

**INTERGOVERNMENTAL AGREEMENT
FOR THE PROVISION OF
800 MHZ P25 PHASE II RADIO SYSTEM ACCESS
FOR PUBLIC SAFETY AND PUBLIC SERVICE RADIO COMMUNICATION
AND USE OF CERTAIN RADIO EQUIPMENT**

This Intergovernmental Agreement ("IGA") is entered into this _____ **day of July, 2019** (the "Effective Date") by and between **Whitfield County, Georgia**, a political subdivision of the State of Georgia, acting by and through its governing authority, the Whitfield County Board of Commissioners ("**County**,") with its principal office at 301 W. Crawford Street, Dalton, Georgia 30720, and the cities of Dalton, Cohutta, Tunnel Hill, and Varnell, Georgia, **all of which are municipal corporations within Whitfield County**, acting by and through their respective governing authorities, hereinafter individually referenced as "Dalton," "Cohutta," "Varnell", and "Tunnel Hill" and collectively referred to herein as the "parties". This IGA is created under the existing laws of the State of Georgia and the Constitution of the State of Georgia.

ARTICLE IX OF THE

RECITALS:

WHEREAS, the COUNTY owns and maintains an 800 MHz P25 Phase II Public Safety and Public Service Radio System ("Radio System") that provides radio communication coverage to areas within the boundaries of Whitfield County; and

WHEREAS, the Radio System provides two-way radio communication infrastructure for portable, mobile, and control station radio equipment; and

WHEREAS, Dalton, Cohutta, Tunnel Hill, and Varnell are governmental entities located in Whitfield County that provide public safety services to its citizens within Whitfield County and which desire to utilize the Radio System for public safety and public service radio communications; and

WHEREAS, Part 90 of the Federal Communications Commission Rules and Regulations promote the use of interagency interoperability; and

WHEREAS, Dalton, Cohutta, Tunnel Hill, and Varnell agree to compensate the County for maintenance and operation costs associated with the Radio System, as provided herein, including, but not limited to infrastructure improvements to the existing Radio System; and

WHEREAS, Dalton, Cohutta, Tunnel Hill, and Varnell agree to abide by the

rules and regulations set forth by Part 90 of the Federal Communications Rules and Regulations for public safety and public service radio communications, as well as all other FCC Rules and Regulations; and

WHEREAS, the County and Dalton, Cohutta, Tunnel Hill, and Varnell have determined that this IGA is in the best interests of the health, welfare, and safety of all residents of Whitfield County.

NOW, THEREFORE, for and in consideration of the mutual promises herein, the public purposes, and the acknowledgments and agreements contained herein, together with other good and adequate consideration, the adequacy and sufficiency of which is hereby acknowledged, the parties hereto do mutually agree as follows:

AGREEMENT

The parties agree that the above and foregoing recitals, background, and agreements are incorporated by reference as fully set forth.

1. Use of the System

1.1 Dalton, Cohutta, Tunnel Hill, and Varnell desire to utilize the Radio System and to establish interagency communication with the County. All parties agree to utilize the Radio System in accordance with federal, state, and County laws, codes, rules, and regulations, and ordinances, including, but not limited to those promulgated by the FCC. Dalton, Cohutta, Tunnel Hill, and Varnell each agree to operate the Radio System in a professional manner and only for official public safety purposes.

1.2 All parties agree to comply with Motorola Software security and programming constraints. Information regarding such constraints may be obtained directly from Motorola.

1.3 Dalton, Cohutta, Tunnel Hill, and Varnell agree to have any of its devices, equipment, or Authorized Subscriber Units (defined below) that cause any disruptions on the Radio System, including any equipment that may be assigned by the County in this IGA, taken out of service and repaired. Dalton, Cohutta, Tunnel Hill, and Varnell shall each be responsible for all repair costs for equipment assigned to it and shall be responsible to the County for any damages to the Radio System arising out of such device, equipment, or unit.

2. Equipment Requirements and Assignment

2.1 The County has previously assigned to Dalton, Cohutta, Tunnel Hill, and Varnell the number and type of radio equipment as set forth in Exhibit "A" attached hereto and incorporated herein by reference ("Assigned Units"). Subject to each city's Usage Fee (defined below), the County will continue to provide the Assigned Units for official use during the term of this IGA. Ownership of all Assigned Units shall remain with the County.

2.2 The County shall not be responsible for purchasing additional radio equipment for Dalton, Cohutta, Tunnel Hill, or Varnell after the initial assignment and acceptance of the Assigned Units described in Exhibit "A." Dalton, Cohutta, Tunnel Hill, or Varnell may, at its sole expense, purchase additional mobile, portable or control station equipment and accessories that will access the County's Radio System; provided that it agrees that it must first obtain County approval as described in Section 3.2 below to ensure compatibility. Dalton, Cohutta, Tunnel Hill, and Varnell each agree that the County is not responsible for any additional equipment purchased by the cities.

2.3 The County may, in its sole discretion, upgrade and/or make other changes to the Radio System. The County will not be responsible for any expenditure, loss or other claim incurred by Dalton, Cohutta, Tunnel Hill, or Varnell and caused by, or attributed to, such upgrades and/or changes to the Radio System. Further, Dalton, Cohutta, Tunnel Hill, and Varnell each agree that it will, at its own expense and within one (1) year of receipt of written notice from the County, comply with any upgrade to its equipment required due either to software upgrades or changes to the Radio System, including, but not limited to, the purchase of new equipment and/or a change in vendor.

2.4 Lost or stolen radios should be reported to Whitfield County Emergency Services immediately so the radio can be reprogrammed remotely to keep the radios system and talkgroups secure. The reporting agency should provide a radio ID, alias, serial number, and last known location. A lost or stolen property report should be completed by the appropriate jurisdiction.

3. System Access

3.1 The County hereby grants separately to Dalton, Cohutta, Tunnel Hill, and Varnell a revocable license to the Assigned Units as well as any additional mobile, portable, and control station units purchased by such city, as described herein, on the Radio System during the term of this IGA ("Authorized Subscriber Units"). The cities collectively agree to limit the number of all subscriber units to the number of Authorized Subscriber Units provided for herein.

3.2 Any party may request authorization to add additional Authorized Subscriber Units by making a formal application with supporting documentation of need to the County's Director of Emergency Services or his or her designee. The application for additional Authorized Subscriber Units shall be reviewed and determined within thirty (30) days of receipt of the formal application; otherwise, the application shall be deemed approved. In addition to any other requirements provided for herein, any equipment accessing the Radio System must meet the specifications and standards established by the Association of Public-Safety Communications Officials ("APCO") and be compatible with the management software and equipment requirements for use with the Radio System, as determined in the sole discretion of the County. The Usage Fee (defined below) associated with those additional units shall be the per unit cost previously calculated and currently in effect for each added unit. Dalton, Cohutta, Tunnel Hill, and Varnell shall be prohibited from selling, assigning, or otherwise transferring its revocable license to use the Radio System, in whole or in part, to any other person or entity.

3.3 The parties all agree that all persons in its jurisdictions operating Authorized

Subscriber Units will be adequately trained in the use of such units on the Radio System and will comply with this IGA, as well as all federal, state, and County laws, codes, rules and regulations, and ordinances, including but not limited those promulgated by the FCC. Further, all parties agree to abide by any rules and regulations regarding the use of the Radio System. Alleged violations of applicable law, code, regulation, ordinance, or this IGA will be reviewed by the County's Director of Emergency Services or his or her designee. Upon finding a violation, the Director of Emergency Services or his or her designee may require the removal of such Authorized Subscriber Unit from the Radio System.

3.4 Dalton, Cohutta, Tunnel Hill, and Varnell each agree to restrict its use of the Radio System to legitimate public safety purposes. The Radio System shall not be used to conduct business, except that which is incidental to legitimate governmental-related purposes.

3.5 The County agrees to maintain the Radio System, use reasonable efforts to respond to questions to facilitate the use of the Radio System by the parties, comply with federal, state, and County laws, rules, and regulations, and to provide notice of any upgrades or early compliance mandates to the Radio System.

4. Infrastructure Maintenance Fees and Terms

4.1 Commencing January 1, 2020, Dalton, Cohutta, Tunnel Hill, and Varnell each agree to pay the County in a timely fashion the yearly Subscriber Fee for each Authorized Subscriber Unit currently accessing the Whitfield County P25 Public Safety Radio System.

4.2 The fees received will be placed in a County account and then payment will then be made to the City of Chattanooga for Subscriber Usage to the Tennessee Valley Regional Communications System. This payment will be for all authorized subscribers to the Whitfield County P25 Public Safety Radio System. These fees are paid to the City of Chattanooga to ensure that overall system services, maintenance, and infrastructure upgrades to the Tennessee Valley Regional Communications System.

4.3 Tennessee Valley Regional Communications System Executive Committee may vote to adjust the yearly Subscriber fee based on the cost to operate and maintain the Radio System. If the TVRCS Executive Committee votes for a fee adjustment, Whitfield County Emergency Services will notify the Authorized Subscribers of the fee change within (60) days of the announcement from TVRCS.

5. License

The County shall hold and maintain a current Federal Communications Commission License to operate the Radio System and operate the Radio System. Further, all use of the shared channels/talk groups shall be subject to the County's license.

6. Agreement Terms and Termination

This IGA shall commence upon the Effective Date provided above and shall continue until July 1, 2025. Unless written notice is provided not less than 30 days prior to the expiration of the Initial Term or the IGA is terminated earlier as

provided herein, this IGA shall automatically renew for consecutive one year terms until terminated by either party by providing at least thirty (30) days written notice to the other party prior to the commencement of any subsequent renewal term; provided that the term of this IGA shall in no event exceed fifty (50) years beginning on the Effective Date.

7. Warranties

The County makes no express or implied representation or warranties with respect to the Radio System or Assigned Units, including without limitation, any warranty as to the merchantability or fitness for a particular purpose. The County shall not be responsible for costs or damages related to cities' access to or use of the Radio System. The Assigned Units may be covered by a warranty from Motorola for a limited period of time, and the County will make reasonable efforts to assist in making claims under that warranty; provided that the County is in no way responsible for the issues related to Assigned Units and shall not be responsible for any maintenance or other costs associated with the Assigned Units or additional equipment.

8. Indemnification; Hold Harmless

8.1 To the extent, allowed by law, Dalton, Cohutta, Tunnel Hill, and Varnell shall each defend, indemnify and hold harmless the County and the County's elected and appointed officials, officers, boards, commissions, employees, representatives, consultants, servants, agents and volunteers (individually an "Indemnified County Party" and collectively the "Indemnified County Parties") from and against any and all claims, suits, actions, judgments, injuries, damages, losses, costs, expenses and liability of any kind whatsoever, including but not limited to attorney's fees and costs of defense ("Liabilities"), which may arise from or be the result of use of the Radio System or Assigned Units. This indemnity obligation does not include Liabilities caused by or resulting from the sole negligence of an Indemnified County Party. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this provision. In any and all claims against an Indemnified County Party, by any employee of Dalton, Cohutta, Tunnel Hill, and Varnell, its contractor, anyone directly or indirectly employed by Dalton, Cohutta, Tunnel Hill, and Varnell or cities of Dalton, Cohutta, Tunnel Hill, and Varnell contractor or anyone for whose acts Dalton, Cohutta, Tunnel Hill, and Varnell or contractor may be liable, the indemnification obligation set forth in this provision shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Dalton, Cohutta, Tunnel Hill, and Varnell or any of cities the contractors under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. The obligation to indemnify, defend, and hold harmless the Indemnified County Party(ies) shall survive expiration or termination of this IGA provided that the claims are based upon or arise out of actions or omissions that occurred during the performance of this IGA.

8.2 To the extent, allowed by law, County shall each defend, indemnify and hold harmless Dalton, Cohutta, Tunnel Hill, and Varnell and cities of Dalton, Cohutta, Tunnel Hill, and Varnell's elected and appointed officials, officers, boards, commissions, employees, representatives, consultants, servants, agents and volunteers (individually an "Indemnified User Party" and collectively the "Indemnified User Parties") from and against any and all claims, suits, actions, judgments, injuries, damages, losses, costs, expenses and liability of any kind whatsoever, including but not

limited to attorney's fees and costs of defense ("Liabilities"), which may arise from or be the result of operations by the County, any County contractor, anyone directly or indirectly employed by the County or County contractor or anyone for whose acts the County or County contractor may be liable. This indemnity obligation does not include Liabilities caused by or resulting from the sole negligence of an Indemnified User Party. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this provision. In any and all claims against an Indemnified User Party, by any employee of the County, its contractor, anyone directly or indirectly employed by the County or County contractor or anyone for whose acts the County or County contractor may be liable, the indemnification obligation set forth in this provision shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the County or any County contractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. This obligation to indemnify, defend, and hold harmless the indemnified User Party(ies) shall survive expiration or termination of this IGA, provided that the claims are based upon or arise out of actions or omissions that occurred during the performance of this IGA.

9. Insurance

All parties hereto shall each have and maintain during the term of this IGA commercially reasonable sufficient insurance insuring against claims for injuries to persons or damages to property which may arise from or in connection with its (respective) performance of this IGA. All policies shall be subject to approval by the County, which approval shall be provided in the County's sole discretion.

10. Assignment

No party shall assign any right or obligation under this IGA.

11. Force Majeure

No party, nor their respective employees or agents, shall be liable for its respective nonnegligent or non-willful failure to perform any of its respective duties or obligations under this IGA or for any delay in such performance due to: (a) any cause beyond its reasonable control; (b) any act of God; (c) earthquake, fire, explosion or flood; (d) strike or labor dispute; (e) delay or failure to act by any governmental or military authority other than the governmental entity claiming a force majeure under this paragraph; or (f) any war, hostility, embargo, sabotage, civil disturbance, riot, insurrection or invasion. In such an event, the time for performance shall be extended by an amount of time equal to the period of delay caused by such acts, and all other obligations shall remain intact.

12. Entire Agreement

This IGA and the Exhibits hereto which are incorporated herein by this reference constitute the entire agreement and supersede any and all other agreements, either oral or in writing, between the parties with respect to the subject matter of this IGA. No other agreement, statement, or promise relating to the subject matter of this IGA not contained in this IGA shall be valid or binding. This IGA may be modified or amended only by a written instrument signed by a duly authorized representative of

each of the parties. The terms of this IGA shall prevail notwithstanding any variance with the terms and conditions of any invoice, purchase orders or any other such document subsequently submitted by either party hereunder. The parties acknowledge that this IGA, as it may be amended as provided herein, shall be incorporated as part of any Service Delivery Strategy Agreement entered into between the parties subsequent to the date of this IGA.

13. Public Procurement Requirements

The parties agree that any procurement related to this IGA will be completed in full compliance with all bidding requirements of the State of Georgia and County purchasing a policy.

14. Authority

Each of the individuals executing this IGA on behalf of his or her respective organization agrees and represents to the other party that he or she is authorized to do so and further agrees and represents that this IGA has been duly passed upon by the required governmental agency or board in accordance with all applicable laws and spread upon the minutes thereof. The parties hereto agree that this IGA is an intergovernmental contract, and is entered into pursuant to Article IX, Section III, Paragraph I of the Constitution of the State of Georgia 1983.

15. Records

Each party shall maintain records relating to matters covered by this IGA as required by Georgia law. Such records shall be maintained for at least a period of three years following the termination of this IGA.

16. Interpretation

The parties hereto have cooperated in the preparation of this IGA, and hence, it shall not be interpreted or construed against or in favor of either party by virtue of identity, interest, or affiliation of its preparer.

17. Notice

All notices, requests, demands, writings, or correspondence, as required by this IGA, shall be in writing and shall be deemed received, and shall be effective, when:
(1) personally delivered, or (2) on the third day after the postmark date when mailed by certified mail, postage prepaid, return receipt requested, or (3) upon actual delivery when sent via national overnight commercial carrier to the party at the addresses given below, or at a substitute address previously furnished to the other party by written notice in accordance herewith:

NOTICE TO THE COUNTY shall be sent to:

Mark Gibson, County Administrator
Whitfield County Board of Commissioners
301 W. Crawford Street
Dalton, Georgia 30720

NOTICE TO THE CITIES shall be sent to

Jason Parker, City Administrator, City of Dalton

Mike Brown, City Administrator, City of Varnell

Blake Griffin, City Administrator, City of Tunnel Hill

Ron Shinnick, Mayor, Town of Cohutta

18. No Third Party Rights

This IGA is entered into for the benefit of the parties hereto only and shall confer no benefits, direct or implied, to any third persons or authorize anyone, not a party to this IGA to maintain an action pursuant to the terms or provisions of this IGA.

19. Waiver

No failure by either party to enforce any right or power granted under this IGA, or to insist upon strict compliance with this IGA, and no custom or practice at variance with the terms and conditions of this IGA shall constitute a general waiver of any future breach or default or affect either party's right to demand exact and strict compliance with the terms and conditions of this IGA. Further, no express waiver shall affect any term or condition other than the one specified in such waiver, and that one only for the time and manner specifically stated.

20. Successors and Assigns

Subject to the provision of this IGA regarding assignment, this IGA shall be binding on the heirs, executors, administrators, successors and assigns of the respective parties, provided that no party may assign this IGA without the prior written approval of the other party.

21. Captions and Severability

The caption or headnote on articles or sections of this IGA are intended for convenience and reference purposes only and in no way define, limit or describe the scope or intent thereof, or of this IGA nor in any way affect this IGA. Should any article(s) or section(s), or any part thereof, later be deemed illegal, invalid or unenforceable by a court of competent jurisdiction, the offending position of the IGA should be severed, and the remainder of this IGA shall remain in full force and

effect to the extent possible, as the parties declare they would have agreed to the remaining parts of this IGA if they had known that the severed provisions or portions thereof would be determined illegal, invalid or unenforceable.

22. E-Verify and Title VI

The parties agree that they will comply with all applicable E-Verify and Title VI requirements, and any contracts let related to this IGA shall contain all required E-verify and Title VI requirements under applicable law.

23. Counterparts

This IGA may be executed in multiple counterparts, and each counterpart shall be considered an original.

IN WITNESS WHEREOF, the parties hereto have caused this IGA to be executed by duly authorized representatives as of the date of their signatures.

/SIGNATURES ON FOLLOWING PAGE/

COUNTY: WHITFIELD COUNTY

BY: _____

Its: _____

Date: _____

[COUNTY SEAL]

Attest: _____

Its: County Clerk

City of Dalton

BY: _____

Its: _____

Date: _____

[CITY SEAL]

Attest: _____

Its: City Clerk

City of Cohutta

BY: _____

Its: _____

Date: _____

[CITY SEAL]

Attest: _____

Its:: City Clerk

City of Tunnel Hill

BY: _____

Its: _____

Date: _____

[CITY SEAL]

Attest: _____

Its: City Clerk

City of Varnell

BY: _____

Its: _____

Date: _____

[CITY SEAL]

Attest: _____

Its: City Clerk

Exhibit A

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IGA
Exhibit A[illegible]

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Exhibit A

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