

PLEASE RETURN TO:



City Clerk's Office
City of Palm Coast
160 Cypress Point Pkwy., Ste B106
Palm Coast, Florida 32164

Inst No: 2009003460 02/10/2009
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GAIL WADSWORTH, FLAGLER Co.

**INTERLOCAL AGREEMENT
BETWEEN FLAGLER COUNTY, FLORIDA AND
THE CITY OF PALM COAST, FLORIDA
TO AUTHORIZE THE CITY'S USE OF THE COUNTY'S
800 MHz RADIO SYSTEM, AND TO PROVIDE
FOR A PLANNED FUTURE UPGRADE OF THE SYSTEM**

This Agreement is entered into between the County of Flagler, a political subdivision of the State of Florida, whose address is 1769 East Moody Blvd., Bunnell, FL 32110, hereinafter referred to as the "County," and the City of Palm Coast, a Florida municipal corporation, whose address is 160 Cypress Point Parkway, Ste. B-106, Palm Coast, FL 32164, hereinafter referred to as the "City".

WITNESSETH:

WHEREAS, the County is authorized by Section 125.01(1)(p), Florida Statutes, to "enter into agreements with other governmental agencies within or outside the boundaries of the county for the joint performance, or performance by one unit in behalf of the other, of any of either agency's authorized functions"; and

WHEREAS, Section 163.01, Florida Statutes, authorizes the exercise by agreement between two or more public agencies of any power common to them; and

WHEREAS, this Interlocal Agreement is authorized by the provisions of Chapters 125, 163, and 166, Florida Statutes and other applicable law; and

WHEREAS, each party presently maintains a separate 800 MHz radio system (sometimes referred to as the "800 MHz system") for agency communications; and

WHEREAS, the City wishes to dismantle its current one tower citywide system and incorporate it into the County's five tower countywide system, allowing a one channel expansion; and

WHEREAS, each party recognizes a mutual benefit to using a countywide 800 MHz radio communications system, and to provide for expansion or upgrading of the existing County 800 MHz system, aligning with the efforts of the Department of Homeland Security to promote interagency communications; and

WHEREAS, the County is willing to allow the City to become a user on its system in the same manner and generally under the same terms as the cities of Flagler Beach and Bunnell and the Sheriff's Office; and

WHEREAS, the County foresees a need for an expansion of the 800 MHz system in the future to maintain its design operability primarily for certain high growth areas such as the City, or the parties may mutually agree to purchase upgrades to the 800 MHz system (known hereafter as the "Phase II Upgrade," or the "Upgrade"); and

WHEREAS, the parties desire to provide a method for cost sharing for the Phase II Upgrade of the 800 MHz system in the fairest manner possible.

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES, MUTUAL COVENANTS, AND REPRESENTATIONS CONTAINED HEREIN, CONSTITUTING GOOD AND VALUABLE CONSIDERATION, THE COUNTY AND CITY AGREE AS FOLLOWS:

Section 1: Purpose. The purpose of this Agreement is to define the rights and obligations of the County and the City with respect to the coordinated operation and upgrades of a countywide 800 MHz radio system.

Section 2: Use. The County hereby authorizes the City to use the County's 800 MHz radio system backbone equipment at no cost to the City, other than as provided herein. The parties agree that each party shall be responsible for all expenses associated with their respective user equipment, including, but not limited to, the cost of purchase, repair, upgrade, and reprogramming, of such user equipment. This agreement shall not give the City any rights of ownership or direct access to the County's 800 MHz backbone equipment. The City shall be a user on the County's system in a manner similar to the other municipal users except as specifically provided herein.

Section 3: Sovereign Immunity. The County and City expressly retain all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes, or its successor. Notwithstanding anything set forth in this Agreement to the contrary, nothing in this Agreement shall be deemed as a waiver of immunity or waiver of the limits of liability. Liability of the County or City for damages shall not exceed the statutory limits of liability, regardless of the number or nature of any claim which may arise, including but not limited to, a claim sounding in tort, equity or contract. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against the County or City which would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

Section 4: Transfer of Ownership. The City agrees to transfer ownership of all 800 MHz single site backbone equipment, licenses, frequencies, and software currently owned by the City to the County for use as an additional channel at each of the County's simulcast backbone sites. An inventory of all transferred equipment, licenses, frequencies and software and a bill of sale for Ten (\$10) Dollars are attached hereto at **Exhibit A**.

Section 5: Relocation of City Equipment Transferred to County. The parties agree that it may be necessary to relocate and install some or all of the City's 800 MHz single site backbone equipment after transfer to the County. The cost of any such relocation and installation of this equipment shall be borne by the City. The County and City agree that the estimated cost of such relocation and installation is \$217,000. The City shall pre-pay this amount to the County within thirty (30) days of this Agreement based on the invoice attached as **Exhibit B**. Upon the completion of such work, the County shall invoice the City for any additional costs incurred which exceed the City's pre-payment.



The City shall remit payment on said invoice within 30 days from when the City receives the invoice from the County.

Section 6: Maintenance. The County shall be responsible for all maintenance of the current 800 MHz backbone system, and the future Phase II Upgrade of the system, including but not limited to, maintaining any and all licenses related to the operation of the current 800 MHz system.

Section 7: Equipment Insurance. The County shall insure all 800 MHz backbone equipment (including all backbone equipment and all equipment transferred to the County from the City) at no cost to the City. The City shall be responsible for insurance, if any, for the City's user equipment.

Section 8: Cost of Phase II Upgrade. The County shall be responsible for the Phase II 800 MHz system backbone infrastructure purchase and installation, and for subsequent infrastructure purchases required to maintain the designed operability of the 800 MHz system, but the parties will share in the costs of the Upgrade, as set forth herein. The Phase II Upgrade will increase the number of channels by five (5) over the present number of channels (which excludes the additional channel to accommodate the City's immediate use of the system). In accordance with the recommendations of the report on the 800 MHz system, the Upgrade will serve an additional one thousand (1,000) users at the rate of two hundred (200) additional users per channel. The Upgrade in 2008 dollars is currently estimated to cost Three Million (\$3,000,000) Dollars. Upgrade work by outside contractors or vendors shall be pursuant to the County's Purchasing Policy. The City shall participate in the Phase II Upgrade project procurement process by the County, to include having a voting representative on the County's selection committee. The selection committee may choose to piggyback or proceed with a sole source vendor in accordance with the County's Purchasing Policy. 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.

Section 9. Phase II Coordination. At a minimum, every five years the County and City shall meet and review the need for the Phase II Upgrade, the estimated costs of the Phase II Upgrade, and review the overall operational aspects of the system.

Section 10: Escrow Account Established. To partially finance the capital cost of the Upgrade, and subject to the provisions hereof, the City shall make five (5) annual deposits in the amount of Three Hundred Thousand (\$300,000) Dollars per annum for the Phase II Upgrade, to be paid into a County account, separate from the County's General Fund, which shall be known as the "800 MHz System Escrow Account." The first payment is due on January 15, 2010, with subsequent payments due on January 15 over the next four years, 2011, 2012, 2013 and 2014. Such payments, and any interest earned, will be held in the Escrow Account until Upgrade occurs. The costs of the Upgrade shall be shared equally between the City and County. The County may add the direct costs of its materials used in the Upgrade to the overall Upgrade costs that are to be shared by the parties. Likewise, any City materials used by the County in the Upgrade shall be credited to the City for the overall Upgrade costs.

1.5 Million
[Signature]

Section 11. Escrow Instructions. The County shall draw on the Escrow Account (including interest earned on such funds) for the City's share of the Upgrade. The County Financial Services Director shall act as Escrow Agent, and during the term of this Agreement, Escrow Agent shall hold and disburse the Escrow Account in strict accordance with the terms and provisions of this Section:

- a. In no event shall Escrow Agent initially disburse any money from the Escrow Account without providing thirty (30) days written notice and the following documents to the City Manager:
 1. Documentation of the County Commission's approval of the procurement for the Phase II Upgrade of the 800 MHz system.
 2. Approved capital project budget from the County Administrator, showing the allocation of County funds for the Upgrade equivalent to the amount to be withdrawn from the Escrow Account, with both allocations (City Escrow Account and County General Fund) to occur in the same fiscal year.
- b. After the Upgrade has been completed, the County shall furnish the City Manager an accounting for the project for all revenues received and all costs expended by the County. The County shall provide the City Manager a copy of the County's annual budget and audit which includes the project fund.
- c. The Escrow Agent shall not be held liable for any actions taken or omitted by him/her under this Agreement so long as the Escrow Agent has acted in good faith and without gross negligence.
- d. City may demand return of the Escrow Account funds (including interest) and either leave the County's system or cap its capacity at 200 users (emergency services only) by use of its equipment that was conveyed pursuant to Section 5 hereof upon any of the following circumstances:
 1. The County breaches this Agreement by failing to allocate, in the same fiscal year in which the County intends to purchase the Upgrade, sufficient funds to equally match the City funds to be used for the Upgrade.
 2. The County fails to complete the Phase II Upgrade within fifteen (15) years.
 3. This Agreement is terminated by the City due to a material default by the County.

Section 12. Cost Overruns for Phase II Upgrade. The County shall notify the City at the earliest opportunity of the full cost of the Upgrade. In the event that the actual



Upgrade costs exceed the estimate, the City and County shall share the cost overruns equally, on a 50/50 basis. If the actual costs of the Upgrade exceed the estimates such that the City's contributions in the Escrow Account are not adequate to pay one-half of the Upgrade, the City shall remit its unfunded share to the County as follows:

- a. The County shall furnish the City the cost of the Upgrade, including a detailed listing of all Upgrade costs, and shall invoice the City for its unfunded 50% share.
- b. Should the City owe Three Hundred Thousand (\$300,000) Dollars or less, the City shall pay the County within one hundred twenty (120) days of the invoice.
- c. Should the City's unfunded share exceed Three Hundred Thousand (\$300,000) Dollars, the City may defer payment of that portion that exceeds Three Hundred Thousand (\$300,000) Dollars to the next anniversary date of the invoice, in increments of Three Hundred Thousand (\$300,000), and annually thereafter until the indebtedness is retired.
- d. In the event actual costs are less than the estimated costs such that the City has overfunded its share of the Upgrade through the Escrow Account, at the end of the Phase II Upgrade the County shall refund the City the amount of its overfunding, including any interest earned on the amount overfunded from the Escrow Account.

Section 13. Effect of Grant Money. Should the County receive a grant from the state or federal government in connection with the Phase II Upgrade of the 800 MHz radio system, such grant shall be credited to both the County and the City in equal amounts, thereby proportionately reducing each party's required monetary share or contribution for such Upgrade.

Section 14. Future Additional Upgrade Cost Share. The parties acknowledge that 800 MHz system upgrade beyond the Phase II Upgrade may be necessary. At the time such additional upgrade is needed, the City and County may need to enter into a new cost share arrangement based on the specific facts existing at that time, which arrangement shall be adopted as an amendment hereto.

Section 15: Exclusivity. This Agreement is exclusive between the County and the City. The City is not authorized to allow any entity, government body, or corporation to use communication equipment on the County's 800 MHz radio system.

Section 16: Administration. The Flagler County Emergency Services Director is designated as the administrator for this Agreement. All documents, requests, modifications, software, or any issues relating to the County 800 MHz radio system should be referred to the Emergency Services Director for proper remedy. The City may appeal the Emergency Services Director's decision to the County Administrator.



Section 17: Additional Talk Group Agencies. The County acknowledges that the City may include any talk group agencies on their user equipment, provided written permission has been received from each talk group agency.

Section 18: User Restrictions. The City shall use the system only for City entities and for City employees similar to all other users on the system. The City shall not have the ability to allow third parties to use the system, nor rent or otherwise charge or grant free access to any third parties. Third parties desiring to use the system may be permitted access by application to the County and approval by the County Emergency Services Director. Firefighting volunteers directly associated with the City of Palm Coast Fire/EMS Department shall be permitted access but only for such emergency services as are related to the work of the City department.

Section 19: Integration / Modification. This Agreement reflects the full and complete understanding of the parties and may be modified or amended only by a document in writing executed by all the parties, with the same formalities as this Agreement.

Section 20: Default.

- a. In the event of an alleged material violation of this Agreement, the party alleging a default shall give notice to the alleged defaulting party.
- b. Upon notice, the alleged defaulting party agrees that it will cure the default within thirty (30) days. In the event the default is not cured, this Agreement may be terminated ninety (90) days after the notice of default. In the event of termination by either party, the Escrow Agent shall return to the City all funds paid by the City pursuant to Section 10, less any amounts otherwise agreed by the parties to be used from the Escrow Account funds. The equipment listed in Exhibit A may be returned to the City with the agreement of the County, provided the costs of equipment removal from the 800 MHz system and restoration of the system's 2008 operational standards are borne by the City. In the event both funds and equipment are returned to the City in accordance with the terms hereof, the City shall not have any dedicated access to the system. In the event only funds are returned, the City's dedicated access shall be capped at 200 emergency service users based on the equipment and subsequent installation provided.
- c. The obligations in this Agreement may be specifically enforced by either party.

Section 21: Records and Audit.

- a. The parties agree to cooperate with the State, County, or City auditors during normal business hours, and as reasonably necessary to examine, audit and transcribe any books and records related to the Upgrade project.

- b. The County and City agree to maintain all records relative to this Agreement and the use of the 800 MHz system and the Upgrade during the period the 800 MHz system is used by the City, and for five (5) years beyond the expiration date of this Agreement.

Section 22: Force Majeure. The obligations of the parties hereunder shall be subject to the concept of force majeure. Accordingly, in the event of Acts of God, riot, weather disturbances, permitting, war, terrorism, civil disobedience, geologic subsidence, electrical failure, malfunctions, and events of a similar nature, the parties shall be excused from performing under this Interlocal Agreement until the cause or causes thereof have been remedied.

Section 23: Choice of Law. This Agreement is to be governed by the laws of the State of Florida and venue for any legal proceeding related to this Agreement shall be in the Seventh Judicial Circuit Court in and for Flagler County, Florida.

Section 24: Severability. If any term, provision or condition contained in this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable, shall not be affected thereby, and each term, provision, and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law when consistent with equity and the public interest.

Section 25: Term/Termination. The term of this agreement shall be indefinite and shall continue from year to year until terminated as set forth in Section 20 or as mutually agreed by the parties in a recorded instrument filed in the Official Records of Flagler County.

Section 26: Notice. Notices provided for in this agreement, unless expressly provided for otherwise, shall be in writing and may be delivered personally or by placing in the United States mail, first class and certified, return receipt requested, with postage prepaid and addressed as follows:

To: City of Palm Coast

Assistant City Manager

City of Palm Coast
160 Cypress Point Parkway, Ste. B-106

Palm Coast, Florida 32164

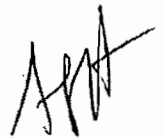
To: Flagler County

Emergency Services Director

1769 E. Moody Blvd.

Building 3
Bunnell, FL 32110

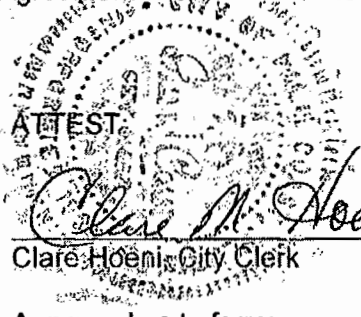
Section 27: Headings. All section and descriptive headings in this Agreement are inserted and intended for convenience only, and shall not affect the construction or interpretation hereof.



Section 28: **Counterparts.** This Agreement may be comprised of several identical counterparts, each to be fully executed by the parties and each to be deemed an original having identical legal effect.

Section 29: **Effective Date.** This Agreement shall be effective as of the date of the last signatory.

IN WITNESS WHEREOF, the parties hereto have caused this Interlocal Agreement to be executed for the uses and purposes herein expressed.



ATTEST

Clare M. Hoeni
Clare Hoeni, City Clerk

Approved as to form:

William E. Reischmann, Jr.
William E. Reischmann, Jr.
City Attorney

CITY OF PALM COAST, FLORIDA

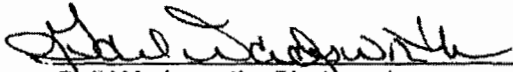
By: John Nettis
John Nettis, Mayor

Date: 1-20-09

John Nettis

ATTEST:

BOARD OF COUNTY COMMISSIONERS,
OF FLAGLER COUNTY, FLORIDA


Gail Wadsworth, Clerk and
Ex Officio Clerk of the Board

By: 
Milissa Holland, Chair

Approved as to form:

Date: 1-22-09



Albert J. Hadeed, County Attorney



EXHIBIT A

**BILL OF SALE BETWEEN
FLAGLER COUNTY, FLORIDA, AND
THE CITY OF PALM COAST, FLORIDA,
FOR THE PURCHASE OF EQUIPMENT**

KNOW ALL MEN BY THESE PRESENTS, that City of Palm Coast, a Florida municipal corporation, ("Seller"), in consideration of the payment of the sum of Ten Dollar (\$10.00), receipt of which is hereby acknowledged, does hereby sell and transfer to Flagler County, a political subdivision of the State of Florida ("Buyer"), its successors and assigns, all its right, title and interest in and to the personal property located in Flagler County, Florida:

All such equipment as identified in Attachment I hereto and including all cable, wire, and any miscellaneous associated equipment that is physically transferred to and incorporated into the Flagler County 800MHz System in accordance with the Interlocal Agreement entered into by the parties effective on (date).

Seller warrants that it is the lawful owner in every respect of all of the described property and that it is free and clear of all liens, security agreements, encumbrances, claims, demands, and charges of every kind whatsoever.

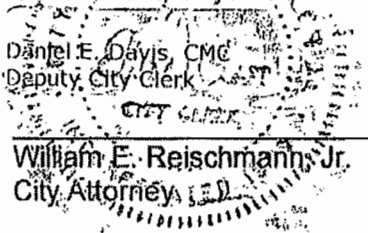
THE DESCRIBED PROPERTY IS SOLD "AS-IS" AND "WHERE IS" WITHOUT ANY WARRANTIES, EXPRESS OR IMPLIED, AS TO THE CONDITION OF SUCH PROPERTY. BY ACCEPTING THIS BILL OF SALE, BUYER ACCEPTS THE PROPERTY "AS-IS" AND "WHERE IS."

IN WITNESS WHEREOF, Seller has executed this document the 6th day of February, 2009.

ATTEST:


for Clare Hoeni, City Clerk

Daniel E. Davis, CMG
Deputy City Clerk


William E. Reischmann, Jr.
City Attorney, J.D.

CITY OF PALM COAST, FLORIDA

By: 
Jon Nettis, Mayor

Date: 2-6-2009



EXHIBIT B



FLAGLER COUNTY

1769 E. Moody Boulevard, Building # 2
Bunnell, FL 32110

INVOICE

Customer Name: City of Palm Coast Address: 160 Cypress Point Parkway, Suite B-106 City : Palm Coast, FL 32164 Phone: (386) 986-3700	Date <u>12/2/2008</u> Invoice # <u>PC-001</u>
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Qty	Description	Total Cost	Total
1	800 MHZ Capital Project addition of channel for the City of Palm Coast	\$ 217,000.00	\$ 217,000.00
TOTAL			\$ 217,000.00

Please remit payment to Flagler County Board of County Commissioners
to the attention of Financial Services Department

Account # 001-0000-366.04-13

A handwritten signature in black ink, appearing to be "JPD", located in the bottom right corner of the page.

Attachment I to Exhibit A

INVENTORY

QUANTITY

Mas tr III Edacs w/ GETC & TX RX Combiner	5
Mas tr III Conventional Mutual Aid Stations	2
Spc Mod DTMF Decoder of National Co.	2
Com - Links	6

