

**INTERGOVERNMENTAL AGREEMENT
FOR THE PROVISION OF
800 MHz RADIO SYSTEM ACCESS
BETWEEN
FULTON COUNTY, GEORGIA and
THE CITY of FAIRBURN, GEORGIA**

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”), by and between Fulton County, Georgia (hereinafter the “County”), a political subdivision of the State of Georgia, acting by and through its duly elected Board of Commissioners, and the City of Fairburn, Georgia (hereinafter “User”), a municipality of the State of Georgia, entered into this 1st day of January, 2023

RECITALS

Whereas the County is the sole owner and operator of an APCO P25 Phase 2 Digital 800 MHz radio system (hereinafter “the County System”); and

Whereas numerous County departments, including the Police, Sheriff, Marshal, Public Works, General Services Administration, School Police, and National Park Services, are presently users on the System; and

Whereas it is desirable to have a unified system to include entities on the System who affect and further the goal of protecting the citizens of Fulton County’s health, safety, and welfare; and

Whereas User is a governmental authority located within Fulton County and provides public safety services to the citizens of the City of Fairburn in Fulton County; and

Whereas User therefore affects and furthers the goal of protecting the health, safety, and welfare of the citizens of the County;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the County hereby grants to User a revocable license to use **179** radio units on the County’s System for the period from January 1, 2023, and ending December 31, 2023, with three (3) consecutive one (1) year automatic renewal options ending on December 31, 2026. User’s license may be revoked only for good cause and only after User has had an opportunity to show cause why its license should not be revoked before the Board constituted for such purpose as set out in Paragraph Six (6). Such license is not intended to and does not grant to User any property interest in the County System. Additionally, either party is free to withdraw from this Agreement for any reason and at no cost to each respective party upon sixty (60) days written notice to the other party. This agreement may be renewed by mutual agreement approved by both governing bodies. The parties will meet on or before December 31, 2026, to review service under this Agreement and consider proposed modifications of the term. Any such proposed

change is subject to consideration and approval of the Board of Commissioners and Fairburn Council.

User Agrees To:

(1) Limit the number of all subscriber units, including but not limited to mobile, portable, and console, to 179. User may request additional units by making formal application with supporting documentation of need to the Director of the Department of Emergency Services 911 or his/her designee. The application for additional units shall be reviewed and approved or denied by the Director or his/her designee. The Director or his/her designee, in reviewing an application, will take into account system loading, airtime usage, number of system busies, and will make a decision based on maintaining the efficiency of the County's System for all users. All requests for additional units shall be made at least sixty (60) days prior to the beginning of the County's fiscal year (January 1). In extraordinary cases, additional units may be requested and added after such time and the cost of those additions shall be calculated on a pro rata basis of the original fiscal year contribution. Any application denied may be appealed to the Board constituted for such purposes as set out in Paragraph Six (6) hereinafter. User is absolutely prohibited from selling, assigning, or otherwise transferring its license to use the County System, in whole or in part, to any other person or entity.

(2) Be solely responsible for purchasing and maintaining all equipment necessary to be a user on the County System. All subscriber units must be approved by type by the County. A conforming product list is available from the Department of Emergency Services 911 and will be updated from time to time. Products not listed will not be accepted. All maintenance performed on User's units must be certified by a Motorola certified technician, or otherwise consented to in writing by the Director of the Department of Emergency Services 911.

(3) Comply with Motorola Software security constraints.

(4) Have any of its devices, equipment, or subscriber units, which cause any problems on the County System immediately taken out of service and repaired by User. User shall be responsible for all repair costs and for any damages or consequences arising out of such problematic device, equipment, or unit.

(5) Guarantee that all persons who will be operating subscriber units are adequately trained in the use of such units, with such training requiring persons to attend an in-house training program for eight (8) to ten (10) weeks in order to obtain the following certifications that are mandatory to perform the duties and responsibilities as a communications officer: (a) the State of Georgia Peace Officer Standards and Training's Basic Communications Officer Training Course certification; (b) the International Academy of Emergency Dispatch's Emergency Medical Dispatch certification; (c) the American Heart Association's Healthcare Provider Cardio Pulmonary Resuscitation certification; (d) the Georgia Crime Information Center's ("GCIC") Criminal Justice Information Services certification; and (e) the GCIC's Security Awareness certification.

(6) Guarantee that its employees who are trained and authorized to use the County System do so in compliance with federal, state, and county laws, codes, regulations, and ordinances, as well as this Agreement. Alleged violations of any applicable law, code, regulation, ordinance, or this agreement will be reviewed by the Director or his/her designee. Upon finding a violation has occurred, the Director or his/her designee, in his/her discretion may require the User to remove a unit(s) from the System, place the User on probation for a certain period of time not to exceed six (6) months, and/or take other reasonable action. Persistent violations or misuse of the County System may result in User being removed entirely from the County System after User has had an opportunity to show cause why its license should not be revoked before the Board as set out below. Any action taken by the Director, or his designee may be appealed to the Board constituted for such purposes, said Board to be comprised of the Director of the Department of Emergency Services 911, the Chief of the Fulton County Police Department, the Fulton County Sheriff, and Fulton County Marshal. Any adverse decision of this Board shall be appealed to the Fulton County Board of Commissioners, and their decision shall be final. All direct and indirect expenses arising out of violations or misuse by User and its employees and agents shall be borne by User. Additionally, User shall be responsible, at the request of the County, for responding to or assisting the County in responding to any correspondence or complaint received by the County from state or federal regulatory agencies involving User's units.

(7) Restrict its use of the County System to legitimate business-related purposes of the User. The County System shall not be used to conduct personal or unrelated business, except that which is incidental and occasional.

(8) Comply with any and all mandate(s) issued by authorized regulatory agencies. If subsequent to this agreement being entered into, technical or other changes are mandated by a regulatory agency, User will have the opportunity to remain on the County System if User is able to timely comply with the mandate(s). The County will in no way be responsible for bringing User into compliance with the mandate(s) or be responsible for any direct or indirect, tangible, or intangible costs, damages, or losses incurred due to the mandates. Notwithstanding the foregoing, User agrees that should the County decide to comply with the mandate(s) in a time period that is shorter than required by the regulatory agency, User agrees to comply within that shorter time period so long as the County provides User at least two (2) years prior notice. If User is unable to comply with the mandate(s) within the applicable time allowed (either by a regulatory agency or the County), User agrees it shall be removed in whole or in part from the County System.

(9) Comply within one (1) year of receipt of notice from the County with any voluntary upgrades to Users equipment that are required due to upgrades or changes to the County System, including a change in vendor. The County will have the sole discretion to update or change the County System. The County will not be responsible for any expenditure, losses, or other claims caused by or attributable to such voluntary upgrades and/or changes to the County System.

(10) Remit to the County in a timely fashion its pro rata share of the estimated cost of the

actual annual maintenance cost of the County System. The amount to be paid by User will be calculated based on the number of units accessible to User. If additional units are added within a fiscal year, the cost of the use of those units shall be calculated on a pro rata basis of the original fiscal year contribution. The County Department of Emergency Services 911 will invoice the User at least thirty (30) days prior to the due date. Due date shall be annually and payments payable on January 1st of each year; and the first payment under this contract shall be due and payable within 30 days of agreement execution for the remaining months within the calendar year. A late payment penalty, of ten percent (10%), will apply on all payments not received by the due date. Interest will also accrue at the rate of one percent (1%) per month or part thereof for any payment that is delinquent. The monies received will be placed in a restricted designated fund and managed by the County Finance Department. All monies in the account will be expended exclusively for maintenance, and/or upgrade of the County System. The Board of Commissioners of Fulton County shall have the sole authority to authorize any expenditure from the account. In the event the County System is replaced during the term of this agreement, and in the event the cost of such replacement is less than the amount contained in the designated fund, User's pro rata portion of the amount remaining in the fund will be reimbursed. If there is no replacement of the County System during the term of this agreement, User shall receive no reimbursement or pay any additional assessment. The pro rata share for years 2023 and 2024 is

\$417.00 times the number of radio units, 179, equals annual cost of \$74,643.00. The pro rata share for years 2025 and 2026 will increase by approximately 6% to \$442.00 times the number of radio units, 179, equals annual cost of \$79,118.00.

(11) Abide by any reasonable rules and regulations promulgated by the County regarding the use of the County System. The User shall have the right to review the rules and regulations prior to their adoption and to make suggested changes if any rules or regulations present a conflict with the reasonable operation of the User System. Changes or exceptions to the rules or regulations will voluntarily be made by the County upon a showing by the User of such a conflict.

The County Agrees To:

- (1) Maintain and support the core of the County System.
- (2) Use best efforts to answer questions and facilitate use of the County System by User.
- (3) Comply with federal, state, and county rules.
- (4) Give adequate notification to User of violations, service interruption, and intent to remove units from operation on the County System; and
- (5) Provide User one (1) year prior notice to any voluntary upgrades or early compliance with mandates to the County System that will affect User.

TERMINATION AND DEFAULT REMEDIES:

In the event that either party shall default on its obligations under this Agreement, including but not limited to failure to remit payment for license use or failure to provide access to the 800 MHz system, the other party may provide the breaching party with a written notice of default specifying the basis for the default and advising the defaulting party of the time frame to cure the default. All defaults shall be cured within a (30) day time period. The non-defaulting party may grant the defaulting party additional time to cure the default. Subject to the provisions of this Agreement, the non-defaulting party may elect to terminate the Agreement if the default is not remedied in the agreed upon cure period. The County and User reserve all available remedies afforded by law to enforce any term or condition of this Agreement.

Either party may terminate this Agreement for its convenience at any time upon sixty (60) days written notice to the other party. If the County terminates, the City of Fairburn shall be entitled to receive reimbursement for fees received for services beyond the 60 days. If the city terminates, the County shall be entitled to termination fees prorated for 180 days.

AMENDMENTS:

This Agreement may be modified at any time during the term by mutual written consent of the parties.

NOTICES:

All notices shall be given by first class mail except that any notice of termination shall be mailed via U.S. Mail, return receipt requested. Notice shall be addressed to the parties at the following addresses:

If to the County:

Richard "Dick" Anderson, County Manager
141 Pryor Street, S.W.,
Suite 1000
Atlanta, Georgia 30303
404-612-8335
404-612-0350 (facsimile)

With a copy to:

Soo Jo, County Attorney
141 Pryor Street, S.W.,
Suite 4038
Atlanta, Georgia 30303
404-612-0235
404-730-6324 (facsimile)

If to the City:

Mario Avery,
Mayor City of
Fairburn
56 SW Malone Street
Fairburn, Georgia
30213
770-964-2244

Tony Phillips, City
Administrator City of Fairburn
56 SW Malone Street
Fairburn, Georgia 30213
770-964-2244

James McCarthy, Chief of
Police 191 W Broad Street
Fairburn, Georgia 30213
770-964-1441

Cornelius Robinson, Fire
Chief 19 NE Broad Street
Fairburn, Georgia 30213
770-683-4630

With a copy to:

Rory K. Starkey, City Attorney
Hilliard Starkey Law
561 Thornton Road, Suite G
Lithia Springs, GA 30122
678-909-2096
678-623-5767 (facsimile)

NON- ASSIGNABILITY

Neither party shall assign any of the obligations or benefits of this Agreement.

ENTIRE AGREEMENT:

The County and User acknowledge, one to the other, that the terms of this Agreement constitute the entire understanding and Agreement of the parties regarding the subject matter of the Agreement.

SEVERABILITY:

If any provision of this Agreement is held as a matter of law to be unenforceable or unconscionable, the remainder of this Agreement shall be enforceable without such provision.

GOVERNING LAW AND VENUE:

This Agreement shall be governed by the laws of the state of Georgia. The obligations of the parties to this Agreement are performable in Fulton County, Georgia and, if legal action is necessary to enforce same, the parties agree exclusive venue shall lie in Fulton County, Georgia.

EFFECTIVE DATE

This Agreement shall become effective upon its adoption by both governing authorities of the City and County or January 1, 2023, whichever is later.

WHEREFORE, the parties having read and understood the terms of this agreement, they do hereby agree to such terms by execution of their signatures on the next page.

**[SIGNATURES APPEAR ON FOLLOWING PAGE]
[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the City and County have executed this Agreement through their duly authorized officers as of the date first above written.

FULTON COUNTY, GEORGIA



Robb L. Pitts, Chairman
Fulton County Board of Commissioners

ATTEST:



Tonya R. Grier, Clerk (SEAL)
Clerk to the Commission



APPROVED AS TO FORM:



Soo Jo
County Attorney

APPROVES AS TO SUBSTANCE:



Chris Sweigart, Director
Department of Emergency Services 911

FAIRBURN, GEORGIA



Mario B. Avery, Mayor
City of Fairburn

ATTEST:



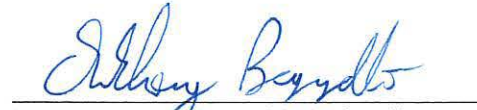
Brenda B. James, City Clerk
City of Fairburn

(Seal)

APPROVED AS TO SUBSTANCE



Tony M. Phillips, City Administrator
City of Fairburn



James McCarthy, Chief of Police
City of Fairburn

APPROVED AS TO FORM:



Cornelius Robinson, Fire Chief
City of Fairburn



Rory K. Starkey, City Attorney
City of Fairburn

ITEM # 22-0913 RM 12/7/22
REGULAR MEETING