

USER AGREEMENT

BREVARD COUNTY PUBLIC SAFETY RADIO SYSTEM

This Agreement for the use of the Brevard County Public Safety Radio System (this "Agreement") is entered into this 14th day of November, 2023, by and between the Brevard County Board of County Commissioners, a Political subdivision of the State of Florida, (hereinafter the "County") with its principal offices located at 2725 Judge Fran Jamieson Way, Viera, FL 32940, and The City of Cocoa (for law enforcement, fire, and EMS services, homeland security and public safety matters), hereinafter referred to as the "USER", with its principal office at 65 Stone Street, Cocoa Florida 32922. County and USER are collectively referred to herein as "Parties."

WITNESSETH

Whereas, the County 800 MHz Intergovernmental Radio Communications Program (ICP) was approved by the Division of Communications of the Department of Management Services (DIVCOM), on January 11, 1994, under the subsection 318.21(9) Florida Statutes; and

Whereas, the County owns, operates, and maintains the 800 MHz Intergovernmental Radio Communication Program (ICP), hereinafter the "Radio System"; and

Whereas, the County provides continuous (24 hour, 7 days a week for 365 days per year) outdoor Radio System availability to the greatest extent possible in light of maintenance requirements and unforeseen outages; and

Whereas, the County, pursuant to Section 318.21(9) Florida Statutes, receives \$12.50 (minus an administrative fee for the Clerk of the Court) for each moving traffic violation for which a civil penalty is imposed to fund the improvements of the Intergovernmental Radio Communication Program (ICP); and

Whereas, the USER wishes to access and use the Radio System for its needs and to coordinate public safety and homeland security functions which the parties agree will promote a more efficient public safety operations in Brevard County, Florida; and

Whereas, this Agreement constitutes the entire Agreement between the County and USER and supersedes any prior agreement with the Brevard County Board of County Commissioners or Sheriff of Brevard County or any other entity relating to the operation of the Radio System.

Now therefore, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the Parties hereto do mutually agree as follows:

1. Term

The term of this agreement shall be for a period of one (1) year, commencing on October 1, 2023 and ending on September 30, 2023. This Agreement shall renew automatically for successive one (1) year terms unless terminated by either party by providing written notice to the other party ninety days in advance of September 30 of the running year.

2. Designated Representatives

Each entity shall assign a designated representative who shall be responsible for the implementation of this Agreement and who is authorized to terminate this Agreement.

The County's authorized representative is the County's Director of Emergency Management (hereinafter "Director"). The USER representative is Emergency Manager Jonathan Lamm .

3. Responsibilities and Duties

- A. USER will abide by all Federal Communication Commission rules and regulations as set forth in the FCC license granted to the County.
- B. USER shall purchase its own communication equipment (radios, base-stations, radio consoles, accessories, gateways, or any other communication equipment) necessary to utilize the Radio System and shall be responsible for all the USER's expenses associated with the maintenance, service, and repair of said communication equipment.
- C. USER recognizes that the County has a contract with a specific radio services and maintenance vendor and that all USER communication equipment must be purchased either through this vendor or through the vendor's authorized subsidiary. Purchases of communication equipment through other vendors or suppliers are not permitted without specific authorization of the Director after prior written evaluation and review by the County, in order to prevent unauthorized access or use of communication equipment incompatible with the Radio System.
- D. Prior to purchasing any communication equipment to be used by USER on, or in connection with, the Radio System, USER shall have the County evaluate, determine, and specify the potential impact, if any, of the USER's use of said proposed communication equipment on the Radio System. USER shall provide the communication equipment to the County for this evaluation. The County will issue a written report setting forth its findings and opinions, with alternative recommendations, if needed. County's written report shall be furnished in writing to the USER representative, prior to the purchase of the proposed communication equipment by the USER. This provision is included for homeland security purposes and to ensure the integrity of the Radio System.
- E. No additional USER communication equipment shall be added to the Radio System and its infrastructure until the potential system impact has been determined and the County has authorized the communication equipment to be added to the Radio System. The communication equipment shall only be added upon written authorization by the County and under the conditions specified by the County. If deemed appropriate and necessary, additional fees for specialized features, licenses, or services which benefit

USER may be allocated against USER and USER shall reimburse the County for any such fees which the County pays for in advance.

- F. All communication equipment operated by USER utilizing the Radio System shall be serviced and repaired only by a service shop authorized by the County or by personnel authorized by the Director.
- G. To ensure proper utilization and operation of the Radio System, no unauthorized third party may be permitted to program, review, maintain, or repair any communication equipment associated with or operating on this Radio System without the express and written prior permission of the Director.
- H. Each USER shall maintain its own accurate, written, internal inventory records of its communication equipment associated with the use, or potential use of the Radio System.
- I. County must provide, at minimum, one annual written inventory record of all active communication equipment to the USER. This inventory record shall be submitted two months before the annual invoices, for an annual review of USER's active inventory.
- J. USER will pay a proportionate share of the Radio System operating costs. This will be known as the "Radio Backbone Fee". The proportionate share per USER shall be based on the Radio System annual budgeted operating costs divided by the total number of all active communication equipment in the Radio System, a per unit cost. Each USER's total number of active communication equipment will be multiplied by the per unit cost, in order to arrive at each USER's annual Radio Backbone Fee.
- K. Payments of these fees will be invoiced on a yearly basis by the County. Brevard County adheres to the Florida Prompt Payment Act (Florida Statute 218.70 et. seq.) and invoices received from the Brevard County Emergency Management on behalf of the Radio System are expected to be paid by the due date. Failure to pay promptly could invoke the implementation of "late fee" penalties and other customary, equitable action as the Director deems appropriate and not otherwise inconsistent with the Prompt Payment Act.
- L. Additional communication equipment not included in the Annual USER Invoice will be charged the per unit cost, at the time of the activation.
- M. In order to facilitate the Radio Backbone Fee invoicing process, each USER will be responsible to validate their total inventory records with the County to ensure accuracy in both the active database and the proper calculation of the USER's annual invoice. A USER's failure to provide adequate inventory records in a timely fashion could result in the agency forfeiting the right to challenge the annual invoice for errors on the basis of invalid inventory records.
- N. County will develop and maintain operating protocols and local communications plans consistent with current guidelines, "best practices", and State and Federal plans.
- O. County will conduct quarterly Radio Users Group Meetings to coordinate issues and matters concerning the Radio System.
- P. County will ensure USER has the opportunity, via participation in quarterly Radio Users Group Meetings, to provide recommendations for the expenditures of the \$12.50 funds.
- Q. County will consider recommendations from USER on various policy issues related to the Radio System and, when feasible, will carefully weigh those recommendations prior to making a final decision. However, in all cases, the County shall have the final decision on

these matters.

4. Termination

This Agreement may be terminated without cause by either party by providing written notice to the other party ninety (90) days in advance of September 30 of the current fiscal year.

5. Acceptance

The Director, or his/her designee, is authorized to execute on behalf of the County any documentation necessary to administer this Agreement.

Upon approval of communication equipment by the Director as described herein, the County authorizes the use of and access to the Radio System pursuant to this Agreement during the life of this Agreement. The Director is authorized by the Board of County Commissioners to make all decisions regarding the addition of communication equipment to the Radio System.

6. Renewal

The Renewal Terms shall automatically occur unless USER notifies the County in writing of USER's intention not to renew this Agreement at least ninety (90) days prior to the expiration of the Initial Term or the then-current Renewal Term.

7. Indemnification/Hold Harmless Clause

The parties shall be responsible for their own negligence and shall indemnify each other and hold the other harmless for their own negligence in conjunction with any and all manner of action and actions, causes of action, losses and damages, costs and expenses of any kind whatsoever, including reasonable attorney's fees and court costs which may be claimed by any third party to have resulted from or arisen out of the intentional or neglect acts of either of the party's employees, officers, or agents under this Agreement, whether occurring before or after the USER and the County assumed the obligations of this Agreement.

The County's and City's indemnity and liability obligations hereunder shall be subject to the County's and City's right of sovereign immunity and limited to the extent of the protections of and limitations on damages as set forth in Section 768.28, Florida Statutes. Nothing in this Agreement is intended to inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity or by operation of law. The indemnifying Party shall have no obligation to indemnify the other Party under this Agreement for any amounts paid in settlement of any action, suit or proceeding without the indemnifying Party's prior written consent and nor shall the obligation to indemnify be assignable to any third party. Nothing herein shall constitute a waiver of the County's and the City's sovereign immunity. The Parties acknowledge specific consideration has been exchanged for this provision.

8. Independent Contractor

Each party to this Agreement shall perform the duties and responsibilities under this Agreement on behalf of its respective entity and nothing contained herein shall be construed to be inconsistent with this relationship or status. Nothing in this Agreement shall be interpreted or construed to mean that either party is an agent, employee, or representative of the other party.

9. Legality of Agreement

Any obligations created by this Agreement which are hereafter determined by a court of competent jurisdiction to be illegal are void, and neither party will be obligated to further perform as to such obligations. Should a non-material portion of this Agreement be void, such obligation is hereby severed, but the balance of the lawful portions hereof will continue to be performed.

10. Attorney's Fees

In the event of any legal action to enforce the terms of this Agreement, each party shall bear its own attorney's fees and costs.

11. Governing Law

This Agreement shall be governed, interpreted, and construed according to the laws of the State of Florida.

12. Venue/Waiver of Jury Trial

Venue for any legal action by any party to this Agreement to interpret, construe, or enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida and **ANY TRIAL SHALL BE NON-JURY.**

13. Notice

Notice under this Agreement shall be given to the County by certified mail or hand delivery as follows:

Director of Emergency Management
1746 Cedar Street
Rockledge, FL 32955

Notice shall be given to USER by certified mail or hand delivery as follows:

To: Jonathan Lamm, Emergency Manager
Address: City of Cocoa City Hall
65 Stone Street
Cocoa, FL 32922

14. Default and Right to Cure

- A. The following will be deemed a default of this Agreement:
- i. Non-payment of Radio Backbone Fee by USER if such fee remains unpaid for more than thirty (30) calendar days from after receipt of written notice from County of such failure to pay; or
 - ii. Either party's failure to perform any other term or condition under this Agreement within forty-five (45) calendar days after receipt of written notice from the other party specifying the failure. No such failure, however, will be deemed to exist if the defaulting party has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of the defaulting party. If the defaulting party remains in default beyond any applicable notice and cure period, the non-defaulting party will have the right to exercise any and all rights and remedies available to it under law and equity; or
 - iii. If USER should be adjudicated as bankrupt, insolvent or placed in receivership, or should proceedings be instituted by or against USER for bankruptcy, insolvency, receivership, agreement of composition or assignment for the benefit of creditors, which proceedings are not dismissed within one hundred twenty (120) days.

15. Communication Equipment Surplus

At such time as this Agreement expires, or is terminated for any cause, USER shall report to the County the removal of any active communication equipment from the Radio System database to guarantee termination of the Agreement and the removal of the Brevard County profile.

USER shall report to the County any communication equipment surplus to guarantee removal of the communication equipment from the Radio System database and the removal of the Brevard County radio profile.

16. Employment of County Employees

USER shall not engage the services of any person or persons now employed by the County, including any department, agency, board, or commission thereof, to provide any work or service under this Agreement without the written consent from the County.

17. Compliance with Statutes

It shall be USER responsibility to be aware of and comply with all applicable federal, state, and local laws.

Any documentation or other information relating to the Radio System, including but not limited to radio logical identification (LID), code plugs, circuit routing, addressing schemes, talkgroups, fleet maps, encryption, or programming utilized by the Radio System are exempt under Florida Statute Section 119.071(2)(d) and 119.071(3)(e).

The Parties agrees to keep all such information strictly confidential unless compelled to release it under federal law or non-conflicting State of Florida law.

18. E-Verify

In accordance with Chapter 448.095, Florida Statutes, USER shall register and utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the USER during the term of this Agreement; and

USER shall expressly require any subcontractors performing work or providing services pursuant to this Agreement to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of this Agreement; and

USER agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as provided above, and to make such records available to the County consistent with the terms of the USER's enrollment in the program. This includes maintaining a copy of proof of the USER's and subcontractors' enrollment in the E-Verify Program.

Compliance with the terms of this section is made an express condition of this Agreement and the County may treat a failure to comply as a material breach of this Agreement.

A USER who registers with and participates in the E-Verify program may not be barred or penalized under this section if, as a result of receiving inaccurate verification information from the E verify program, the USER hires or employs a person who is not eligible for employment.

Nothing in this section may be construed to allow intentional discrimination of any class protected by law.

19. Public Records – exemptions and Home Land Security

In performance of this Agreement, USER shall keep books, records, and accounts of all activities related to the Agreement, in compliance with generally accepted accounting procedures. All documents, papers, books, records, and accounts made or received by USER in conjunction with the Agreement and the performance of this Agreement shall be open to inspection during regular business hours by an authorized representative and shall be retained by USER for a period of three (3) years after termination of this Agreement, unless such records are exempt from Section 24(a) of Article I of the State Constitution and Chapter 119, Florida Statutes. All records or documents created by USER or provided to USER by the County in connection with the activities or services provided herein are public records unless exempt/confidential and USER agrees to comply with any request for such public records made in accordance with Chapter 119, Florida Statutes.

20. Severability

If any section, sentence, clause, or phrase of this Agreement should be held to be invalid or unconstitutional by a court of competent jurisdiction, it shall be considered deleted from this Agreement and shall not invalidate the remaining provisions of this Agreement.

21. Merger

This Agreement constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution of this Agreement. This Agreement may only be amended or modified by a written instrument duly executed by both parties hereto.

22. Disputes

If any dispute or issue of non-performance arises under this Agreement, the parties agree to resolve the issue at the lowest management level of each party. In the event the issue remains unresolved, the parties agree to immediately escalate the issue to upper-level management for their consideration. In all events, the parties will negotiate, in good faith, a mutually agreeable solution. In the event all parties cannot agree on a solution, the issue shall be directed to the Brevard County Board of County Commissioners for resolution.

23. Notices

All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows:

USER: City of Cocoa City Manager _____
 Attn: Stockton Whitten _____

With a copy to: Anthony Garganese, City Attorney
 111 N. Orange Avenue, Suite 2000
 Orlando, Florida 32802
 (407) 425-9566

Attn.: Legal Dept.

If to the County: Brevard County Emergency Management Director
 1746 Cedar Street
 Rockledge, FL 32955
 Phone: 321-637-6670

Either party hereto may change the place/person for the giving of notice to it by thirty (30) days prior written notice to the other as provided herein

24. Construction of Agreement

The parties hereby acknowledge that they have fully reviewed this Agreement, its attachments and had the opportunity to consult with legal counsel of their choice, and that this Agreement shall not be construed against either party as if it were the drafter of this Agreement.

25. Effective Date.

This Agreement shall be in effect on the date on which the last party hereto signs this Agreement (“**Effective Date**”).

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[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals on the day and year written below.

**BREVARD COUNTY BOARD OF
COUNTY COMMISSIONERS**

By: _____

Name: _____

Title: _____

As approved by the Board on: _____

Date: _____

USER:

City of Cocoa _____

By: City of Cocoa _____

Name: Michael C. Blake

Title: Mayor _____

Date: _____

**REVIEWED FOR LEGAL FORM AND
CONTENT:**

OFFICE OF THE COUNTY ATTORNEY

By: _____

Name: _____

Date: _____