



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

October 3, 2017

Ms. Erica K. Kemmer
Assistant Attorney General
Poarch Band of Creek Indians
5811 Jack Springs Road
Atmore, Alabama 36502

**RE: Memorandum of Understanding - Baldwin County Commission and Poarch
Band of Creek Indians**

Dear Ms. Kemmer:

Please find enclosed a **fully executed copy** of the *Memorandum of Understanding* approved during the June 21, 2016, Baldwin County Commission, between the Baldwin County Commission and the Poarch Band of Creek Indians regarding the shared use of certain communications facilities or equipment owned by the Baldwin County Commission for the purpose of supporting an interoperable P-25 public safety communications system. This *Memorandum of Understanding* will be effective for a term of two (2) years.

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

Sincerely,

ANU GARY, Administration/Records Manager
Baldwin County Commission

AG/met Item BE3

cc: Brian Peacock

ENCLOSURE



*Poarch Creek Indian
Tribal Council Resolution*

TCR 2016-101

**RESOLUTION TO APPROVE MEMORANDUM OF UNDERSTANDING
WITH BALDWIN COUNTY COMMISSION REGARDING USE OF
COMMUNICATIONS INFRASTRUCTURE**

WHEREAS, the Poarch Band of Creek Indians (the "Tribe") is a federally recognized Indian tribe organized pursuant to 25 CFR, Part 83;

WHEREAS, the Tribal Council is authorized to transact business on behalf of the Tribe and to appropriate and distribute resources needed to conduct the necessary activities and functions of a Tribal government;

WHEREAS, the Poarch Band of Creek Indians Fire Department has the authority and responsibility to provide fire protection services to all of the Tribe's property;

WHEREAS, the Fire Department desires to utilize certain communications facilities or equipment owned by the Baldwin County Commission ("BCC") for the purpose of supporting an interoperable P-25 public safety communications system;

WHEREAS, the Tribe and the BCC desire to enter into a Memorandum of Understanding regarding the shared use of certain communications infrastructure;

WHEREAS, the Tribe has negotiated with the Baldwin County Commission and the BCC has already approved the MOU attached hereto as "Exhibit A"; and


WHEREAS, the Tribal Council wishes to approve the Memorandum of Understanding with the Baldwin County Commission attached hereto as "Exhibit A".

NOW THEREFORE BE IT RESOLVED that the Tribal Council hereby approves the Memorandum of Understanding between the Baldwin County Commission and the Poarch Band of Creek Indians relating to shared use of communications infrastructure, subject to the terms and conditions of the MOU, hereto attached as "Exhibit A"; and

BE IT FURTHER RESOLVED the Tribal Chair is authorized to execute the Memorandum of Understanding and any other documents relative to this transaction. In the event of the Tribal Chair's absence, the Vice-Chairman is authorized to execute the documents relative to this transaction.

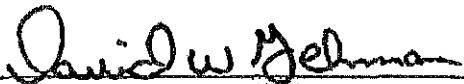
APPROVAL

I, the Chair of the Poarch Band of Creek Indians, hereby affix my signature to the resolution authorizing it to become official this 14th day of July, 2016.


Stephanie A. Bryan, Tribal Chair
Poarch Band of Creek Indians

CERTIFICATION

I, the Secretary of the Poarch Band of Creek Indians, certify that the foregoing is a true extract from the minutes of the Tribal Council meeting of the Poarch Band of Creek Indians, comprised of nine members with 8 in attendance on the 14th day of July, 2016, and that the above is in conformity with the provisions therein adopted by a vote of 7 in favor, and 0 against, 0 abstentions.


David W. Gehman, Tribal Secretary
Poarch Band of Creek Indians

**MEMORANDUM OF UNDERSTANDING BETWEEN THE BALDWIN COUNTY
COMMISSION AND THE POARCH BAND OF CREEK INDIANS REGARDING THE SHARED
USE OF CERTAIN COMMUNICATIONS INFRASTRUCTURE**

This Memorandum of Understanding ("MOU") is made and entered into by and between the Baldwin County Commission, a political subdivision of the State of Alabama and the Poarch Band of Creek Indians (including any Tribal owned or controlled entity, including, but not limited to, Tribal departments, enterprises or authorities), a federally recognized Indian Tribe. The Baldwin County Commission (hereinafter "BCC") and the Poarch Band of Creek Indians (hereinafter "PBCI") are sometimes referred to collectively as "Parties" or individually as "Party". This MOU shall become effective on the date it is executed by the latter of BCC and PBCI, hereinafter referred to as the "Effective Date."

WITNESSETH:

WHEREAS, BCC and PBCI desire to enter into an MOU regarding the shared use of certain communications facilities or equipment owned by BCC for the purpose of supporting an interoperable P-25 public safety communications system.

FOR AND IN CONSIDERATION of the terms and mutual covenants contained herein, the sufficiency of which are hereby acknowledged, BCC and PBCI hereby agree as follows:

1. Purpose

The purpose of this Shared Use MOU is to document the relationship between the Baldwin County Commission (BCC) and the Poarch Band of Creek Indians (PBCI) regarding the use of BCC's P-25 Motorola SmartZone switch by PBCI. Benefits include cost savings to PBCI over procuring, maintaining, and upgrading a separate P-25 core switch, as well as mutual benefits to both counties in roaming seamlessly between the two counties, interoperability, and improved geographical coverage for public safety agencies served by each communications district. Some limitations of sites and subscribers will apply.

2. Independence of Operations

Each party to this MOU will maintain its own identity in providing P-25 radio services to its subscribers. Each organization is separately responsible for establishing its own policies and financing its own activities.

3. Methods of Cooperation

- A. **Connection to System--** BCC and PBCI will establish a technical means for PBCI's Motorola P-25 radio site to operate utilizing BCC's Motorola SmartZone P-25 switch. PBCI agrees to provide a reliable network connection (microwave, fiber, wireless, common carrier and/or other means) between the PBCI system and the BCC system. BCC will cooperate in order to facilitate installation of this link.
- B. **Talk Groups--** Both BCC and PBCI will take appropriate steps to ensure that no unauthorized talk groups are programmed into radios from the other's respective sites. Both organizations will work to define and document interoperable talk groups that will be programmed into radio on both zones to facilitate interoperability for disaster responses. 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.
- C. **Upgrades--** Upgrades are defined as changes made to the communications system to provide improvements to existing features, provide legal or regulatory compliance, or ensure serviceability

of equipment. Enhancements may include any additions or modifications to the communications system that allow advanced functionality. The BCC plans and oversees upgrades and enhancements as needed. The PBCI agrees to discuss, cooperate and coordinate with the BCC with regard to scheduling for any future upgrades in order to ensure the ongoing compatibility of system components and infrastructure owned by PBCI.

- D. **Future Costs for Communications System Upgrades and/or Software Upgrade Agreements (SUAI)**
– The PBCI acknowledges that the BCC may, to the extent it deems necessary, affect upgrades to the its communications system, which communications sites and infrastructure are wholly-owned and operated by the BCC. These upgrades may be performed in order to achieve certain standards as required for the communications system to attain any technological advancements which are available at the time of the upgrade. These communications system upgrades may be performed as a capital investment and/or as part of an ongoing contractual arrangement with a vendor, which may also be referred to as a Motorola Software Upgrade Agreement (SUAI). If, at any time, the BCC undertakes an upgrade of any part of the its communications system, which communications sites and infrastructure are owned and operated by the BCC, the PBCI will, at its own expense, pay its portion of the costs associated with any upgrades to its communications sites and/or infrastructure, as required to continue affiliation with the communications system. The PBCI's failure to participate in such upgrades may require the PBCI to terminate their use of the BCC communication system.
- E. **Compliance with Policy and Procedures** – PBCI will abide by and comply with all current BCC resolutions, rules, policies, guidelines, procedures, and protocols governing the operation and use of the communications system that are in effect at the time of the execution of this Agreement. PBCI will abide by and comply with all future BCC resolutions, rules, policies, guidelines, procedures, and protocols governing the operation and use of the communications system which shall be provided to the PBCI at least 90 days in advance of implementation of said resolutions, rules, policies, guidelines, procedures, and protocols. The PBCI will properly attend to and comply with notifications and requirements of BCC, including but not limited to, invoicing and bill payment matters, maintenance and service of the PBCI-owned and operated communications sites, improper usage of the communications system, termination of services, etc.

4. Compensation

In consideration for use of BCC's P-25 switch, the PBCI shall pay to the BCC the sum of \$10.00 per month for each radio or communication device activated on the communications system. The BCC CIS Department will verify on a monthly basis the number of radio or communication devices activated on the communications system for the PBCI. 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 BCC within ninety (90) days of such expiration or termination. The PBCI shall be responsible for all costs of operation for each radio or communication device activated and/or used on the communications system, including, but not limited to, acquisition costs and costs associated with activation or deactivation of individual radios or communication devices.. BCC's current P-25 core switch was provided to BCC via a grant from the Department of Homeland Security, with BCC paying the required matching funds. if prior to the end of the term the Parties determine that BCC has incurred substantial out-of-pocket expenses solely attributable to PBCI's use of BCC's P-25 core switch, pricing and the term of this Agreement may be subject to renegotiation. In exchange for use of BCC's P-25 switch, PBCI agrees to license and install an additional Dynamic Dual Mode channel in BCC's Rabun RF site. At end of fourth year, the hardware and license of said channel shall belong to PBCI.

5. Term of MOU

The initial term of this MOU shall be for two (2) years from _____, and the term shall automatically renew for subsequent two (2) year terms if not cancelled by either party on or before sixty (60) days prior to expiration of the initial two year term or any subsequent renewal period thereafter.

6. Permits

The obligations of the Parties under this MOU are expressly subject to and conditioned upon the satisfaction of the following conditions: 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 MOU. 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.

7. Assignment

The Parties shall not have the right to assign this MOU 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.

8. 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 MOU, including, without limitation, all necessary replacements and upgrades. The Facilities and Equipment include:

- a. The P-25 switch core which is to be maintained, repaired and /or upgraded by BCC;
- b. The tower located behind PBCI fire station #2 which is to be maintained, repaired and /or upgraded by PBCI;
- c. All equipment located on the tower located behind PBCI fire station #2 which is to be maintained, repaired and /or upgraded by PBCI; and
- d. Any and all equipment installed by PBCI at BCC's Rayburn RF site for the addition of the Dynamic Dual Mode channel which is to be maintained, repaired and /or upgraded by PBCI.
- e. The PBCI will be responsible for the installation, maintenance, repair and upgrades to the connection between BCC and PCBI, whether it be microwave, leased line, etc.

9. Compliance by the Parties

The Parties shall comply with all applicable 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 applicable FCC and/or OSHA radio frequency rules and regulations as they pertain to the Parties individually owned equipment.

10. Limitation of Liability, Disclaimer of Warranties and Indemnity

- A. Disclaimer of Warranties. BCC in no way warrants or guarantees the services and/or equipment installed and/or serviced under this MOU. 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 BCC's reasonable control, including without limitation, any government actions, fire, work stoppages, civil disturbances, interruptions of power or communications to BCC or any facilities used by or for BCC, failure of internet, hosting, telecommunications, or other services to BCC or facilities used by or for BCC, 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 PBCI. BCC 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. BCC 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 BCC's reasonable control.
- B. Failure to Supply – Neither the BCC nor its Commissioners, officers, directors, agents, employees, or representatives, as the case may be, will be liable for delays or failures in performing any services, supplies or other obligations hereunder to the extent arising out of or resulting from failure to supply or perform any services. Although the BCC shall endeavor to guard against any loss or damages to the PBCI and/or any user as a result of the failure to supply or perform services, neither the BCC nor its Commissioners, officers, directors, agents, employees, or representatives will be responsible for any such failure, or other act(s) or omission(s). **ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THE PARTIES AGREE THAT THE BCC WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT OR THE PERFORMANCE OF SERVICES BY THE BCC PURSUANT TO THIS AGREEMENT.** To the extent available under the laws of the State of Alabama, the PBCI agrees to hold harmless the BCC, its Commissioners, officers, directors, agents, employees, or representatives, against any claim made by any said individual, agent, employee, contractor or third party, and against all loss, damage, costs and expenses they, or any of them suffer, incur or are put to that is attributable to the supply or the failure to supply any services, connection, signal, transmission or coverage to the PBCI.
- C. Indemnity and Hold Harmless. PBCI shall indemnify, defend and hold BCC, its Commissioners, officers, directors, agents, employees, and County Representatives (collectively referred to as "BCC") harmless from and against any and all claims, demands, liabilities, damages, losses, judgements, costs, and expenses, including without limitation, attorneys' fees, for any and all personal injury and property damage of any kind, that results from any act, conduct, or omission by PBCI, or its agents, officers, or employees.
- D. Further Liability. In no event or way will the BCC, its Commissioners, officers, directors, county agents and employees 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 the BCC was informed of the likelihood of any particular type of damages.

E. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR PUNITIVE DAMAGES.

11. Termination: Removal of Facilities

Either party may terminate this MOU, with or without cause, by giving thirty (30) days' advance, written notice to the other party. Upon cancellation, revocation, termination or expiration of this MOU, 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 MOU shall extend to and bind the successors and assigns of the parties hereto, consistent with Section 7 hereof.

13. Notices

All notices, demands, requests, consents, and approvals desired, necessary, required or permitted to be given pursuant to the terms of this MOU 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.

BCC: Baldwin County Commission
312 Courthouse Square
Bay Minette, AL 36507
Attn: _____

PBCI: The Poarch Band of Creek Indians
5811 Jack Springs Road
Atmore, AL 36502
Attn: LEGAL DEPARTMENT

14. Severability

In the event any one or more of the provisions contained in this MOU 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 MOU shall be continued as if such invalid, illegal, or unenforceable provisions had never been contained herein. 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 MOU are for convenience of reference only and do not affect any provision of this MOU.

15. Entire MOU

This MOU and the documents attached hereto constitute the full and complete MOU between the Parties hereto with respect to the subject matter hereof, and said Parties shall not be bound by any statement, special condition or representations not herein expressed. No alteration or amendment to this MOU by the Parties hereto shall be effective unless in writing, signed by the Parties, and by reference incorporated into this MOU. 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 BCC and PBCI agree with such modification to take advantage of technological advancements or to overcome technical issues that may arise. Therefore, this MOU will not need to be modified to implement such modifications, as long as the overall intent and scope of the project are followed, the intent and scope of the project are followed and the changes do not substantially burden the resources of either Party. This MOU, 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 MOU.

17. 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 MOU, the prevailing party shall be entitled to recover from the other party court costs including attorney fees. Nothing contained in this Agreement or in any related documents shall be construed as a waiver by the Poarch Band of Creek Indians (the "Tribe") of sovereign immunity from unconsented lawsuits or as consent by the Tribe to the bringing of any action against the Tribe, its officers, agents, employees, departments or business entities or enterprises. Nothing in this Agreement shall be construed or deemed to provide recourse against any Tribal government assets. Nothing contained in this Agreement or in any related documents shall be construed as a waiver by the BCC of immunity from unconsented lawsuits or applicable limitations of liability under federal or state law or as consent by the BCC to the bringing of any action against the BCC, its Commissioners, officers, directors, agents, employees, or representatives. Nothing in this Agreement shall be construed or deemed to provide recourse against any BCC assets.

18. Time is of the Essence

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

19. No Third Party Beneficiaries

It is the intent of the Parties to this MOU that they be the only parties to the MOU and to expressly exclude third party beneficiaries. Nonparties to the MOU may not claim benefits under the MOU. If the PBCI enters into any verbal or written agreement with any third party for maintenance and/or services related to its communications system, the BCC will not be a party to that agreement. The PBCI does not represent the BCC and cannot make commitments on behalf of the BCC.

20. Future Upgrades.

Notwithstanding any other provision of this Agreement, the PBCI will continue to own, or maintain lease agreements, and operate its wholly-owned communication sites. The PBCI acknowledges that it will be responsible for participation in future upgrades for any hardware and/or software associated with any such upgrade(s) or improvement(s), such that it is advisable for the PBCI to consider participation in Motorola's Software Upgrade Agreement (SUAII) which is recommended by the BCC. In the event the PBCI fails to perform such upgrades or improvements, the PBCI hereby acknowledges that the performance of its system and equipment will be affected.

21. Alabama Inter-zone Core Owners Participation Agreement.

The PBCI and the BCC acknowledge and agree that all terms and conditions of this Agreement shall be subject to the Alabama Inter-zone Core Owners Participation Agreement with an effective date of April 1, 2015, as the same may be amended from time to time, to which the BCC is a party.

22. Licenses, Agreements, etc.

The PBCI and the BCC acknowledge and agree that this Agreement shall be subject to and conditioned upon all software license agreements, license agreements, user agreements, covenants, conditions, agreements, terms and conditions set forth in any agreements between the BCC and any other party, as the same may be amended from time to time, including, but not limited to, all agreements with Motorola.

23. Additional Parties to MOU

Upon mutual agreement of both the BCC and PBCI, an additional party or parties may be added to this MOU, 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.

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

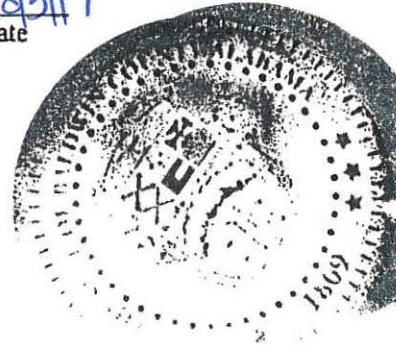
BALDWIN COUNTY, ALABAMA

BY: J. Tucker Dorsey /10/31/17
J. Tucker Dorsey, Chairman /Date

Christopher Elliott

ATTEST:

Ronald J. Cink /10/31/17
Ronald J. Cink, County Administrator /Date



POARCH BAND OF CREEK INDIANS

BY: Stephanie A. Bryan
7.14.16 /Date

STATE OF ALABAMA
COUNTY OF BALDWIN

I, Anu Gary, a Notary Public in and for said county in said state, hereby certify that ~~J. Tucker Dorsey~~, whose name as Chairman of the Baldwin County Commission, and ~~Ronald J. Cink~~, whose name as County Administrator of the Baldwin County Commission, a political subdivision of the State of Alabama, are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of such instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of said commission on the day the same bears date.

Given under my hand and official seal this 3rd day of October, 2016.

[Notarial Seal]

Notary Public: Anu Gary
My Commission Expires: _____

My Commission Expires:
October 12, 2019



STATE OF ALABAMA
COUNTY OF Escambia

I, Tawana M. McGhee, a Notary Public in and for said county in said state, hereby certify that Stephanie A. Bryan, whose name as Tribal Chair of the Poarch Band of Creek Indians, 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 Tribe on the day the same bears date.

Given under my hand and official seal this 14 day of July, 2016.

[Notarial Seal]

Notary Public: Tawana M. McGhee
My Commission Expires: April 6, 2017

