

ATTACHMENT 1

EMAIL FROM CITY OF PALM COAST TO
COUNTY ATTORNEY
DATED NOVEMBER 13, 2015

Subject: FW: City of Palm Coast - 800 MHz System
Attachments: Attached Image

From: Melanie Kelly [<mailto:mkelly@orlandolaw.net>]

Sent: Friday, November 13, 2015 8:51 AM

To: Albert J. Hadeed

Cc: Jim Landon (JLandon@palmcoastgov.com); Virginia Smith (vsmith@palmcoastgov.com); jnetts@palmcoastgov.com; bmcguire@palmcoastgov.com; JDelorenzo@palmcoastgov.com; snobile@palmcoastgov.com; hshipley@palmcoastgov.com

Subject: City of Palm Coast - 800 MHz System

Dear Mr. Hadeed:

Please find attached that prior Interlocal Agreement between the City of Palm Coast and Flagler County. This Interlocal Agreement between our clients reflects the historical consolidation of the parties' respective 800 MHz Radio Systems. Consolidation, as provided therein, has been completed for the mutual benefit of both Flagler County and Palm Coast.

The Interlocal Agreement recognizes the potential need for an expansion of this consolidated system, referred to as the "Phase II Upgrade". In Section 8 of the Interlocal, the Phase II Upgrade is specifically identified as the technological process included in a report; said Upgrade designed to serve a specific number of additional users and specifically estimated to cost \$3,000,000. This Interlocal Agreement requires that the City be allowed to participate in the Phase II Upgrade project procurement process, such as it may have occurred, by Flagler County. Indeed, the City was to have a voting representative in the County Selection Committee. If this has occurred, the City is unaware of this. Paragraph 8 specifically provides "in lieu of the above described expansion of the 800 MHz System, the parties may mutually agree to other upgrades to the 800 MHz system". As the above described expansion of the consolidated 800 MHz System has not occurred, any alternative upgrades would necessarily require the mutual agreement of Flagler County and Palm Coast.

Section 10 provides for the process for the establishment of an escrow account. The City has provided three of the five annual deposits, consistent with that section, up and until the time that the City was notified by the County of the County's intent not to proceed with the Phase II Upgrade as previously described in Section 8. Rather, the County indicated that it was seeking to upgrade the parties' consolidated 800 MHz Radio System in a manner inconsistent with and in violation of this Interlocal Agreement, to wit: an upgrade costing up to \$20,000,000. Indeed, Flagler County has advised that this will not be an upgrade at all but rather will be a new system. Of course this is totally inconsistent not just with the report provided in the Interlocal Agreement, but the Interlocal, itself.

Importantly, Section 9 of the Interlocal Agreement provides that every five (5) years the County and City will meet and review the need for the Phase II Upgrade. This has not happened. Given the failure of the County to comply with Section 9 of the Interlocal Agreement, the necessity of this correspondence was inevitable.

Unfortunately, the County has defaulted in its responsibilities and obligations as set forth in the 2009 Interlocal Agreement. Therefore, the City, as indicated in prior correspondence to the County (attached), has had no obligation to make further payments consistent with Section 10 of the Interlocal Agreement, and, further, hereby demands that the County return the prior three payments that the City has made.

Respectfully, the City of Palm Coast would suggest that it would be appropriate, additionally, for the parties to meet and discuss a replacement Interlocal Agreement to reflect the changed needs of the parties.

Sincerely,

William E. Reischmann, Jr., Esquire
City Attorney



Melanie R. Kelly, Legal Assistant to:

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