COUNTY COMMISSION

BALDWIN COUNTY
312 Courthouse Square, Suite 12
Bay Minette, Alabama 36507
(251) 580-2564
(251) 580-2500 Fax
agary@baldwincountyal.gov
www.baldwincountyal.gov

ANU GARY
Records Manager

MONICA E. TAYLOR
Assistant Records Manager

February 5, 2016

Chief Ken Wright
Perdido Beach Volunteer Fire Department
8888 Escambia Avenue
Perdido Beach, Alabama 36530

RE: Agreement Regarding Baldwin County Interoperability Communications System

Dear Chief Wright:

Please find enclosed a **fully executed copy** of the *Agreement Regarding Baldwin County Interoperability Communications System for Volunteer Fire Department* approved during the December 15, 2015, Baldwin County Commission meeting between the Commission and Perdido Beach Volunteer Fire Department.

If you have any questions or comments, please do not hesitate to contact Brian Peacock, Communications and Information System Director, at (251) 580-2598.

Sincerely,

ANU GARY, Records Manager
Baldwin County Commission

AG/met Item BE2

cc: Brian Peacock

ENCLOSURE

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BY: ..... ab

AGREEMENT REGARDING
BALDWIN COUNTY INTEROPERABILITY COMMUNICATIONS SYSTEM
FOR VOLUNTEER FIRE DEPARTMENT

This Agreement Regarding Baldwin County Interoperability Communications System for Volunteer Fire Department ("Agreement") is entered into as of the date of execution of this Agreement by the Chairman of the Baldwin County Commission by and between Baldwin County, Alabama, by and through the Baldwin County Commission, a political subdivision of the State of Alabama (the "Baldwin County Commission"), and Perdido Beach Volunteer Fire Department (the "Perdido Beach VFD") as and subject to the terms and conditions set forth below.

WITNESSETH:

Section 1. Purpose:

This Agreement establishes the permission, guidelines and requirements for the use of the Baldwin County Interoperability P25 700 MHz (sometimes referred to as the "System") by the Perdido Beach VFD.

Section 2. Authority:

Participation in this Agreement and permission to use the System requires the approval and authorization of the Baldwin County Commission and shall be managed by the Baldwin County Communications and Information Systems Department ("CIS") and the Baldwin County Commission Interoperability Communications Advisory Committee, as authorized by the Baldwin County Commission.

Section 3. Applicability:

This Agreement authorizes the use of Baldwin County Interoperability channels and radio frequencies by Perdido Beach VFD as approved and authorized by the Baldwin County Commission, in its discretion, based on recommendations by the Baldwin County Interoperability Advisory Committee. The Baldwin County Commission reserves the right to add or remove approved and authorized agencies, entities or individuals.

Section 4. Understanding:

A. The Baldwin County Commission by and through the Baldwin County Communication and Information Systems Department ("CIS") shall do the following:

1. Manage and maintain proper licenses for the use of the interoperability frequencies.

2. Manage and maintain an accurate database of federal, state, county and local government entities or agencies that have been approved and authorized to use the System.

3. Issue any talk groups, channels or subscriber IDs that will be used on the System.

4. The Baldwin County Commission shall have the authority to monitor proper usage of the Interoperability talk groups and channels, although the Baldwin County Commission and its departments, committees or employees shall not be liable for any content or misuse of the System.

5. Maintain the System's operations, functionality and upgrades, as deemed necessary for optimal performance of the System.

B. Perdido Beach VFD shall do the following:

1. Participate in Baldwin County communications planning for countywide communications interoperability as may be required by the Baldwin County Commission, by and through CIS.

2. Manage the proper usage of interoperability frequencies, talk groups and channels by its employees, ensuring compliance with any Federal, State, County or Local laws, ordinances and rules.

3. Utilize the interoperability frequencies, talk groups and channels hereby authorized for their intended purpose of coordination between emergency first responders.

4. Use the interoperability frequencies, talk groups and channels for on-scene incident communications, as established by the on-scene Incident Commander and governed by any Federal, State, County or Local laws, ordinances or rules.

5. Implement radio communications procedures consistent with National Incident Management Systems (NIMS) and Incident Command Systems (ICS).

6. Ensure that agency mobile, portable and base radios intended for use by the agency for interoperability communications on the 700 MHz radio system are properly configured for the proper interoperability frequencies, talk groups and channels, as outlined by the Baldwin County Commission by and through CIS, and ensure that such radios are properly maintained and upgraded.

Section 5. Procedures:

The Baldwin County Commission reserves the right to adopt, change or amend any policies, procedures or rules related to the use of the System, and/or any provision of this Agreement, as

deemed necessary, in its discretion, with or without the consent or approval of the Perdido Beach VFD or any other entities or agencies. Such change or amendment shall become effective immediately upon its adoption and approval by the Baldwin County Commission. Such change or amendment shall be provided to the Perdido Beach VFD in writing. In the event the VFD disagrees or objects to such change or amendment, the VFD shall have the right to terminate this Agreement in accordance with Section 7.

Section 6. Compensation:

The Perdido Beach VFD shall pay to the Baldwin County Commission the sum of $10.00 per month for each radio or communication device activated on the System. The CIS Department will verify on a monthly basis the number of radio or communication devices activated on the System for Perdido Beach VFD. Payments shall be made on or before the February 1 of each year for all sums accrued each month through and including the date of payment. At the termination or expiration of this Agreement, all outstanding amounts owed shall be paid to the Baldwin County Commission within ninety (90) days of such expiration or termination. The Perdido Beach VFD shall be responsible for all costs of operation for each radio or communication device activated and/or used on the System, including, but not limited to, acquisition costs and costs associated with activation or deactivation of individual radios or communication devices.

Section 7. Term and Termination:

This Agreement shall be for a term of ten years, unless otherwise terminated by the parties as set forth herein. Any party may cancel or terminate this Agreement by giving ninety (90) days written notice of such termination to the other party. In the event of such termination, the VFD shall pay the fees incurred through the date of termination, and the Perdido Beach VFD shall bear the cost of separating from the System.

Section 8. Disclaimer of Warranties:

The Baldwin County Commission in no way warrants or guarantees, and expressly disclaims any warranties or guarantees for or related to, the services and/or equipment installed and/or serviced under this Agreement. Reasons that may affect, interrupt, cause failure or otherwise limit the use of such services and/or equipment include, but are not limited to, the following: a power outage, a fiber optic line cable being cut, equipment not configured properly, and/or any event above and beyond the Baldwin County Commission's reasonable control, including, without limitation, any government actions, fire, work stoppages, civil disturbances, interruptions of power or communications to Baldwin County or any facilities used by or for Baldwin County, failure of internet, hosting, telecommunications, or other services to Baldwin County or facilities used by or for Baldwin County, natural disasters, acts of God, or acts of terrorism or war, or the lines not being compatible with the software and/or equipment used by the Perdido Beach VFD.

THE BALDWIN COUNTY COMMISSION MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF

MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OR ANY WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE OR ANY WARRANTY THAT THE SERVICES AND/OR EQUIPMENT WILL MEET THE REQUIREMENTS OF THE PERDIDO BEACH VFD. Without limiting the foregoing, the Baldwin County Commission does not warrant that the services and/or equipment will be without failure, delay, interruption, error, degradation of voice quality or loss of content, data or information. Neither Baldwin County nor its Commissioners, officers, directors, employees, representatives, affiliates, or agents will be liable for unauthorized access to Baldwin County's or the Perdido Beach VFD's transmission facilities or premises equipment or for unauthorized access to, alteration, theft or destruction of, data files, programs, procedures or information through accident, fraudulent means, or equipments or any other method, regardless of whether such damage occurs as a result of the Baldwin County's or its agent's or vendor's negligence. Statements and descriptions concerning the services and/or equipment are informational and are not given as a warranty of any kind.

The Baldwin County Commission does not warrant or guarantee that the information sent, relayed, carried or delivered through any third parties' networks/services will reach its destination or its correct address or recipient, or that the details of the recipient or sender are correct or accurate. Baldwin County shall not be liable for, and shall be excused from, any failure to deliver or perform, or for any delay in delivery or performance of services due to causes beyond its reasonable control.

Section 9. Hold Harmless:

A. Indemnity and Hold Harmless. To the fullest extent allowed by law, Perdido Beach VFD shall indemnify, defend and hold Baldwin County, its Commissioners, officers, directors, agents, employees and County Representatives (collectively referred to in Section 9 as "Baldwin County") harmless from and against any and all claims, demands, liabilities, damages, losses, judgments, costs, and expenses including, without limitation, attorneys' fees and costs, for any and all personal injury (including death) and property damage of any kind or nature whatsoever, incurred by or imposed upon Baldwin County or any County Representative, as a result of any entry upon or activity conducted by, or any act or omission of, Perdido Beach VFD or any Perdido Beach VFD representative, employee, agent, or subcontractor arising out of or related to this Agreement, including, but not limited to, the construction, maintenance, upgrade, repair or removal of any information or equipment from the property and/or facilities. Baldwin County does not and shall not waive any rights against the Perdido Beach VFD which it may have by reason of this indemnification and hold harmless agreement. This indemnification and hold harmless agreement by the Perdido Beach VFD shall apply to all damages, penalties and claims of any kind, regardless of whether any insurance policy shall have been determined to be applicable to any such damages or claims for damages.

B. Further Liability. In no event or way will Baldwin County, its Commissioners, officers, directors, or County Representatives be liable for any direct, incidental, indirect, special, punitive, exemplary or consequential damages, or for any other damages, including, but not limited to, personal injury, wrongful death, property damage, loss of data, loss of revenue or profits, or damages arising out of or in connection with the use or inability to use the services and/or the equipment installed and/or serviced under this Agreement. The limitations set forth herein apply to claims founded in all areas, including, but not limited, to breach of contract, breach of warranty, and product liability, and apply whether or not Baldwin County was informed of the likelihood of any particular type of damages.

Section 10. Legal Compliance:

The Perdido Beach VFD shall at all times comply with all applicable federal, state, county, local laws and regulations. The Perdido Beach VFD agrees to use the services and/or equipment installed and/or serviced under this Agreement only for lawful purposes. The Perdido Beach VFD will be responsible for any and all liability that may arise out of content transmitted by the Perdido Beach VFD to any person, whether authorized or unauthorized, using the services and/or equipment.

Section 11. Core Owners Agreements:

This Agreement shall be subject to the Alabama Inter-zone Core Owners Agreement or any other agreement, rules or regulations approved by the Baldwin County Commission as a member or participant of the Core Owners in the operation and maintenance of the state-wide communications system.

Section 12. Miscellaneous:

A. This Agreement shall not be construed more strictly against one party than against the others merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both Baldwin County Commission and the Perdido Beach VFD have contributed substantially and materially to the preparation of this Agreement.

B. This Agreement embodies the entire agreement and understanding of the parties, and there are no further or prior agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof.

C. This Agreement may not be modified in any manner other than by an agreement as specified herein.

D. This Agreement may be executed in any number or counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument. This Agreement may be delivered by facsimile transmission.

E. This Agreement shall be construed in accordance with and governed by the laws of the State of Alabama.

F. If any part, section, or subdivision of this Agreement shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Agreement, which shall continue in full force and effect notwithstanding such holding.

G. The headings or captions in this Agreement are for convenience only and shall not limit or otherwise affect the meaning hereof.

H. The Perdido Beach VFD's indemnity and hold harmless obligations under this Agreement shall survive expiration or termination of this Agreement.

BALDWIN COUNTY COMMISSION:

By: J. TUCKER DORSEY
Its: Chairman

Attest:
RONALD J. CINK
As: County Administrator/Budget Director

Perdido Beach VFD:

By: Ken Wright
Its: Fire Chief.

STATE OF ALABAMA

COUNTY OF BALDWIN

I, Monica E. Taylor, a Notary Public, in and for said County in said State, hereby certify that J. TUCKER DORSEY, as Chairman of the Baldwin County Commission, and RONALD J. CINK, as County Administrator/Budget Director of the Baldwin County Commission, whose names are signed to the foregoing instrument and who are known to me, acknowledged before me and on this day that, being informed of the contents of said instrument, they, as such Chairman and County Administrator/Budget Director of the Baldwin County Commission, and with full authority, executed the same voluntarily on the day the same bears date for and as an act of said Baldwin County Commission.

Given under my hand and seal this the 2nd day of February, ~~2015~~ 2016.

Monica E. Taylor
Notary Public, Baldwin County, Alabama
My Commission expires: My Commission Expires 09/05/2016

STATE OF ALABAMA

COUNTY OF Baldwin

I, Donna L Thompson, a Notary Public, in and for said County in said State, hereby certify that Ken Wright, as Fire Chief of the Perdido Beach Volunteer Fire Department, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me and on this day that, being informed of the contents of said instrument, he/she, as such Fire Chief of the Perdido Beach Volunteer Fire Department, and with full authority, executed the same voluntarily on the day the same bears date for and as an act of said Volunteer Fire Department.

Given under my hand and seal this the 19th day of January, 2016

Donna L. Thompson
Notary Public, Baldwin County, Alabama

My Commission expires: December 19, 2017