

TRUNKED RADIO SERVICES AGREEMENT  
PAULDING COUNTY, GEORGIA

This agreement is made and entered into this 10 day of May, 2012<sup>th</sup> by and between Paulding County, Georgia, a political subdivision of the state of Georgia (hereinafter the "County"), and Dallas, Georgia, a municipal corporation under the laws of the State of Georgia, by and through its City Council (hereinafter "User"), collectively referred to as "the parties."

WHEREAS the County is the sole owner and operator of a VHF radio system; and

WHEREAS the current radio system does not make efficient use of the radio spectrum resulting in congestion and overuse of some channels; and

WHEREAS a countywide trunked radio system will make more efficient use of the radio spectrum by allowing larger numbers of users to share a small number of radio channels through a combination of repeater and computer technologies and is more flexible and reliable than the other technologies currently in use in Paulding County; and

WHEREAS the County and User desire a radio system that will allow the County and participating user agencies to effectively interoperate during emergencies among themselves and with agencies surrounding Paulding County; and

WHEREAS the County and User desire to share the costs of designing, building, implementing and maintaining a new countywide trunked radio system (hereinafter "the System").

NOW, THEREFORE, the parties agree as follows:

ARTICLE I

1.1 Construction and Installation of System Infrastructure

The County shall be responsible for constructing and acquiring fixed radio equipment and computer hardware and software ("Infrastructure") necessary for operation of the System. User, as well as any other user agencies of the System, shall be responsible for paying a share of the cost of the Infrastructure, as provided in Article II below, and User shall have an ownership interest in the Infrastructure as provided in Section 1.3 below.

1.2 Acquisition of Radios and Other Equipment

Initial acquisition of radios and other equipment necessary to access the System ("Radio Equipment") will be accomplished by the County and User individually, provided however that if User orders radios during the initial system build-out at the same time and in conjunction with the County, User will be afforded the County's contract cost for Radio Equipment. Thereafter, User shall be responsible for acquiring Radio Equipment at a price agreed upon by User and a qualified Radio System Vendor. Radio Equipment must be of a type approved the Radio System User Board. Regardless of the method or means of acquiring Radio Equipment, User shall be responsible for all costs of the acquisition, maintenance, and repair of said equipment. Any



programming necessary for equipment operation must be performed by a trained County or User employee or a vendor approved by the Radio System User Board. User shall be solely responsible for the cost of programming.

### 1.3 Ownership of the System

*Formula*  
*X* (a) Infrastructure. The County and User shall have joint ownership of the Infrastructure as set forth herein. Joint ownership shall not extend to any real property or any towers affixed thereto. User's Share of System Ownership ("SSO") shall be determined by the Radio System User Board using a formula which takes into consideration the overall Infrastructure costs compared against that portion of the System's capacity which the User is reasonably anticipated to utilize. In determining User's reasonably anticipated use, the Radio System User Board shall consider the following three weighted factors:

(1) Raw Usage (20%). This factor considers the number of User devices and the period of time during which such devices will ordinarily have access to the System.

(2) Call Volume (70%). This factor considers anticipated daily usage patterns as described and estimated by the User in conjunction with the number of devices utilized by the User.

(3) Square Miles of Coverage (10%). This factor considers the size of the geographic area over which User will ordinarily need radio coverage. *5 sq*

The Radio System User Board may consider other factors which it deems relevant in order to equitably determine User's SSO.

(b) The County shall never have less than a 51% SSO. The County's initial SSO is expected to be approximately 72%.

(c) The Radio System User Board may adjust User's SSO based upon the addition, withdrawal or expulsion of other users. In the event of the addition of a user at a time when the County's SSO exceeds 51%, payments by the additional user will first be applied toward reducing the County's SSO. When the County's SSO is decreased to 51%, then payments by additional users, with the exception of the recovery of the cost of capital retained by the County, shall be distributed to existing users in accordance with their SSO at the time of the payment.

## ARTICLE II Financing of the System

### 2.1 Payment of the System Infrastructure Costs by Initial Users.

(a) Share of System Infrastructure Costs. User shall be responsible for paying its share of System Infrastructure Costs according to the schedule set forth in Section 2.1(b). User's total share of System Infrastructure Costs shall be equivalent to its SSO as determined in Section 1.3(a).

(b) User shall pay to the County its share of the System Infrastructure Costs according to the following schedule no later than 30 days from the date of project milestone completion: 10% upon completion of the System Design Review; 20% upon the Ordering of Site and Subscriber Equipment; 20% upon Receipt and Inventory of Site and Subscriber Equipment; 20% upon

*What is  
County's  
current SSO?*



Delivery and Installation of Site and Subscriber Equipment; 20% upon Completion of the Acceptance Test Plan (ATP); and the final 10% upon Final System Acceptance.

## 2.2 Payment of Infrastructure Costs by Additional Users

Additional Users requesting to become members of the System after Final System Acceptance must petition the Radio System User Board. The User Board will determine the infrastructure cost for new users which may include, but not be limited to; cost associated with increasing of system capacity to accommodate the additional Users, in a fair and equitable manner.

# ARTICLE III

## Operation and Maintenance of the System

### 3.1 County to Operate System

(a) Except as otherwise provided, the County shall be responsible for providing all services necessary to operate the System, including but not limited to personnel, purchasing responsibilities, maintenance of infrastructure equipment and hardware, installation and operation of System software, preparation of all necessary contracts, and billing of all Users.

(b) The County shall maintain property insurance to cover repair or replacement of all jointly owned System equipment, including, but not limited to towers, fixed radio equipment, buildings and building improvements, and computer hardware and software.

(c) It shall be the responsibility of User to maintain all solely User-owned equipment. Future replacement and/or acquisition of solely User-owned equipment shall be the responsibility of User.

### 3.2 Payment of Operating Cost/System Maintenance

(a) "Subscriber unit" means any device which uses the System for the purpose of sending or receiving radio or wireless transmissions, including but without limitation, a handheld radio, vehicle-mounted radio, or other wireless communications device.

(b) The amount of operating/maintenance costs to be paid by User shall be determined as follows:

(1) For the first year, divide the total operating/maintenance cost for the System by the System's total number of subscriber units, resulting in a per subscriber unit fee. User's operating/maintenance cost for the first year shall be the product of the subscriber unit fee multiplied by the User's total number of subscriber units. This cost must be paid to the County no later than 60 days from the date of Final System Acceptance, or if not an initial user, no later than 60 days from the date User was approved as an additional user by the Radio System User Board.

(2) For all years subsequent to the first year, the operating/maintenance costs shall be the product of multiplying the proposed operational/maintenance budget for the entire System by the User's percentage of System use. The User's percentage of System use will be determined by averaging the User's monthly System usage for the previous 12 month period. This cost must be paid to the County no later than 30 days from the anniversary date of Final System Acceptance, or if not an initial user, no later than 60



days from the anniversary date of User's approval as an additional user by the Radio System User Board.

#### ARTICLE IV Radio System User Board

For the purposes of this Agreement, the Radio System User Board ("RSUB") shall mean the Paulding County Radio System User Board as set forth in the Official Code of Ordinances of Paulding County. In addition to those powers and duties otherwise provided in this Agreement, the powers and duties of the RSUB in regard to this Agreement shall include, without limitation, 1) determining the System budget; 2) hearing and deciding disputes amongst any users who participate in the System; 3) expelling any user of the System where appropriate in accordance with the terms of this agreement. The RSUB shall have final decision making authority in regard to the issues concerning the System and user agreements pertaining thereto.

#### ARTICLE V Withdrawal or Expulsion of User

##### 5.1 Withdrawal of User

User may withdraw from the System at any time upon providing written notice to the County and to the User Board. Upon withdrawal, User will continue to be responsible for the following:

- (a) 100% of User's SSO for any unpaid Infrastructure Costs.
- (b) User shall be obligated to pay its share of operating/maintenance costs for the fiscal year in which the notice is received.
- (c) For the purposes of Article V, "fiscal year" means the period from July 1 until June 30.

At the time of User's withdrawal, all other users' SSO's shall be adjusted by adding to their respective SSO, a proportionate share of the withdrawing User's SSO. User shall not receive from the County or any other user, any money or other compensation for its ownership interest.

##### 5.2 Expulsion of User

(a) User may be expelled from the System and its participation in the System and this Agreement terminated for cause pursuant to the majority vote of the Radio System User Board. The following are considered causes for termination:

- (1) Misuse of the System or System equipment;
- (2) Failure to pay obligations to the County or the System when due; or
- (3) Failure to pay fines, penalties or forfeitures assessed by another governmental agency related to use of the System.

(b) Upon expulsion, the expelled User continues to be responsible for the following:



(1) 100% of User's SSO for any unpaid Infrastructure Costs.

(2) User shall be obligated to pay its share of operating/maintenance costs for the fiscal year in which the expulsion occurred.

(3) Settlements or judgments for events occurring during membership.

At the time of User's expulsion, all other users' SSO's shall be adjusted by adding to their respective SSO's a proportionate share of the expelled User's SSO. User shall not receive from the County or any other user, any money or compensation for its ownership interest.

## ARTICLE VI Miscellaneous

### 6.1 No Assignment

No party to this agreement may assign its interest in this agreement or in the System to any other party or individual.

### 6.2 Responsibility for Fines, Forfeitures or Penalties

In the event that a fine, forfeiture or penalty is assessed against User by the Federal Communications Commission for misuse of airwaves or any other violation of federal law or regulation, User shall be solely responsible for payment of such fine, forfeiture or penalty.

### 6.3 Property Insurance Waiver of Subrogation

The County and User hereby release each other from any and all responsibility and liability to the other for any loss or damage, including consequential losses, that may incur even if such loss or damage is caused by the fault or negligence of the other party. Each agree that to the extent any policy of insurance provides a right of subrogation in the insurer, or to the extent a right of subrogation exists independent of such policy, each will hold the other harmless for any loss, claim or expense suffered and shall obtain from its insurance carrier a waiver of subrogation for the matters herein described in any such policy of insurance.

### 6.4 Responsibility for Settlements or Judgments

In the event that a recovery shall be had, either by settlement or judgment, against the County or User as a result of a failure of the trunked radio System, the cost of said settlement or judgment shall be borne by each party to this agreement in accordance with their respective SSO. This paragraph shall apply and the User shall be obligated for its proportionate share of said settlement or judgment even if the User shall have terminated the agreement prior to the settlement or judgment.

The County shall provide, at no cost to participating users, all legal representation for any litigation alleging failure of the System infrastructure and shall have sole authority to direct said litigation. This provision shall not be applicable in the event of litigation between County and User.



## 6.5 Force Majeure

Except as otherwise specifically provided herein, neither County nor User shall be considered to be in default in the performance of any of their obligations under this agreement, other than the obligation to make payments as specified in this agreement or in any other agreement entered into by the parties, when there is the occurrence of an event of Force Majeure, as defined below, and the result is a delay or failure of performance of a party, and in such case, neither party shall be liable for any loss or damage suffered by the other party as a result thereof. Force Majeure, as used herein, shall mean any conditions affecting a party in connection with the agreement, which condition is beyond the reasonable control of the party, including, without limitation: acts of God, strikes, lockouts, acts of public enemy, wars, blockages, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, civil disturbances, or explosions.

## 6.6 Conditions on Agreement

This agreement is only effective if sufficient funds have been appropriated by the Paulding County Board of Commissioners and said appropriation has been approved and a contract had been executed with a vendor chosen by Paulding County for development and implementation of a System.

## 6.7 Effective Date; Term

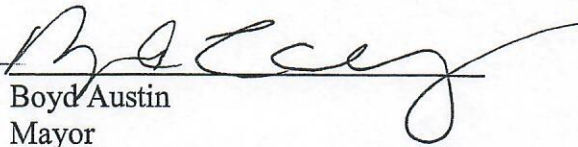
This agreement shall be binding on the parties upon execution and shall terminate at 11:59:59 p.m. on December 31, 2022, except as provided in Article V, above.

Date: 8-1-2013

Date: 5/6/13



David Austin  
Chairman  
Paulding County Board of  
Commissioners



Boyd Austin  
Mayor  
City of Dallas