



**COUNTY COMMISSION
BALDWIN COUNTY**

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May 31, 2018

The Honorable Karen Wilson
Mayor
City of Fairhope
Post Office Drawer 429
Fairhope, Alabama 36533

RE: Memorandum of Understanding between Baldwin County Commission, City of Fairhope and the Fairhope Volunteer Fire Department

Dear Mayor Wilson:

Enclosed is a **fully executed original** *Memorandum of Understanding (MOU)* approved during the May 2, 2017, Baldwin County Commission meeting between the Commission, the City of Fairhope, and the Fairhope Volunteer Fire Department regarding the shared use of certain communications infrastructure. The term of this *MOU* shall begin upon execution of this *MOU* by both parties, and the term shall end on January 31, 2025, unless the *MOU* is renewed or extended by mutual agreement of the parties or terminated by the parties as set forth herein.

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 BD1

cc: Brian Peacock

ENCLOSURE

**MEMORANDUM OF UNDERSTANDING BETWEEN THE BALDWIN
COUNTY COMMISSION, THE CITY OF FAIRHOPE, AND THE FAIRHOPE
VOLUNTEER FIRE DEPARTMENT 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 (hereinafter "BCC"), and the City of Fairhope, Alabama ("COF"), a municipal corporation, both political subdivisions of the State of Alabama, and The Fairhope Volunteer Fire Department, Inc., ("FVFD") an Alabama corporation (BCC, COF and FVFD are sometimes referred to collectively as "Parties" or individually as "Party"). COF and FVFD shall sometimes be referred to jointly in this agreement as "FVFD/COF." This MOU shall become effective on the date it is executed by the latter of BCC, FVFD and COF, hereinafter referred to as the "Effective Date."

WITNESSETH:

WHEREAS, BCC, FVFD and COF 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 (sometimes referred to as "system", "P-25 system" or "BCC system").

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

1. Purpose

The purpose of this Shared Use MOU is to document the relationship between the Baldwin County Commission (BCC), The Fairhope Volunteer Fire Department, Inc. (FVFD) and the CITY OF FAIRHOPE (COF) regarding the use of BCC's P-25 Motorola SmartZone switch by FVFD and COF. Benefits include cost savings to FVFD and COF over procuring, maintaining, and upgrading a separate P-25 core switch, as well as mutual benefits to both parties in roaming seamlessly between the two areas, 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

BCC, FVFD and COF will establish a technical means for FVFD's and COF's Motorola P-25 radio site to operate utilizing BCC's Motorola SmartZone P-25 switch. FVFD and COF agree to provide a reliable network connection (microwave, fiber, wireless, common carrier and/or other means) between the FVFD and COF system and the BCC system. BCC will cooperate in order to facilitate installation of this link.

BCC, FVFD and COF will take appropriate steps to ensure that no unauthorized talk groups are programmed into radios from the other's respective sites. The parties 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 all parties will work to develop procedures and documentation to assure these goals.

4. Terms

- A. In consideration for use of BCC's P-25 switch, FVFD and COF agree to pay BCC \$0.00 up-front payment to connect the new FVFD/COF RF site to the County's P-25 switch for voice-only service for the term of this MOU. In exchange for use of BCC's P-25 switch, FVFD and COF agree to license and install an additional Dynamic Dual Mode ("DDM") channel in BCC's Spanish Fort and Magnolia Springs RF sites. As additional consideration in exchange for use of BCC's P-25 switch and BCC maintaining FVFD/COF's new RF site, FVFD and COF agree that, at end of third year from the purchase date of the hardware by the COF or the FVFD, all hardware of the RF site, the DDM channels installed at BCC's Spanish Fort and Magnolia Springs RF sites and license of said channels shall belong to the Baldwin County Commission and its P25 system, and FVFD and COF shall execute any and all documents deemed necessary to effect such transfer. BCC shall have the right to charge the sum of \$10.00 per month as user fees to COF and FVFD for each radio or communication device active on the communication system for the COF and FVFD, subject to any policies, procedures, rules and regulations adopted by BCC. The BCC reserves the right to adopt, change or amend any policies, procedures, rules or regulations related to the use of BCC's P-25 switch or System, in its discretion, with or without the consent or approval of the COF, FVFD or any other entities or agencies. Such adoption, change or amendment shall become effective immediately upon its approval by the BCC. BCC shall have the right, in its discretion, without any further consent by the parties, to increase or decrease the amount of user fees charged to COF and FVFD, which shall become effective on the first day of the month following written notice to the COF and the FVFD. In the event the COF or FVFD object to such increases in user fees, the COF or FVFD shall have the right to terminate this MOU in accordance with Section 4.B. of this MOU. The BCC CIS Department will verify on a monthly basis the number of radio or communication devices activated on the communication system for the COF and FVFD. Payment shall be made on or before February 1 of each year for all services accrued each month through and including the date of payment. The COF and FVFD shall be responsible for all costs of operation of each radio or communications device activated and used on the communication system, including, but not limited to, acquisition cost and cost associated with activation or deactivation on individual radios or communication devices and all upgrades associated therewith.
- B. In the event (1) the user fees or rates charged by the BCC for the use of the BCC system are increased above the original amount charged as set forth in Section 4.A. of this MOU, and the COF or the FVFD elect to terminate this MOU; or (2) the parties fail to reach an agreement on any renewals or extensions of the term of this MOU; or (3) the term or any renewals or extensions of this MOU expire or the MOU is terminated or cancelled; then, in any one of those events, the hardware on the Fairhope RF site only which was transferred to the BCC pursuant to Section 4.A. above shall revert back to the COF and the FVFD, respectively, and the COF and FVFD shall pay to the BCC, as reimbursement, any and all payments, costs and expenses incurred by the BCC pursuant to this MOU, including, but not limited to, Motorola Software Update Agreement II ("SAUII") renewals and fees, maintenance, repairs, costs, expenses, updates, and license fees paid by the BCC during the term of this MOU, and any extensions or renewals thereof. The COF and the FVFD shall separate from the BCC's P-25 system.

5. Term of MOU

The term of this MOU shall begin upon execution of this MOU by both parties, and the term shall end on January 31, 2025, unless the MOU is renewed or extended by mutual agreement of the parties or terminated by the parties as set forth herein.

6. Permits

The obligations of the Parties under this MOU 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 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. There will be one exception to this "no assignment" provision in that FVFD will be allowed to assign its rights and duties in the Agreement to COF.

8. Maintenance of Facilities and Equipment

BCC agrees to be responsible for the maintenance cost of all RF equipment, and FVDF/COF agrees to be responsible for the maintenance cost of all facility maintenance to include, but not limited to, UPS, Generator, Commercial Power, environmental equipment and tower.

9. 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.

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 COF. 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 our reasonable control.
- B. Indemnity and Hold Harmless. FVFD and COF shall indemnify, defend and hold BCC, its Commissioners, officers, directors, agents, employees and County Representatives (collectively referred to in this Section 10.B. as "BCC") harmless from and against any and all claims, demands, liabilities, damages, losses, judgments, costs, and expenses including, without limitation, attorneys' fees, for any and all personal injury (including death) and property damage of any kind or nature whatsoever, incurred by or imposed upon BCC or any County Representative, as a result of any entry upon or activity conducted by, or any act or omission, by FVFD or COF or any FVFD or COF representative, employee, agent, or subcontractor arising out of providing the subject services, including, but not limited to, the construction, maintenance, upgrade, repair or removal of any information or equipment from the property and/or facilities, except for those claims, costs, losses, expenses, demands, actions, or causes of action which arise solely from the willful misconduct of the BCC, county agent, or employee. BCC does not and shall not waive any rights against the FVFD and/or COF which it may have by reason of this indemnification. This indemnification by the FVFD and COF 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.
- C. Further Liability. In no event or way will the BCC, 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 the BCC was informed of the likelihood of any particular type of damages.
- D. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR PUNITIVE DAMAGES.

11. Termination: Removal of Facilities

The Parties may terminate this MOU, with or without cause, by giving thirty (30) days' advance, written notice. 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. If FVFD/COF terminates the MOU, they will be responsible to reimburse BCC for all costs incurred by BCC pursuant to this MOU, subject to all terms and conditions set forth in Section 4.

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: _____

COF and FVFD: City of Fairhope
P. O. Drawer 429
Fairhope, AL 36533

Attn: _____

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 procedures, policies, rules and regulations adopted, changed or amended by the BCC, in its discretion, related to the BCC P-25 switch or System, 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. Except as expressly provided herein, 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 COF 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 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.

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.

20. Additional Parties to MOU

Upon mutual agreement of both the BCC, FVFD and COF, 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.

21. Alabama Interzone Core Owners Participation Agreement

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

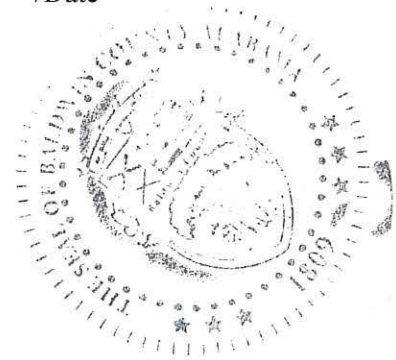
IN WITNESS WHEREOF, each of the parties has caused this MOU to be executed in duplicate originals by their duly authorized representatives on the respective dates entered below.

BALDWIN COUNTY, ALABAMA

BY: Frank Burt, Jr. /5/30/18
T. Christopher Elliott, Chairman /Date
Frank Burt, Jr.

ATTEST:

Ronald J. Cink /5/30/18
Ronald J. Cink /Date
As: County Administrator/Budget Director



CITY OF FAIRHOPE, ALABAMA

BY: Karin Wilson /4/26/17
Karin Wilson, Mayor /Date

ATTEST:

Lisa A. Hanks /4/26/17
Lisa A. Hanks, MMC /Date
City Clerk

FAIRHOPE VOLUNTEER FIRE DEPARTMENT, INC.

BY: Christopher R. Ellis /5/18/19
Christopher R. Ellis /Date
Fire Chief

STATE OF ALABAMA

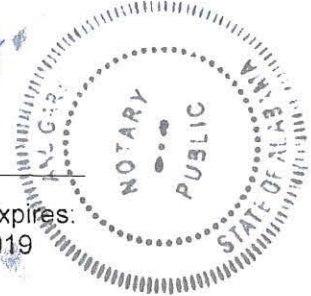
COUNTY OF BALDWIN

I, Anu Gary, a Notary Public in and for said county in said state, do hereby certify that ~~T. Christopher Elliott~~ Frank Burt Jr., 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 30th day of May, 2018.

(AFFIX SEAL)

Anu Gary
Notary Public
My Commission Expires: _____ My Commission Expires: October 12, 2019



STATE OF ALABAMA

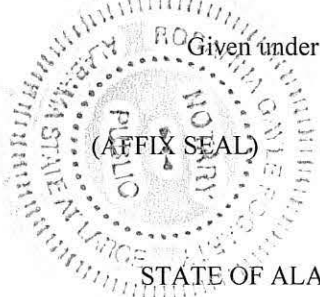
COUNTY OF BALDWIN

I, Rosanna Gayle Fogarty, a Notary Public in and for said county in said state, do hereby certify that Karin Wilson, whose name as Mayor of the City of Fairhope, 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, she, as such officer and with full authority, executed the same voluntarily for and as the act of said City of Fairhope on the day the same bears date.

Given under my hand and official seal this 26th day of April, 2017.

(AFFIX SEAL)

Rosanna Gayle Fogarty
Notary Public
My Commission Expires: April 11, 2020



STATE OF ALABAMA

COUNTY OF BALDWIN

I, Lisa A. Hanks, a Notary Public in and for said county in said state, do hereby certify that Christopher R. Ellis, whose name is signed to the foregoing instrument as Chief of the Fairhope Volunteer Fire Department, Inc. and who is known to me, acknowledged before me on this day, that being informed of the contents of said instrument, he as such officer and with full authority executed the same voluntarily on the day the same bears date on behalf of said corporation.

Given under my hand and official seal this 18th day of May, 2018.

(AFFIX SEAL)


Lisa A. Hanks
Notary Public
My Commission Expires: 8/28/2018



RESOLUTION NO. 2726-17

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF FAIRHOPE, ALABAMA, that the City Council hereby approves and authorizes Mayor Karin Wilson to execute a Memorandum of Understanding between the Baldwin County Commission, the City of Fairhope, and the Fairhope Volunteer Fire Department regarding the shared use of certain communications infrastructure owned by Baldwin County Commission for the purpose of supporting an interoperable P-25 public safety communications system.

Adopted on this 24th day of April, 2017



Karin Wilson, Mayor

Attest:



Lisa A. Hanks, MMC
City Clerk