

Board of County Commissioners

1769 E. Moody Blvd Bldg 2
Bunnell, FL 32110



www.flaglercounty.org

Phone: (386)313-4001

Fax: (386)313-4101

March 7, 2016

The Honorable Jon Netts
Mayor, City of Palm Coast
160 Lake Avenue
Palm Coast, FL 32164

Dear Jon:

I am pleased to be informed directly by you that the City of Palm Coast is intent on working collaboratively for the best communication system that comprehensively covers the county.

I also agree that it is always conducive to full understanding when all elected officials get the same information together to best support a chosen path on any issue.

The County has had numerous meetings and presentations over the last few years related to 800 megahertz radio system and the communications network needed for optimum coverage. It was my understanding from staff and the Press stories that Kevin Guthrie presented to you the county's current plans and how best to move forward on a very costly system upgrade.

You mention in your letter cell phone carriers, usage and coverage. Cell phone coverage is only a collateral improvement when towers are spaced appropriately but is not the guiding factor. But recognizing the need for expensive towers and the ability to pay for them is with a business relationship with cell tower developers. We recently went through that effort and unfortunately the developer declined to move forward with the project, so the county is again looking for those opportunities.

I believe it has been stated by our Administration and in our public meetings, that the County has accepted the responsibility to create the communications system necessary for all of our partners (Cities-Schools) and to bear the cost of the infrastructure and operate the system. It would then be up to the individual government entities to pay for their peripheral equipment (radios etc). Naturally the size and type of the system relies on the number of users and the level of service desired as you have noted.

The decision to create a comprehensive system by the use of tall towers was the conclusion of much study. As you know we have a large area surrounding the airport that cannot have towers due to FAA regulations and flight paths. Once you configure the possible cones of emission around those locations it begins to dictate other locations throughout the county. Additionally all of the older towers in the county do not

Charles Ericksen, Jr.
District 1

Frank Meeker
District 2

Barbara Revels
District 3

Nate McLaughlin
District 4

George Hanns
District 5

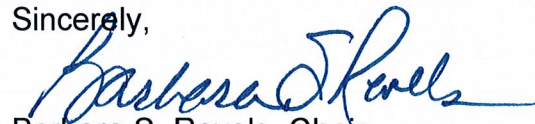
comply with current wind resistance measures and new towers would need to be built to those standards.

At this time, the county is revisiting our tower plans and locations and desire to further examine the entire system with the input of our new Emergency Services manager when on board. At that time when a more comprehensive presentation of what is possible under our logistics and pocket book parameters, we will be happy to convene all of the users of the system and hear input and plan further together.

In the meantime, I am very willing and happy to attend your "league of cities" gatherings of the Mayors and use those sessions as education for us all.

In addition, I have also asked County staff to address the questions they can answer today and bring further clarity to our approach. Unfortunately, several of the questions you have asked cannot be solved by elected officials meeting together until our staffs and the consultants have worked through the many technical variables/scenarios, which will likely be completed sometime in 2017, after a new Mayor and Council is seated. However, I believe the answers County staff can provide today will help Palm Coast complete its planning and there are actions that the City can take NOW if it truly desires to assist the County in completing planning of the best radio system possible.

Sincerely,



Barbara S. Revels, Chair
Flagler County Board of County Commissioners

Enclosures:

Interlocal Agreement for 800MHz Radio System
County letter dated November 20, 2013 to City of Palm Coast
County response dated November 19, 2015 to City of Palm Coast

C: Flagler County Board of County Commissioners (w/encl.)
City of Palm Coast City Council (w/encl.)
Mayor Linda Provencher, City of Flagler Beach (w/encl.)
Mayor Steve Emmett, Town of Beverly Beach (w/encl.)
Mayor Leslie Babonis, Town of Marineland (w/encl.)
Mayor Catherine Robinson, City of Bunnell (w/encl.)
Mr. Craig Coffey, County Administrator (w/encl.)
Mr. James Landon, Palm Coast City Manager (w/encl.)

MAYOR QUESTIONS AND RESPONSES

Just as all personnel from different agencies should be able to communicate, I am asking to open the channels of communication among elected officials to discuss the future of a public safety radio system.

In spite of a recent briefing by county staff on some of the issues surrounding the proposed news radio system, I have several unanswered questions. The answers to these questions are vital to the planning efforts of the Palm Coast City Council.

With regard to communication channels we have always understood them to be open, especially on this issue. Over the last three years, we have had standing user group meetings where many City staff members attended and were briefed on all aspects of the radio system (namely the City Manager, Fire Chief, Assistant Fire Chief, IT representative and Fire IT representative). In addition, we have written letters on several occasions offering to update the City Council to offset incorrect information being released (see attached letters). Instead we went a slightly different route to brief the Council and are glad Mr. Guthrie was able to brief you and several council members individually two weeks ago, however, I am sorry to hear you still have questions.

Depending on the cell phone carrier, probably everyone in Flagler County has experienced “dead spots” where they lose cell phone coverage. Probably all of us have found that in certain buildings our cell phones don’t work. For cell phone users, this is an inconvenience. For emergency personnel this can be a “life or death” issue.

We are equally concerned with the safety and welfare of all first responders and is the main reason we choose to take the lead to create and pay for a comprehensive 800 MHz radio system, approximately 10 years ago. We understand radio coverage and building penetration issues well and this year the County took the first steps to address these issues by seeking to erect new, higher, hurricane rated towers to raise the equipment over 100ft higher on the towers. As part of County’s process to upgrade the system, in addition to the technical equipment upgrades, coverage area and building penetration will be one of the major focuses of our approach. We are addressing these issues primarily in three ways – tower height and tower location, the number of towers, and rebroadcasting equipment in some buildings.

Similarly, I was told that one of the first issues that needs to be resolved is the ‘standard’ to which the new system will be designed. Only once it is determined how much “penetration” into existing and future buildings is desired and how extensive the geographical coverage is to be, can we determine the need for additional radio towers. Just as Flagler County experienced pushback from residents against proposed radio tower sites in the County, I am concerned that Palm Coast may experience similar resistance if additional radio towers are required within our City limits. Palm Coast needs to begin planning, NOW, for such anticipated needs.

The County will not be seeking to adopt an arbitrary standard, that may be politically (because of towers) or financially unachievable, however the County will definitively be seeking to improve our system coverage and building penetration percentages using the methods described above. For example, we know that simply raising the height of our existing equipment on towers will create coverage and building penetration improvements. We know that we need a potential tower in the NW rural quadrant of the County to fulfill a gap in coverage. We also know that an additional tower or two in the right locations will improve building penetration and that additional towers could be added over time. At least one, if not two of those new towers will need to be within the

City limits of Palm Coast. The standard for any of our new towers will be 350+/-, hurricane rated (category 4 wind loads), re-enforced lattice towers, with safety paint and strobe lighting.

If the City is sincere in its desire to improve the safety of first responders, there are things the City can do NOW to assist the county in determining the potential for improving radio coverage and building penetration. The City could provide us all locations within the City where it would support a standard tower. Could the City planning staff do this? A list of sites would allow us to model various scenarios with our radio experts. One such location that Mr. Guthrie likely mentioned to you was in central Palm Coast in the vicinity of Palm Coast Parkway and Cypress Pointe. The library on Belle Terre and Palm Coast Parkway would likely be a good alternate location as well. Would the City Council support either of these locations?

I have been told that broader coverage can be accomplished by a relatively small number of "tall" towers or by a larger number of shorter towers. Is there a cost differential? Do community input and aesthetics play a role in the decision-making? If there is a cost differential for shorter towers will Palm Coast be asked to make up the difference? We need to know this NOW!

The towers now are all in unincorporated Flagler County with the exception of the one at I-95 and Matanzas Woods Parkway on County property. To increase both our coverage and building penetration we will be seeking to raise the equipment on the towers to an optimal height of 350ft as recommended by our technical advisors. Additionally the towers we will be seeking to have constructed will be hurricane rated towers (lattice reinforced), capable of supporting over 13 antennas and multiple other communication devices. Typically cell phone towers (under 200ft) and the flag towers the City installs (limited to 4 antennas, not hurricane rated) will not serve the system needs. While community input and aesthetics will always play a role, so does safety of our first responders, taxpayer costs, and the functional relationship to other towers. The County is not realistically considering smaller towers as this would be cost prohibitive from a capital and ongoing operational perspective. Smaller towers would also be much less functional from a radio operations standpoint, yet the towers would still have many of the same visual impacts.

Also, we must always remember that no matter how good of a tower system exists there will still be gaps. To enhance the system there will be a need to have repeaters/boosters in existing and future building locations. This is a second area where the City, as a large developed area, can assist us in achieving a higher level of radio building penetration. The staff working group will be developing a countywide standard for installation of repeaters for some types of building. The City could assist the County with developing this standard and adopt it for new development within the City. Also, the City could NOW develop a list of all existing locations/buildings where gaps in coverage exist. This will also help with the tower location planning that will occur in 2017. Additionally, on its own the City could consider a retrofit incentive program to assist existing businesses (like Super Walmart) with any necessary retrofits. We will be working with the Flagler County School District to develop a retrofit program for all the schools. The challenge is that although this could be done now, it will need to be done with P-25 system parameters in mind.

With regard to the system itself, Palm Coast has only been asked to help with capacity expansion through its 2009 Interlocal Agreement. The exception to this statement is if the City has additional expectations of coverage and building penetration or wants the timing of the system upgrade to be moved up - additional financial support would be requested from the City.

I understand the new system will require all cities in Flagler County to upgrade their own radio equipment. Palm Coast needs to fully understand the impact the County's plans will have on our existing radio equipment and the associated costs. The City has an ongoing five- and ten-year capital improvement plan that allows us to prepare for important capital projects without issuing debt. We need a specific plan, NOW, to deal with the costs and timing of this radio upgrade to assure our future financial obligations will be fully funded.

The end user radio equipment the City will need to replace is fairly straightforward and has been fully explained to your staff on several occasions. You do not need the County to determine this amount. Your staff simply needs to determine its equipment (i.e. portable and vehicle radios, etc.) then price it out as P-25 radios. The County does not know every piece of equipment the City has. My understanding is the City has already followed the County's suggestion and set aside \$250,000 +/- for this purpose. The other cities have been advised as well and they know that if necessary the County will finance their needed equipment in the same manner that the County did for them when the system was established. Please realize that whatever prices you see today should be conservative as we are likely to see better prices when the end user radio equipment is bid out in bulk. The State of Florida will be bidding similar items in same time frame that may further help pricing. The good thing is the P-25 system is not proprietary so there could be multiple, competitive vendors. To date we have not heard this concern from any other City.

I was told that the proposed new system, P-25 and P-25 *phase two*, will provide significant additional capacity to the system. In the past, the County has requested funds from Palm Coast to pay for capacity increases. To the best of my knowledge there has been no mention of such assistance with this upgrade. Will Palm Coast be asked to contribute to the cost of the new system? Again, we need to know this NOW!

The only thing asked of the City of Palm Coast towards the system was a smaller component of the overall system related to user capacity expansion. When Palm Coast joined the County system they took up a significant amount of the excess capacity. For example today on paper we are fairly full with users, but operationally we are fine. In a disaster we could need more than twice our normal capacity. To offset these impacts the City and County signed an Interlocal agreement to pay approximately 50% each, to expand capacity, similar to impact fees for water and sewer plant capacity. Part of the expansion of system user capacity expansion will involve the additional equipment for five more channels. The City contribution towards additional channels has been estimate to be approximately \$1.5 million. The City is now three years delinquent in honoring this commitment. The City of Palm Coast could tell us NOW what are its intentions as this will help us plan system users, resources, etc. The last correspondence we received was from the City Attorney requesting a return of the partial money funded, effectively breaking the Interlocal agreement and leaving the system. It seems like words are being parsed and that the City is now seeking to avoid fulfilling its obligations toward the radio system user capacity.

The P-25, phase two 800 Mhz Radio system should indeed significantly increase capacity, but you must keep in mind that we are rapidly growing and that we have other local users that could be on our system in the future (school system). Additionally, we must always remember that significant capacity is needed in a disaster which could easily double or triple usage from mutual aid and increased local users on the system. As a general standard, the County will be satisfied with the bare minimum for day to day operations when we have learned from many disasters that the ability to communicate is critical.



I understand the new system will require all cities in Flagler County to upgrade their own radio equipment. Palm Coast needs to fully understand the impact the County's plans will have on our existing radio equipment and the associated costs. The City has an ongoing five- and ten-year capital improvement plan that allows us to prepare for important capital projects without issuing debt. We need a specific plan, NOW, to deal with the costs and timing of this radio upgrade to assure our future financial obligations will be fully funded.

I believe the best way to answer these and other questions is to convene meetings, NOW, involving ALL participants in the new system. Certainly, as users of the system, you would want our input on the fundamental issues such as the new system standard, etc. Once this is determined, the other questions can be properly answered.

Regards,

CC: Palm Coast City Council
Flagler County Commissioners
Mayor Provencher, Flagler Beach
Mayor Robinson, City of Bunnell
Mayor Emmett, Town of Beverly Beach
Mayor Bobonis, Town of Marineland

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
03:29PM Book: 1701 Page: 1392 Total Pgs: 12

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.

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. Hoerni
Clare Hoerni, City Clerk

Approved as to form:

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

CITY OF PALM COAST, FLORIDA

By: Jon Nettis
Jon Nettis, Mayor

Date: 1-20-09

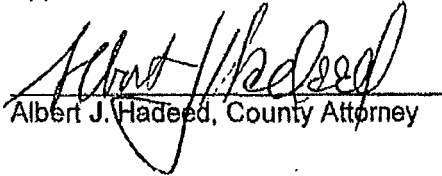
Asst

ATTEST:



Gail Wadsworth, Clerk and
Ex Officio Clerk of the Board

Approved as to form:



Albert J. Hadeed, County Attorney

BOARD OF COUNTY COMMISSIONERS,
OF FLAGLER COUNTY, FLORIDA

By: 
Milissa Holland, Chair

Date: 1-22-09



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 Daniel E. Davis, City Clerk

Daniel E. Davis, CMC
Deputy City Clerk

William E. Reischmann Jr.
City Attorney

CITY OF PALM COAST, FLORIDA

By: 
Jon Netto, Mayor

Date: 2-6-2009



Attachment I to Exhibit A

INVENTORY

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

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

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 12/2/2008Invoice # PC-001

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 "Ald", located in the bottom right corner of the page.

Administration
1769 E. Moody Blvd Bldg 2
Bunnell, FL 32110



www.flaglercounty.org
Phone: (386)313-4001
Fax: (386)313-4101

November 20, 2013

Mr. James Landon
City of Palm Coast City Manager
160 Cypress Point Parkway, Suite B-106
Palm Coast, FL 32164

Dear Mr. Landon:

I am writing in response to the recent email you sent to Ms. Phyllis Downes, our accounting clerk in the Emergency Service Department (attached).

In that email you discussed the informal working group that was set up under the leadership of Undersheriff Staley to work through the concerns with the 911 system (phone system) and related CAD system vendor, New World Systems. We have heard your concerns and, as you know, we too share many of the same frustrations with the current CAD system. We also understood why you refused to follow through with paying your previous commitment (no formal agreement - half of the \$7,500 run card project) until the other current CAD system issues are resolved or it is decided to migrate to a different vendor. Having said that, I am confident the informal working group will begin to develop solutions in the coming months and we will ultimately end up with a better 911/CAD system.

I am concerned, however, that you are applying your frustration with a completely separate phone/internet emergency communication system to the 800 MHz Emergency Radio System and the formal 800 MHz agreement between the City and County. You are also stating the City is defaulting on the interlocal agreement. As you know, the 800 MHz agreement does not provide for the City to unilaterally not pay due to concerns with another system or to create new terms for payment that are not provided for in the agreement. It should also be noted that City is currently in default of its agreed upon obligations and owes the County two payments of \$300,000 for a total of \$600,000.

The problem with this approach is that the 800 MHz system on which the interlocal agreement is based, operates fairly well and likely performs much better and less costly for the City than the City's previous stand alone, million dollar plus, radio system. Also, in searching our records on this issue we do not have any outstanding complaints on the 800 MHz system from the City.

Charles Ericksen, Jr.
District 1

Frank Meeker
District 2

Barbara Revels
District 3

Nate McLaughlin
District 4

George Hanns
District 5

Mr. James Landon
November 20, 2013
Page Two

To refresh our memories on the purpose of the interlocal and City's contributions, the interlocal agreement was entered into to allow the City's migration onto the countywide radio system and to provide additional system growth capacity that was given up by the County to allow the City to come on the system. By giving up this County capacity without the need for an immediate system expansion, it made it affordable for the City to easily come onto the system. At the time, the County had capacity for all of the current system users and planned capacity for the growth of those users for many years to come. By allowing the City's public/utility workers to severely cut into that planned capacity, it necessitated a much earlier expansion of the system. Besides the initial capacity used, it was also anticipated that the City of Palm Coast would grow and increase radio users much more rapidly than the other entities already on the system; thereby burning through remaining user capacity at a much quicker rate. The City's funding was primarily to address these capital capacity issues no different than the use of capacities at a utility plant, plus also addressing new technology upgrades that will help with capacity and performance.

In the coming months, we will be forming an 800MHz ad hoc group that will be looking at the 800 MHz system for both its expansion and upgrading to the latest technology. In the meantime, my professional staff will be happy to brief you and your staff further on this issue and some of the long-term system issues we will all be facing. Should you choose to have a presentation from my staff, you will have direct information from the County as operator of the system and a much better understanding of how capacity and technology are somewhat interconnected; i.e., besides regular expansion, new technology will increase system capacity.

The County runs and operates the system daily and can advise you that the premise and general direction when the interlocal was crafted in 2009 has not changed despite what someone may have brought to your attention. All the users will be asked to be part of the working group. The anticipated expenses are expected to easily surpass \$3 million. As an example, the initial cost of the County's 800 MHz backbone system was approximately \$6.5 million. We do fully understand the terms of the agreement and plan to follow them accordingly, unless you are choosing to default and effectively cancel the agreement, as stated in your email.

It should also be noted that the County pays for all the ongoing 800 MHz backbone expenses for the City and all other users, which is in excess of \$400,000 annually, plus the ongoing annual debt service for the system of over \$800,000. Additionally, the County pays for all the ongoing maintenance and operational costs of the backbone E911 system and CAD system as well. For full disclosure, we do receive E911 grant funds for the 911 portion of system. With regard to decision making, ultimately, the County Commission will have to make a decision on

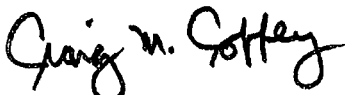
Mr. James Landon
November 20, 2013
Page Three

changes to the 800 MHz system, which the Commission will ultimately have to fund. However, we will do that with input from all users, including our partners like the City of Palm Coast.

In light of these facts, I would ask you to reconsider your position and bring the City contractual obligations current. However, if it still is the intent of the City to default on the agreement (as stated in your email), because the agreement is really between the two governmental bodies, I would ask that the default be formally ratified by the Palm Coast City Council and that you follow the proper notice requirements outlined in the agreement.

For future reference, I would have been happy to at least discuss the issue with you at one of our meetings and will still be willing to do so in the future.

Sincerely,



Craig M. Coffey
County Administrator

Attachments:

Email from Mr. Landon
2009 City and County 800 MHz Interlocal Agreement

c: Flagler County Commissioners
Palm Coast City Council
Palm Coast Executive Team
Sheriff James Manfre
Undersheriff Rick Staley
Al Hadeed, Flagler County Attorney
Don Petito, Flagler County Fire Chief

Craig Coffey

From: Jim Landon [JLandon@palmcoastgov.com]
Sent: Wednesday, November 13, 2013 12:10 AM
To: Phyllis F. Downes
Cc: City Council; Executive Team; Craig Coffey; Jim Manfre; Rick Staly; Kendra Iannotti; Brian Rothwell; Dianne Torino
Subject: Fwd: Final invoice
Attachments: image001.png; ATT00001.htm; image002.png; ATT00002.htm; image003.png; ATT00003.htm; image004.png; ATT00004.htm; image005.png; ATT00005.htm; Palm Coast 13-14-10 800 MHz Project Invoice010.xls; ATT00006.htm

Follow Up Flag: Follow up
Flag Status: Flagged

Ms. Downes,

The City of Palm Coast has joined Flagler County and the Flagler County Sheriff's Office in cooperative discussions about our emergency communications. The committee looking into this issue has been asked to address future communications system requirements and improvements. It has been brought to our attention that the improvement plans developed a number of years ago that was the foundation for the 2009 interlocal agreement are now out of date and new plans must be developed. Through the communications committee we have informed the County that we do not intend to continue to contribute additional resources to this effort until a new plan has been developed and approved by all parties. We, therefore, do not intend to submit the last two payments as outlined in our 2009 interlocal agreement until after a new plan has been approved and it is confirmed that the total cost of the improvements will be at least \$3,000,000. After the new improvement plan is approved, the City will fulfill its obligations under the 2009 agreement.

I would also like to take this opportunity to highlight another provision in our 2009 agreement. All expenditures under the subject agreement are to be a 50/50 match between Palm Coast and Flagler County. The current City dollars being held in escrow by the County should not be used until a new plan has been approved by all parties and any expenditures in which City funds are used must be matched by County funds at that time.

I hope this is helpful. Please let me know if you have any questions.

Jim Landon
City Manager
City of Palm Coast
160 Cypress Point Pkway, Suite B-106
Palm Coast, FL 32164
Tel: 386-986-3702
www.palmcoastgov.com<<http://www.palmcoastgov.com>>

Begin forwarded message:

From: Kendra Iannotti <kiannotti@palmcoastgov.com<<mailto:kiannotti@palmcoastgov.com>>>
Date: November 1, 2013 at 8:51:59 AM EDT
To: Jim Landon <JLandon@palmcoastgov.com<<mailto:JLandon@palmcoastgov.com>>>, Steven Viscardi <SViscardi@palmcoastgov.com<<mailto:SViscardi@palmcoastgov.com>>>
Subject: FW: Final invoice

FYI, please see below request for payment.

· Thank you,

Kendra Iannotti

Executive Assistant to the City Manager

City of Palm Coast

160 Cypress Point Pkwy, Ste B-106
Palm Coast, FL 32164

Tel: 386-986-3710

Fax: 386-986-3703

www.palmcoastgov.com<<http://www.palmcoastgov.com/>>

<<http://discoverpalmcoast.com/>>

PLEASE NOTE: Florida has a very broad public records law. Most written communications to or from City of Palm Coast officials and employees regarding public business are public records available to the public and media upon request. Your e-mail communications may be subject to public disclosure.

Christie L. Mayer

From: Christie L. Mayer
Sent: Thursday, November 19, 2015 2:55 PM
To: 'mkelly@orlandolaw.net'
Cc: 'Jim Landon'; 'Virginia Smith'; 'Jon Netts'; 'bmcguire@palmcoastgov.com'; 'Jason DeLorenzo'; 'snobile@palmcoastgov.com'; 'hshipley@palmcoastgov.com'; Craig Coffey
Subject: Flagler County/Palm Coast 800MHz System
Attachments: 2015 11 19 response to COPC attorney ref 800MHz system.pdf; 2015 11 13 email from COPC attorney ref 800MHz system.pdf; 2013 11 20 ltr to COPC ref 800MHz system.pdf; 800MHz radio system status & expansion plans ppt.pdf; 2009 02 09 800MHz ILA with COPC.pdf

Ms. Kelly – Please provide the attachments to Mr. Reischmann, in response to his email dated November 13, 2015 to Flagler County Attorney Al Hadeed.

Thank you,



Christie L. Mayer, CPS/CAP
Exec. Admin. Asst. to the County Administrator
1769 E. Moody Boulevard, Building 2 | Bunnell, Florida 32110
Office 386.313.4094 | Fax 386.313.4101 | www.FlaglerCounty.org

Dear Mr. Reischmann,

I am writing in response to your recent email to the County Attorney regarding our 800 MHz Interlocal Agreement with the City of Palm Coast. I am unsure who has given you the information in support of your emailed position, but to say the information is partially accurate would be an overstatement. The following information will relay a more accurate account about any phase II expansion and the Interlocal Agreement.

The City staff participating on the informal Communications User Group has heard information on the 800MHz radio system many times during their monthly meetings. It is the same information we have been trying to provide to Mr. Landon directly for years, although to date he has not availed himself to meet with us on this issue (see attached letter).

First, let me start by saying the City of Palm Coast joined the Board of County Commissioners existing 800MHz system similar to the other cities and system users in the County. It was not a consolidation as you have phrased it, although some City equipment was added to the County system to minimize the City's impacts and there were some direct costs in order to integrate the City into the system, altering the original plan. Keep in mind, the City's first responders were already a planned part of the system from the onset. Also, at that time, the City chose not to partner with the County and instead built its own single tower, million dollar plus system for its other users.

Through this Agreement we welcomed the City and made it financially attractive to come onto the County's system. Joining the existing 800 MHz system gave the City's other users such as public works and utilities an enhanced, much broader and more reliable radio system to utilize. As it relates to the County, it was of very little benefit to our established system. These added users, when combined with the City's first responders, who were already on the system, made the City the largest end user with approximately 450 devices/users. The County sacrificed existing user capacity and gave the City access to a quality radio system with no ongoing system costs and for a minimal capital cost. The County pays all ongoing operational and maintenance costs which are substantial on annual basis, in addition to the continuing debt service payments running through 2020/21.

The Interlocal agreement was put into place as a way to offset the loss in system user capacity from the City's additional users by adding additional system channels (phase II expansion) to accommodate more users, if necessary. This was essentially a capital fee to help expand the system with the other half of any expansion coming from the County. Changes in the system related to user capacity was estimated at the time to be approximately \$3,000,000 (\$1,500,000 City/ \$1,500,000 County). The Agreement provided this cost to be slightly more or less in the future based on inflation, changes in technology, and based on the actual design versus just a study estimate. Any costs would be split equally and whenever we undertook the channel expansion project (phase II), the City would have a seat on the selection committee, so they could be involved in the process. We did not know exactly when we were going to need the additional capacity and the agreement provided for 15 years for this channel expansion to occur. Our capacity is doing fine for now so we have had very little reason to discuss expansion (likely due to the downturn) and may not need to for another 5 or more years.

To date, we have not done anything with a phase II expansion, with one exception. Several years back when the FCC was reorganizing frequencies, we had the opportunity to acquire additional frequencies. We knew there would eventually be a need for these frequencies to serve any future user expansion. The County did acquire 5 additional frequencies before they were privately sold or otherwise taken. Since the added frequencies would be part of any user expansion, at that time, we asked the City if it would share in the \$14,000 cost of acquiring the frequencies from the escrowed funds. The City said no, and we did not take any monies from the \$900,000 dollars in escrowed funds. The County paid for the additional frequencies and placed them into active use as part of the FCC requirements for frequencies.

The County is undertaking many other improvements to the overall system that are not part of any phase II user expansion and are in no way connected to the Interlocal Agreement. This may be where some of the larger numbers that are being discussed are coming from. These improvements are primarily related to tower replacement (for hurricane sustainment), new towers for better County coverage in remote County areas (future), tower ownership, and the requirement that we migrate to a digital 800 MHz system (P25) as our current EDACS system is facing end of life support from the manufacturer. These projects are entirely at the County's capital, maintenance and operational expense and are solely a Board of County Commissioners decision. Again the City's representatives on the communications user group have been briefed on these issues on many occasions. The City's representative should have conveyed this up to Mr. Landon and reported back with any questions or concerns. We have offered to brief Mr. Landon personally or the City Council. In his email to an EOC accounting clerk several years ago, it seems he was confused between the New World CAD data system and the 800 MHz radio systems in our Interlocal Agreement.

Whether it is the current EDACS system or the P25 system that we must migrate to, both are 800 MHz systems that rely on frequencies with similar user capacities per frequency. Any user capability expansion will essentially be the same project with the same type of costs. Any cost differences over the amounts estimated are expected to be minor, but nonetheless it could be higher or lower than three million dollars. These other projects unrelated to the Phase II expansion are totally consistent with the Interlocal Agreement. The Agreement does not say or imply that the County would not maintain its system with an unsupported platform (EDACS) or somehow the City could now decide all aspects of a ten+ million dollar radio system because it paid some minor monies to partially offset a portion of its impacts. That language does not exist, nor will it be considered with a new Interlocal, especially when the County is facing upwards of a fifteen million dollar plus upgrade to maintain the existing capacity and system. We would welcome 50% participation in all the system costs if the City would like that type of input into the system.

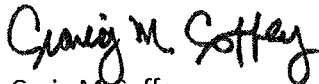
From our perspective, it seems like there is a lot of misunderstandings on the City's part about the system in general and specifically this Interlocal Agreement. For many years now, we have simply asked Mr. Landon to honor the Interlocal Agreement and bring the City out of default for its remaining payments of \$600,000 or cancel the Interlocal Agreement through action of the City Council.

With regard to the number of meeting opportunities they are literally too numerous to mention and even though his Council has approved this Agreement, the County cannot compel the City Manager to meet. Mr. Landon's staff representatives (Assistant Fire Chief Gerald Forte; Leo Chumaceiro, firefighter – CAD Specialist, and Lt. Jeff Gates) have met monthly, many times with the informal Communications User Group headed by the Emergency Management Director as discussed in the Interlocal Agreement. To say the County has somehow defaulted on a small project, that was never started (nor is required to start yet), based on not having a special five year meeting, is an interesting approach.

Nonetheless, you as the City's legal counsel have requested the return of the escrow funds paid to date (\$900,000). If that is the course you wish to pursue, there is no problem. We would need a formal action from the City Council to withdraw from the Interlocal agreement in written form. This is the same thing we requested from Mr. Landon in 2013 (see attached letter). If this occurs radio users from the City will be generally limited to emergency first responders. Conversely, if you desire to adhere to the Agreement, please pay the amount required. We are good either way. There is no need to make the outlandish accusations in the email. In the end we just need to know for system planning purposes. Otherwise we would be happy to go over this with the City Council in a presentation, if no one else wants to meet with us. As always, it is our desire to work with and support the City whenever possible.

Should you have any questions, you may contact Mr. Hadeed at 313-4005 or Mr. Landon may contact me at 313-4001. We will await your reply and support your decision to remain with the Interlocal Agreement or dissolve the Interlocal as the City may wish.

Most sincerely,



Craig M. Coffey,
Flagler County Administrator

Attachments:

1. Email from City of Palm Coast to County Attorney dated November 13, 2015
2. Letter to Mr. Landon dated November 20, 2013 with email to County Accounting Clerk
3. Powerpoint Presentation used for a Flagler County Board of County Commissioners Workshop and the informal Communications Users Group
4. 800MHz Interlocal Agreement

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; bmcquire@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:

William E. Reischmann, Jr., Esquire,
Gary M. Glassman, Esquire, and
Vivian P. Cocotas, Esquire

Garganese, Weiss & D'Agresta, P.A.

111 North Orange Avenue
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Fax (407) 425-9596
Kissimmee (321) 402-0144
Cocoa & Viera (866) 425-9566
Website: www.orlandolaw.net
Email: mkelly@orlandolaw.net

Any incoming e-mail reply to this communication will be electronically filtered for "spam" and/or "viruses." That filtering process may result in such reply being quarantined (i.e., potentially not received at our site at all) and/or delayed in reaching us. For that reason, we may not receive your reply and/or we may not receive it in a timely manner. Accordingly, you should consider sending communications to us which are particularly important or time-sensitive by means other than e-mail.

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