

## COUNTY COMMISSION

BALDWIN COUNTY

312 COURTHOUSE SQUARE, SUITE 12

BAY MINETTE, ALABAMA 36507

(251) 937-0264

FAX (251) 580-2500

[www.baldwincountyal.gov](http://www.baldwincountyal.gov)

### MEMBERS

DIST 1. FRANK BURT, JR.  
2. ROBERT E. (BOB) JAMES  
3. J. TUCKER DORSEY  
4. CHARLES F. GRUBER

May 1, 2012

Mr. James Ernest Blair  
Madison County Communications District  
5827 Oakwood Road NW  
Huntsville, Alabama 35806-1589

**RE: Shared Use Agreement**

Dear Mr. Blair:

The Baldwin County Commission, during its regularly scheduled meeting held on May 1, 2012, approved and authorized me, as Chairman, to sign the *Shared Use Agreement* with the Madison County Communications District (MCCD), which describes the connectivity of both Counties' communications switches and plans for interoperability. The term of this *Agreement* will be 25 years with up to twenty (20) additional one (1) year terms unless terminated with 270 days' notice.

Enclosed is a **fully executed original *Shared Use Agreement***, for your file.

If you have any questions or need further assistance, please do not hesitate to contact me or David Pimperl, Communications/Information Systems Director, at (251) 937-0351.

Sincerely,

ROBERT E. JAMES, Chairman  
Baldwin County Commission

REJ/met Item EC1

cc: David Pimperl  
Mike Job

ENCLOSURE

**SHARED USE AGREEMENT BETWEEN THE  
BALDWIN COUNTY COMMISSION AND THE  
MADISON COUNTY COMMUNICATIONS DISTRICT  
REGARDING THE INSTALLATION AND SHARED USE OF  
CERTAIN COMMUNICATIONS INFRASTRUCTURE**

This Shared Use Agreement (“Agreement”) is made and entered into by and between BALDWIN COUNTY, a political subdivision of the State of Alabama, by and through the BALDWIN COUNTY COMMISSION, the governing body of Baldwin County, Alabama (hereinafter “Baldwin County”), and the MADISON COUNTY COMMUNICATIONS DISTRICT (hereinafter “MCCD”) (Baldwin County and MCCD are sometimes referred to collectively as “Parties” or individually as “Party”), and shall become effective on the date it is executed by the latter of Baldwin County or MCCD (hereinafter referred to as the “Effective Date”).

**WITNESSETH:**

**WHEREAS**, Baldwin County and MCCD have agreed to cooperate in the construction of a proposed interoperable public safety communications system in conjunction with the Alabama Department of Homeland Security; and

**WHEREAS**, Baldwin County and MCCD desire to enter into an agreement providing for the shared use of certain communications facilities or equipment owned by the parties for the purpose of supporting the interoperable public safety communications system.

**FOR AND IN CONSIDERATION** of the terms and mutual covenants contained herein, the sufficiency of which are hereby acknowledged, Baldwin County and MCCD hereby agree as follows:

1. Use of Shared Equipment. Baldwin County and MCCD agree to establish an Inter-Zone link connection between their respective Motorola ASTRO P25 systems providing interoperability between the systems with two zones of operation. The Inter-Zone link will be established via the Alabama Public TV microwave network and/or via other means that may be established in the future to provide a reliable network connection. The existing MCCD User Configuration Server (UCS) located at the MCCD E-911 Center in Huntsville, Alabama, will be leveraged as the primary database server for user configurations. MCCD will provide authorized Baldwin County staff access to the UCS via the Inter-Zone link for user and system configuration. MCCD will maintain and ensure high availability of the UCS while Baldwin County will be responsible for the network connectivity to the MCCD Master Site and UCS Location.

MCCD will generate and provide the required Motorola Master Advanced System Key to authorized Baldwin County staff. Baldwin County will have the ability and authority to generate Daughter Keys for distribution to authorized agencies and vendors for programming of radios within the Baldwin County Zone. Any System Keys generated by Baldwin County will be inventoried and controlled by Baldwin County. Both Baldwin

County and MCCD will take appropriate steps to ensure that no unauthorized talk groups are programmed into radios from the others respective zones. Both organizations will work to define and document interoperable talk groups that will be programmed into radios on both zones to facilitate interoperability for disaster response teams. Any other cross zone talk groups will require written authorization from the appropriate agency(s) involved prior to being programmed into any radios. Staff from both organizations will work to develop procedures and documentation to assure these goals.

In the event of any mutually agreed upon system wide upgrades or system separation, each Party will be financially responsible for any required modifications of their individual Party's equipment. If either Party decides to separate the Inter-Zone link/Systems, they must notify the other Party in writing nine months prior to separating.

The buildings and equipment referenced herein shall be collectively referred to as the "Facilities and Equipment."

2. Term. The term of this Agreement shall be for twenty-five (25) years and shall commence on the first (1st) day of the month ("Commencement Date") following the Effective Date, and shall terminate on the twenty-fifth (25<sup>th</sup>) anniversary of the Commencement Date, unless sooner terminated or extended as herein provided. Based on the mutual benefits provided to the parties pursuant to this Agreement, neither party shall receive any further compensation during the term of this Agreement and any extensions thereof. At the end of the twenty-five (25) year initial term, or any renewals or extensions thereof, this Agreement shall automatically renew and extend for up to twenty (20) additional one (1) year terms, unless either Party provides written notice of termination to the other Party at least two-hundred and seventy (270) days prior to the end of the initial term or any renewals for extensions thereof.

3. Permits. The obligations of the Parties under this Agreement are expressly subject to and conditioned upon the satisfaction of the following condition: receipt by the Parties of all necessary permits or other federal, state or local governmental authorizations (the "Permits") necessary for the use of the Facilities and Equipment, including, without limitation, any building, signage, zoning, variances, special use permits or other Permits deemed necessary in connection with intended use of the Facilities and Equipment. The Parties shall cooperate with each other in effort to obtain such approvals and shall take no action which would adversely affect such efforts. In the event that any of such applications should be finally rejected or any certificate, permit, license or approval issued to the Parties is canceled, expires, lapses, or is otherwise withdrawn or terminated by any governmental authority or radio frequency propagation, or similar tests are found to be unsatisfactory, the Parties shall have the right to terminate this Agreement. Notice of such termination shall be given to the other Party in writing by certified mail, return receipt requested, and shall be effective upon receipt of such notice by the other Party as evidenced by the return receipt.

4. Assignment. The Parties shall not have the right to assign this Agreement or any rights or obligations hereunder without written permission and consent by the other Party. Any attempted assignment shall be void. No assignment shall relieve the other Party of its liabilities and obligations herein.

5. Maintenance of Facilities and Equipment. The Parties shall maintain their individually owned portions or components of the Facilities and Equipment in good order and repair for the purposes of this Agreement, (including, without limitation, all necessary replacements), and shall observe and comply with all present and future laws, statutes, ordinances, requirements, orders, directives, rules and regulations of the federal, state, and local governments and of all other governmental authorities affecting the Facilities and Equipment, or any part thereof, and whether or not the same are in force at the Commencement Date or may in the future be passed, enacted or directed.

6. Compliance by the Parties. The Parties shall comply with all local, city, county, state and federal laws, rules, ordinances, statutes and regulations (including, but not limited to, FCC requirements applicable to the Facilities and Equipment) now in effect or hereafter enacted as the same may apply to the use of the Facilities and Equipment, and shall obtain, any licenses, permits and other approvals required for use of the Facilities and Equipment. The Parties agree to cooperate in obtaining such licenses, permits or approvals. Each Party shall be responsible for individual compliance with all FCC and/or OSHA radio frequency rules and regulations as they pertain to the Parties' individually owned equipment.

7. Insurance.

The Parties agree to separately acquire and maintain during the term of this Agreement individual commercial general liability insurance policies against claims for "personal injury" or property damage liability with a limit of not less than One Million and No/100 Dollars (\$1,000,000.00) in the event of "personal injury" to any number of persons or of damage to property arising out of any one occurrence. Such insurance may be furnished under a "primary" policy and an "umbrella" policy or policies. Such insurance may be carried in whole or in part (i) under any plan of self-insurance which either Party may have in force and effect from time to time, or (ii) under any blanket policies that include other properties and provide separate coverages provided that all of the foregoing requirements are satisfied.

8. Liability.

(a) To the extent of any claims not barred by the immunity granted to Baldwin County by Section 14 of Article I of the Constitution of Alabama of 1901, Baldwin County shall hold MCCD harmless from and against any loss, injury, death, or damage to persons or property which at any time may be suffered or sustained by anyone including, without limitation, Baldwin County, Baldwin County's agents, employees, contractors, lessees, licensees or invitees who may at any time be using or occupying or visiting the Facilities and Equipment or be in, on, or about the same, to the extent such loss, injury, death, or damage shall be caused by or in any way result from or arise out of any wrongful act or omission or negligence of Baldwin County, its agents, employees or contractors.

(b) To the extent of any claims not barred by the immunity granted to MCCD by Section 14 of Article I of the Constitution of Alabama of 1901, MCCD shall hold Baldwin County harmless from and against any loss, injury, death, or damage to persons or property

which at any time may be suffered or sustained by anyone including, without limitation, MCCD, MCCD's agents, employees, contractors, lessees, licensees or invitees who may at any time be using or occupying or visiting the Facilities and Equipment or be in, on, or about the same, to the extent such loss, injury, death, or damage shall be caused by or in any way result from or arise out of any wrongful act or omission or negligence of MCCD, its agents, employees or contractors.

9. Limitation of Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR PUNITIVE OR SPECIAL DAMAGES OF ANY KIND OR FOR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHETHER RESULTING FROM LOSS OF REVENUE, LOSS OF USE OF FACILITIES OR EQUIPMENT OR OTHERWISE, DURING ANY TERM OF THIS AGREEMENT OR AFTER THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.

10. Default. The following events shall constitute events of default under this Agreement:

(a) Baldwin County's failure to perform any of the other covenants, conditions and agreements herein contained and to be performed by Baldwin County and the continuance of such failure without the curing of same for a period of thirty (30) days after receipt by Baldwin County of notice in writing from MCCD specifying the nature of such failure, shall be deemed a default. In the event that such failure is of such a nature that it cannot be cured within such thirty (30) day period, then such failure shall not be deemed a default so long as Baldwin County, after receiving such notice, promptly initiates efforts to cure the failure and diligently pursues such efforts.

Upon the occurrence of an event of default, MCCD's sole remedy is to terminate this Agreement by written notice to Baldwin County, and Baldwin County shall have nine (9) months to separate from the system and allow time to implement its own alternative equipment.

(b) MCCD's failure to perform any of the other covenants, conditions and agreements herein contained and to be performed by MCCD and the continuance of such failure without the curing of same for a period of thirty (30) days after receipt by MCCD of notice in writing from Baldwin County specifying the nature of such failure, shall be deemed a default. In the event that such failure is of such a nature that it cannot be cured within such thirty (30) day period, then such failure shall not be deemed a default so long as MCCD, after receiving such notice, promptly initiates efforts to cure the failure and diligently pursues such efforts.

Upon the occurrence of an event of default, Baldwin County's sole remedy is to terminate this Agreement by written notice to MCCD, and MCCD shall have nine (9) months to separate from the system and allow time to implement its own alternative equipment.

11. Termination: Removal of Facilities. The Parties may terminate this Agreement for any cause whatsoever by giving thirty (30) days' advance, written notice. Upon cancellation, revocation, termination or expiration of this Agreement, the Parties shall

have nine (9) months within which to separate the systems, and neither Party shall be responsible for any damages or claims by the other Party as a result of such termination.

12. Subsequent Parties Bound. This Agreement shall extend to and bind the successors and assigns of the parties hereto.

13. Notices. All notices, demands, requests, consents, and approvals desired, necessary, required or permitted to be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been properly given (i) upon actual delivery if delivery is by hand, (ii) on the third day following the date on which each such notice is deposited, postage prepaid, in the United States mail, certified, return receipt requested or (iii) on the next business day after being sent by a nationally recognized overnight courier service which provides proof of receipt. All notices shall be directed to the other Party at the address indicated below, or to any other address as the Parties may designate by notice delivered pursuant to this provision. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, demand, request or other communication.

Baldwin County:        Baldwin County  
                                  312 Courthouse Square, Suite 312  
                                  Bay Minette, AL 36507  
                                  Attention: Chairman

MCCD:                    Madison County Communications District

With a copy to:

14. Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be continued as if such invalid, illegal, or unenforceable provisions had never been contained herein, and there shall be immediately substituted for such invalid, illegal or unenforceable provision a like, but valid and enforceable, provision which most nearly satisfies and comports with the original intention of the Parties. Paragraph or section headings used in this Agreement are for convenience of reference only and do not affect any provision of this Agreement.

15. Entire Agreement. This Agreement and the documents attached hereto constitute the full and complete agreement between the Parties hereto with respect to the subject matter hereof, and said Parties shall not be bound by any statement, special condition or agreements not herein expressed. No alteration or amendment to this Agreement by the Parties hereto shall be effective unless in writing, signed by the Parties, and by reference

incorporated into this Agreement. Notwithstanding the foregoing, as technology and methods change at a rapid pace, it is imperative that modifications to the equipment be allowed, provided that the designated technical representatives of both Baldwin County and M CCD agree with such modification to take advantage of technological advancements or to overcome technical issues that may arise. Therefore, this Agreement will not need to be modified to implement such modifications, as long as the overall intent and scope of the project are followed and as long as the changes do not substantially burden the resources of either Party. This Agreement, and the performance thereof, shall be governed by and construed according to the Laws of the State of Alabama.

16. Non-Waiver. Failure of either Party to exercise any power or rights provided for herein shall not constitute a waiver of said Party's right to demand exact compliance with the terms and conditions of this Agreement.

17. Survival of Representations. The provisions contained in this Agreement that by their sense and context are intended to survive the performance hereof by either or both Parties shall so survive the completion of performance, termination or expiration of this Agreement, including the hold harmless and indemnity obligations set forth hereunder.

18. Recovery of Expenses. If any action at law or in equity shall be brought for or on account of any breach of, or to enforce or interpret any of the covenants, terms, or conditions of, this Agreement, the prevailing party shall be entitled to recover from the other party court costs and reasonable attorneys' fees.

19. Time is of the Essence. Time is of the essence of this Agreement, and of each and every covenant, term, condition and provision hereof.


20. No Third Party Beneficiaries. It is the intent of the Parties of this Agreement that they be the only parties to the Agreement and to expressly exclude third party beneficiaries. Nonparties to the Agreement may not claim benefits under the Agreement.


21. Additional Parties to Agreement. Upon mutual agreement of both the Madison County Communications District and the Baldwin County Commission, an additional party or parties may be added to this agreement, with the objective of further expanding the system to allow increased interoperability within the State of Alabama and possibly into other States. Terms and conditions applying to any additional party or parties will be defined at the time they are to be included in the system.

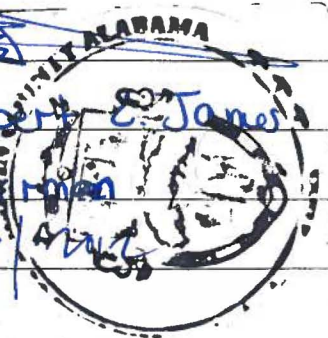
**(NO FURTHER TEXT ON THIS PAGE; SIGNATURES BEGIN ON NEXT PAGE)**

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed in duplicate originals by their duly authorized representatives on the respective dates entered below.

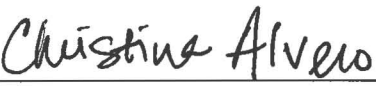

BALDWIN COUNTY  
312 Courthouse Square, Suite 312  
Bay Minette, AL 36507


  
\_\_\_\_\_  
Witness  
  
\_\_\_\_\_  
Witness

By:   
Name: Robert E. James  
Title: Chairman  
Date: 5/18/12



MADISON COUNTY  
COMMUNICATIONS DISTRICT  
5827 OAKWOOD RD NW  
HUNTSVILLE, AL 35806-1589

  
\_\_\_\_\_  
Witness  
  
\_\_\_\_\_  
Witness

By:   
Name: JAMES ERNEST BLAIR  
Title: CEO  
Date: 4/18/12



STATE OF Alabama

COUNTY OF Baldwin

I, Kimberly Mayo, a notary public in and for said county in said state, hereby certify that Robert James, whose name as Chairman of the Baldwin County Commission, as the governing body of BALDWIN COUNTY, ALABAMA, a political subdivision of the State of Alabama, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said entity on the day the same bears date.

Given under my hand and official seal this 1 day of May, 2012.



Kimberly Mayo  
Notary Public  
My Commission Expires

NOTARY PUBLIC STATE OF ALABAMA AT  
MY COMMISSION EXPIRES: Nov 6, 2012  
BONDED THRU ROTARY PUBLIC UNDERWRITERS

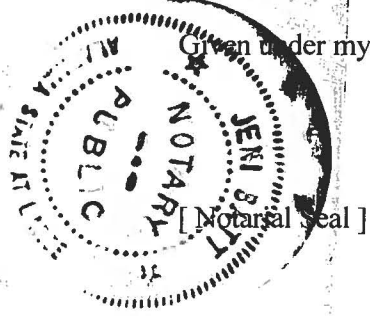
STATE OF Alabama

COUNTY OF Madison

I, JENI BATT, a notary public in and for said county in said state, hereby certify that James Blair, whose name as CEO of MADISON COUNTY COMMUNICATIONS DISTRICT, a \*see below, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said district on the day the same bears date.

\*Public entity of the State of Alabama

Given under my hand and official seal this 18<sup>th</sup> day of April, 2012.



Jeni Batt  
Notary Public  
My Commission Expires: 10-19-13