within thirty (30) days after the customer receives such notice."

The parties have signed this Addendum below on the _____ day of November in the year 2009 to signify their agreement to be bound by the terms of this Amendment:

"Customer"

Cooperative Cities

City of Troy

By 

Print Name: John M Lamerato

Title: Assistant City Manager /Finance & Administration

Date 11/12/09

"Vendor"

American Messaging Services LLC
dba American Messaging

By 

Print Name Dave Andersen

Title President & COO

Date 11-13-2009

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**Attachment 1
PRICING for Cooperative Cities**

This is Attachment number 1 to the American Messaging Services, LLC Agreement and it is incorporated into and made part of that Agreement. The pricing set forth below is applicable during the initial term of the Agreement and any subsequent terms unless the parties agree to change or modify such pricing.

ACTIVATION INFORMATION

Contracted Units in Service	
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ALPHA AND NUMERIC ONE-WAY PRICING

NUMERIC	Service	Access Fee (Includes Lease Fee)	Page Allowance (Per Month)	Charge per page over Allowance
	Statewide*	\$ 1.85 per month	Unlimited	N/A
ALPHA	Service	Access Fee (Includes Lease Fee)	Page Allowance** (Per Month)	Charge per page over Allowance
	Statewide*	\$ 3.95 per month	Unlimited	N/A
	Nationwide	\$ 17.95 per month	Unlimited	N/A

*Local service includes one or more Metropolitan Statistical Areas (MSAs), Statewide service includes major MSAs within a State. **Two hundred forty (240) character limit per page.

TWO-WAY PRICING

Two-Way P900 Leased	Service	Access Fee (Includes Lease Fee)	Packet Allowance (Per Month)	Charge per packet over Allowance
	Nationwide	\$17.95 per month	500	\$0.05

Third Party Carrier Pricing

In certain instances, American Messaging may utilize third party carriers to provide paging services. The pricing contained herein is based on services provided directly by American Messaging. If we determine that the use of a third-party carrier is necessary, our customer's associated service costs will be negotiated separately.

ENHANCED SERVICE OPTIONS

Secondary 800/888/877 Number	\$ 3.95 per month
Group Calls	No Charge
Voice Mail Pkg. D (20/60/72)	\$ 1.50 per month
Custom Greeting	No Charge
Operator Dispatch	To be determined based on needs of customer.
Page Saver SM Numeric Retrieval	No Charge
Page Forwarding	No Charge
Alpha Software	No Charge – limited quantity based on total units
Batteries (ordered quarterly)	1 battery per pager per month at No Charge (includes free shipping)

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PAGER REPLACEMENT PROGRAM (PRP)

American Messaging will exchange leased paging units at no additional charge that are defective or stop working due to normal wear and tear. The optional Pager Replacement Program will protect you against theft, loss or damage to your pager. Without PRP, you are responsible for the full pager replacement charge. With PRP, any repairable damage is covered 100% and if your pager is lost, stolen or damaged beyond repair, it will be replaced with a comparable one (see fee schedule).

Service	Fee	Loss Fee with PRP	Note: American Messaging Services, LLC reserves the right to change or discontinue models during this agreement.
Numeric	No Charge	\$19.95	
Alpha	No Charge	\$39.95	
Two-Way	No Charge	\$99.95	

SHIPPING CHARGES AND MISC. CHARGES

SHIPPING CHARGES

American Messaging Services, LLC provides automated order fulfillment. By contacting Major Account Customer Service, a representative can initiate the shipping order and prioritize it to meet Cooperative Cities' needs for the pager(s) to arrive at the location and by the time specified by Cooperative Cities. American Messaging Services, LLC will pass onto Cooperative Cities any charges that are incurred for expedited shipping and handling. American Messaging will provide UPS Ground shipments at No Charge to the Cooperative Cities.

TAXES AND FEES

Prices do not include state and local sales tax, and other applicable taxes, fees, charges, or pass through assessments.

AMERICAN MESSAGING'S EXPLANATION OF USF FEES

*The Telecommunications Act of 1996 requires American Messaging Services, LLC to support the Federal Universal Service Fund. American Messaging will separately list the Federal Universal Service Charge (FUSC) and Regulatory Charge (RC) on our customer's bill. All accounts will be assessed a monthly charge. The actual amount of the FUSC charge may vary monthly; the history is listed below. The Regulatory Charge is \$0.06 per line per month as of January 1, 2009.

Assessment Rate History:

- (3Q) July 1, 2009 – September 30, 2009 FUSC rate: 1.55%
- (2Q) April 1, 2009- June 30, 2009 FUSC rate: 1.36%
- (1Q) January 1, 2009 – March 31, 2009 FUSC rate: 1.14%
- (4Q) October 1, 2008 – December 31, 2008 FUSC rate: 1.368%

Some states have developed their own Universal Service programs and the USF rate is determined by the individual state. American Messaging Services, LLC will provide more information regarding this State Universal Service Fund upon request from Cooperative Cities.

RESTOCKING FEE

Pagers returned between the 46th and the 180th day will be charged a \$10.00 restocking fee. (No line item will appear on the invoice for the restocking fee, the credit issued will be \$10.00 less that what was charged for the equipment.) Pagers returned after the 180th day will not receive an equipment credit. Lost pagers will follow the same process. If returned prior to the 45th day, a full credit will be issued.

INVOICE FEE

Customers will be charged an invoice fee of \$4.95. The fee will appear on invoices for customers with 1 to 99 UIS that are not paperless. By going paperless, they can avoid this fee. This fee will be waived for Cooperative Cities.

NETWORK ADMINISTRATION FEE

Customers will be charged a network administration fee of up to 9.95% per account. The fee is applied to recurring charges including overcalls if applicable, and is not applied to the Universal Service Fund charges or taxes.

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Attachment 2

Subscriber Agreement

American Messaging Services Subscriber Agreement for Cooperative Cities Eligible Entities

This Account Agreement is made and entered into as of _____, 20__ by and between American Messaging Services LLC d/b/a American Messaging and _____, with a billing address of _____

- A. American Messaging entered into a five (5) year Services Agreement with Cooperative Cities dated _____ and any and all related Amendments, (collectively the "Service Agreement") to provide wireless paging service and equipment ("Services").
- B. Whereas, the undersigned represents that it is a Cooperative Cities affiliate or location entitled to participate in the Service Agreement and desires to purchase materials/services from American Messaging under the same terms, conditions, specifications, and pricing as set forth in the Agreement;
- C. Therefore, the undersigned hereby agrees to the terms and provisions of the Service Agreement and agrees to participate in the Service Agreement to purchase Services from American Messaging.

ELIGIBLE AGENCY: _____

Name: _____ Signature: _____

Title: _____ Date: _____

ORDER SUMMARY (add lines as needed)		or EXISTING ACCOUNT (account #)	
# of units	Type of equipment	Coverage	Enhanced Services

The following employee(s) are authorized to access the account, purchase equipment, add lines of service, cancel service, make changes to the account and to sign an American Messaging customer service order for the Eligible Agency indicated above for lines of wireless and paging service:

AUTHORIZED CONTACT PERSON(S):

Name: _____ Title: _____

Employee ID No.: _____ Signature: _____

Mailing Address: _____

Telephone: _____ Fax: _____

Email: _____

Name: _____ Title: _____

Employee ID No.: _____ Signature: _____

Mailing Address: _____

Telephone: _____ Fax: _____

Email: _____