

3B-2

Agenda Item #: _____

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: August 21, 2012

[] Consent [X] Regular
[] Ordinance [] Public Hearing

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to: deny a request of the Municipal Public Safety Communications Consortium (MPSCC) that Staff be directed to make reimbursements pursuant to Resolution 2002-0192 (Resolution) to municipalities utilizing the MPSCC's Law Enforcement Communications System (MPSCC System) for infrastructure and/or subscriber unit expenses.

Summary: MPSCC represents six cities which chose to implement a Law Enforcement Communications System (Harris-OpenSky) independent of the County's Public Safety Radio System (Motorola). Staff's concerns over the MPSCC System's ability to meet the requirements of the Resolution were made known prior to: 1) the MPSCC selecting its System (2001), 2) the State approval of OpenSky technology (2002), 3) the MPSCC executing a contract for its System, 4) the time at which the design of the MPSCC system was completed. Currently, five of the six cities are operational on the MPSCC System with the first becoming operational in 2009, another in 2010 and three others in 2012. Within the last months, interoperability has been achieved. It is Staff's position however, that MPSCC System expenses are not eligible expenses pursuant to FS 318.21, which is a State statute that regulates expenditure of \$12.50 radio funding. The Resolution's two criteria are: 1) interoperability with the County System, and 2) compliance with the requirements of FS 381.21. Throughout this process, the County has respected the cities' autonomy in their choice of a radio system, but with full notice of this issue. Denial of requests for reimbursement for MPSCC expenses were made as early as 2003. In 2007, the County Administrator advised the MPSCC that "if this matter is brought to the Board without a resolution to the technical matters, it will be with a strong recommendation from this office that the Board not direct Staff to reimburse the MPSCC System expenses under the resolution as it may jeopardize the County's future disbursement of \$12.50 monies to itself and other municipalities that have direct access to the County's system. This position is supported by an opinion from the County Attorney's Office." The MPSCC believes that Staff's eligibility criteria are arbitrary and inconsistent with the intent of the Board Resolution. The proposed termination of the \$12.50 Program and the MPSCC member's inaccessibility to future and accumulated balances has now caused the MPSCC to request the review be elevated to the Board. (FDO Admin) Countywide (JM)

Background & Policy Issues:

Continued on Page 3

Attachments:

1. Letter from Audrey Wolf, Director FDO to MPSCC dated July 11, 2012
2. Response from MPSCC to Audrey Wolf, Director FDO dated July 23, 2012

Recommended by: Audrey Wolf 8/8/12
Department Director Date

Approved by: [Signature] 8/21/12
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2013	2014	2015	2016	2017
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____
Is Item Included in Current Budget:	Yes _____	No _____			

Budget Account No: Fund _____ Dept _____ Unit _____ Object _____

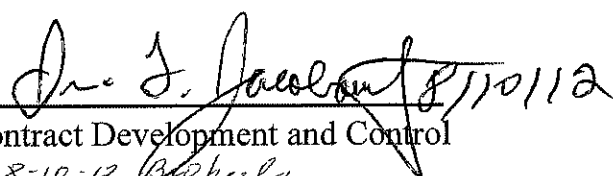
B. Recommended Sources of Funds/Summary of Fiscal Impact: If the Board were to direct Staff to reimburse the MPSCC for its expenses, the reimbursement would be in estimated at \$1,257,402 in FY 13 and \$180,000 annually thereafter. While the \$12.50 Fine and Forfeiture collections are budgeted for this purpose, Staff is recommending that reimbursements be made from ad valorem funds in lieu of the \$12.50 Fine and Forfeitures funds so that the County's ongoing receipt of \$12.50 funds is not jeopardized but still under all terms of the Resolution but for the requirement for compliance with the requirements of FS 318.21.

The Background and Policy Issues Section provides the additional details should the Board direct something other than the Staff's recommendation or the MPSCC's request.

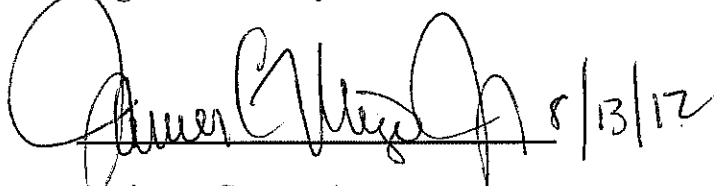
C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

 _____ OFMB	 _____ Contract Development and Control
SN 8/9/12 8/9/12 8/9/12	8-10-12 B. Wheely

B. Legal Sufficiency:



 Assistant County Attorney

C. Other Department Review:

Department Director

Background & Policy Issues (Cont'd)

In the 1990's, the County was in need of a countywide radio system which would address the coverage, capacity and functionality issues that had been identified by the Palm Beach County Sheriff's Office (PBSO), Palm Beach County Fire Rescue and Emergency Management (on behalf of emergency and public works departments). While in 1994, the cities were advised that the money allocated to the Sheriff was insufficient to support the municipalities' law enforcement communication needs, funding for the project was subsequently increased. With the input of the League of the Cities and the Criminal Justice Commission (predecessor to MPSCC) the system was designed to accommodate the cities' capacity requirements through either a hub, or direct connection – city choice. The County System was designed with that capacity and still today has the capacity to meet the municipal needs.

The County System as designed had eight (8) critical design features to address existing deficiencies of the former system and the new functionality identified by law enforcement and fire rescue personnel. The design features were as follows:

- Proposed countywide 95% (drive test verified 100%) outdoor talk back coverage,
- Proposed 95% (drive test verified 99.6%) medium building coverage in the unincorporated areas east of 20 Mile Bend as well as all municipalities using either PBSO or PBC Fire Rescue as its law enforcement or fire rescue provider,
- adequate capacity for projected growth of all law enforcement, fire rescue and public works agencies (Agencies) committed to utilizing the system through the Year 2013,
- adequate capacity for all municipal Agencies by way of hub or direct (full time users with a physical connection) or talk-group connections (part time users through common programming) providing for countywide interoperability,
- the critical functionality of emergency call utilizing a routinely maintained alias data base,
- ability to operate countywide in a non-trunked mode in the event of a failure of the system controller,
- a redundant infrastructure that includes the installation of multiple system controllers, multiple looped digital microwave system, simulcast/voted technology that provides for high reliability talk-in/talk-out,
- a robust regionalized mutual-aid system that provides for adequate outdoor portable communications for visiting public safety agencies with 800 MHz capabilities.

In 1997, the County concluded its planning for the Countywide 800 MHz System. It was the County's countywide system that was the basis for the County's ICP. At the time, the League of Cities, Criminal Justice Commission, and many municipalities including all that are currently active participants of the MPSCC, all supported the County's choice of a Motorola solution as the basis for the County's ICP as such a choice would seamlessly build on the Motorola infrastructure already existing in the municipalities, in Broward County, and at the State level –reducing the time by which all public safety agencies would become interoperable.

In 1999, the County passed a resolution (referred to as the "\$12.50 Resolution") by which the County would share with or disburse to municipalities, a portion of the \$12.50 monies collected; again for the purpose of expediting municipal interoperability. Palm Beach County is the only county with an ICP that chose to share its statutory collections. The State was definitive during the time leading up to the approval of \$12.50 Resolution that the county fund only be used for; 1) County owned and maintained equipment and 2) that all expenses needed to further the County's participation in the ICP – with the application of this direction being solely within the County's discretion. From time to time, the State provided additional guidance regarding expenditures, some at the request of the MPSCC, regarding disbursement of \$12.50 collections. The County used the correspondence prior to the approval of the \$12.50 Resolution to create the two conditions of the \$12.50 Resolution which needed to be met prior to disbursement; interoperability and eligible expenses. That same year, the County (through the countywide effort of the Communications Systems Operations and Policy Advisory Committee [CSPOAC]) established acceptable levels of interoperability. With the identification of eligible expenses and the establishment of interoperability standards, the basis for disbursements were set.

The County used correspondence received from the State after the approval of the \$12.50 Resolution to ensure the disbursement program was implemented within the State's guidelines and in some cases to broaden the expenses the County considered to be eligible. Other than the broadening of the expenses considered to be eligible, the program has been consistently implemented and the County's position regarding eligible expenses was made known prior to the municipalities participating in the MPSCC long before they made their system choices.

Background & Policy Issues (Cont'd)

In 2001, the MPSCC conducted an RFP for a system to implement amongst its participating municipalities. The County expressed its concerns regarding the functional ability of the Open Sky system to result in the same design parameters being met and provide the same functionality requirements that were the objectives of the County's ICP. In 2001, the MPSCC chose the M/A Com (now Harris) OpenSky System and requested that the County amend its ICP 2002. The MPSCC asked that the County amend its ICP to include the Open Sky technology representing that its system, when implemented, would:

- enhance channel utilization,
- possess numerous call features,
- possess expandable capacity,
- be compatible with the State mutual aid network,
- be fully interoperable with the County system through the interface component, and
- meet other requirements necessary for a fully functional countywide public safety communications system (*emphasis added*).

It was only because of these representations that the County Administrator agreed to transmit the ICP amendment to the State. Ultimately it is a combination of; 1) lesser system coverage, 2) lost functionality through the interface, and 3) lesser redundancy in system design which cause the MPSCC System to not meet the requirements for the County's participation in the MPSCC System. A strict interpretation of the statutory requirement would result in no disbursement to any municipality. However in light of the intent of the Resolution and consistent with the general guidance provided by the Department of Management Services (DMS), Staff defined County participation as municipal expenditures which will provide for coverage and full functionality at the field user level as implemented through compliance with ongoing operational requirements for implementing that functionality as those participating directly on the County's system, and extending/enhancing the County's system by providing for the same field functionality in the event of operational necessity or failure of the County's System's back-up. Attachment 1 to this item describes in detail the basis for the County's position. Attachment 2 is the MPSCC's most recent response to the County's position.

County Staff and the County Attorney's Office have consistently and repeatedly expressed their concerns over the MPSCC's system's eligibility to receive \$12.50 disbursements. Staff's position on eligibility was a result of series of decisions made by the MPSCC and its participating municipalities. The financial impact in terms of \$12.50 reimbursement were or should have been known to the municipalities in making this decisions and it as follows.

	Total Collected	Total Disbursed	Available
Atlantis	\$132,392.54	\$1,890.00	\$130,502.54
Jupiter	\$762,091.69	\$0.00	\$762,091.69
<i>Sub Total</i>	<i>\$894,484.23</i>	<i>\$1,890.00</i>	<i>\$892,594.23</i>
Juno Beach	\$157,525.67	\$126,310.57	\$31,215.10
Palm Beach	\$159,664.94	\$135,968.88	\$23,696.06
P Beach Gardens	\$698,321.07	\$568,424.08	\$129,896.99
West Palm Beach	\$2,612,289.67	\$2,581,324.90	\$30,964.77
<i>SubTotal</i>	<i>\$3,627,801.35</i>	<i>\$3,412,028.43</i>	<i>\$215,772.92</i>
Totals	\$4,522,285.58	\$3,413,918.43	\$ 1,108,367.15

The Towns of Atlantis and Jupiter were not interoperable in any way prior to March and June of 2012 respectively. Juno Beach, Palm Beach and Palm Beach Gardens were previously interoperable through their former 800 MHz equipment and hence the significant reimbursements shown. Since the time that Juno, Palm Beach and Palm Beach Gardens implemented the MPSCC system, reimbursements were discontinued as a result of their inability to demonstrate compliance with the requirements of FS 318.21. West Palm Beach will no longer be eligible for reimbursement at such time that it is operational on the MPSCC System.

Staff's position is solely in response to maintaining the County's compliance with the statutory requirements for the use of \$12.50 Fine and Forfeiture funds. As such, if the Board should choose to honor the MPSCC's request, Staff recommends that the reimbursements be made from ad valorem funding so as not to jeopardize the County's receipt of \$12.50 funds. Further, if the Board was to direct Staff according to the MPSCC request, the Board would need to define the specific terms under which expenses should be reimbursed to the MPSCC.

ATTACHMENT 1



Facilities Development &
Operations Department

2633 Vista Parkway
West Palm Beach, FL 33411

Telephone - (561) 233-0200
Facsimile - (561) 233-0206
www.pbcgov.com/fdo

■
**Palm Beach County
Board of County
Commissioners**

Shelley Vana, Chair

Steven L. Abrams, Vice Chairman

Karen T. Marcus

Paulette Burdick

Burt Aaronson

Jess R. Santamaria

Priscilla A. Taylor

County Administrator

Robert Weisman, P.E.

July 11, 2012

Robert Mangold, Chairman
Municipal Public Safety Communications Consortium
260 Orange Tree Drive
Atlantis, Florida, 33462

**Re: County Response to MPSCC June 4th, 2012 Resubmittal of
System Information**

Dear Chief Mangold,

County Staff has received and reviewed your Request for Law Enforcement Communication System Expansion Plan ("Plan") approval, the State's approval correspondence and your letter to Robert Weisman all submitted on June 4th 2012 and this letter serves as the County's technical response. It remains the County position that the MPSCC Open Sky (OS) System is not eligible for the receipt of \$12.50 funds.

The requirements of County's Resolution 2002-0192 allow for disbursement of \$12.50 monies for expenses 1) on systems determined to be interoperable, and 2) which do not violate the requirements of FS 318.21(9). This is not a recent distinction by the County Staff; as will be demonstrated throughout this letter by reference to earlier correspondence. Further, the distribution of the \$12.50 funds throughout the \$12.50 program has been consistent with the requirements of the 2002 Resolution, the need for interoperability, and the requirements of the FS 318.21(9) with respect to eligible expenses.

Interoperability

Inclusion of PBC Level F Interoperability in the County's ICP OS technology was requested in April 2002 and approved by the State on July 22, 2002. The MPSCC's most recent approval of the Plan partially fulfills the interoperability requirements of the Resolution. While this satisfies the interoperability requirement of the Resolution, inclusion in the ICP and approval of the Plan fulfill only one of the two general requirements of the Resolution for access to the \$12.50 funds.

*AA An Equal Opportunity
Affirmative Action Employer@*

This position is supported by language in the State's letter approving the OS technology into the ICP advising that OS ". . . is accepted as an amendment to Palm Beach County's exiting ICP...it is critical to note that Chapter 318.21 is clear in stating the \$12.50 amount is applicable **only to the County's portion of the expenses for the ICP**. In no way does this letter endorse access to these funds by the MPSCC. To that extent, **expenses incurred by the County applicable to interfacing with the MPSCC's system for interoperability** may be recovered from the \$12.50 amount statutorily referenced."(emphasis added) This same position was reiterated in the Plan approval stating "that approval of a Law Enforcement (LE) Communications System does not, in of itself, make a system eligible for \$12.50 finding."

Compliance with FS 318.21(9)

FS 318.21 (9) provides broad guidance as to the use of the \$12.50 monies stating that "Twelve dollars and fifty cents from each moving violation must be used by the county to fund that county's participation in an intergovernmental radio communication program approved by the Department of Management Services."Determining how the \$12.50 monies are used to fund a county's participation in the ICP remains the responsibility of the county.

The Department of Management Services has stated on numerous occasions including recently that "DMS is not charged with the responsibility of regulating the \$12.50 from each moving violation, and does not determine to what extent, if at all, the \$12.50 can be applied retroactively, or how the funds may be distributed to other participant is in the approved ICP." While this language expresses DMS's opinion that it is not responsible for policing local decisions on the use of the funds, the county does not believe that this is intended to indicate that it is DMS opinion that the County 1) does not the need to comply with the statutory requirement to spend the \$12.50 funds towards the County participation in the ICP, or 2) does not have potential liability associated with use of the \$12.50 funds outside the statutory requirements.

The County has attempted to balance the intent of the Resolution to distribute \$12.50 collections with the need to create a local definition of eligible expenses that follows the minimal guidance the County has received from DMS so that the County's receipt of \$12.50 funds are not jeopardized. To that end, Palm Beach County has based its opinions related to eligible expenses on various correspondence from DMS including, 1) DMS' responses to questions or inquiries from the MPSCC and/or its predecessor, and 2) communications from DMS to the County during the development of the \$12.50 Resolution. Palm Beach County has then applied that direction to our unique situation while trying to implement the Board's intent as expressed through the resolution.

Based on the totality of the limited direction received from DMS, as discussed below, the County's definition of participation has two components, 1) expenditures must be for equipment that is County owned and 2) expenditures must provide for County participation meaning at a minimum, continuing the same coverage and functionality to additional users.

County ownership

On 8/18/95, DMS sent a letter to the CJC (precursor organization to MPSCC) in response to a separate, proposed 800 MHz system and its inclusion in the ICP stating, *"Ownership and participation by the County can maintain the premise of the ICP for radio equipment purchased by the County. Taken further, county-owned mobile and portable radios may be installed in municipal vehicles, so long as this is the County's decision...The County controls the surcharge funds and ICP. How far the ICP reaches and how thinly the funds are spread rest primarily with the County. The basic philosophy of an ICP in Palm Beach County may encompass the following:*

- *800 Mhz backbone, antennas, tower, transmitter, receivers, filter/combination/multi-couplers, shelters and generators, microwave owned and maintained by the County*
- *County owned and maintained communications dispatch consoles, logging recorders and associated radio communications equipment used by Public Safety entities designated by the County.*
- *County owned and maintained mobile, portable and radio control stations used by public safety entities designated by the County*
- *County owned and maintained mutual aid radio communications system...*

The above philosophy (wholly or partially) has been identified in the report; although some may argue the "thin line" aspects. Additionally, the report's conclusion and recommendation is within the premise of the County's ICP as long as the County is clearly a participant throughout.

In early December 1999, the \$12.50 resolution met this requirement by requiring that expenditures for equipment purchases be accompanied by an Equipment Use Agreement assigning ownership to the County for use by the municipality.

Shortly after the adoption of the resolution on December 17, 1999, the County received a letter from DMS stating that *"At the County's option, radio equipment or associated support facilities that are intergovernmental in nature and shared with the County (ie: radio equipment with common radio frequencies, common support facilities or spectrum efficient technology) can be purchased in accordance with an approved ICP. Whether it is installed in County-owned, City owned, or State owned vehicles does not violate the intergovernmental aspects of the equipment or facilities. The crux of any of the items purchased is that the County is a participant of the communications system."*

Applying the above to the conditions in Palm Beach County and at the request of the municipalities (two of which are now MPSCC participants), the County relaxed the ownership requirement and has disbursed for; 1) municipal operational expenses for fixed network equipment not owned by the County, but identical to the County's equipment and for connectivity and maintenance of subscriber units when the municipal system to which the subscriber unit was connected was identical to the County's. This request for payment

of expenses and maintenance costs was generated by the municipalities due to their desire to not asset any portion of the FNE to the County nor to take on the duplicative fixed asset inventory requirements associated with the subscriber units (which is operationally burdensome on its own). This request was immediately implemented by the County providing that all other requirements of the Resolution were complied with and has been applied consistently from the time of first reimbursements.

With respect to the MPSCC OS system, either the MPSCC or a MPSCC participating municipality could meet the ownership requirement for equipment determined to meet all of the other requirements for disbursement by assigning ownership to the County. In the event that the MPSCC OS is able to meet all other requirements of the Resolution described above, it is the County's opinion that that the only equipment that would eligible for reimbursement are the interfacing equipment and the control stations. This is also consistent with guidance from DMS dated 7/22/02 stating *"OS is accepted as an amendment to Palm Beach County's existing ICP...it is critical to note that Chapter 318.21 is clear in stating the \$12.50 amount is applicable only to the County's portion of the expenses for the ICP. In no way does this letter endorse access to these funds by the MPSCC. To that extent, expenses incurred by the County applicable to interfacing with the MPSCC's system may be recovered from the \$12.50 amount statutorily referenced."*(emphasis added)

This position that only the interfacing equipment would be considered eligible for reimbursement was also communicated verbally in meetings and in writing by County Staff and County Attorney's Office to the MPSCC, attorneys representing the MPSCC and the City of West Palm Beach as early as 2002-2003.

County participation

Certainly a strict interpretation of the statutory requirement would result in no disbursement to a municipality. However, in light of the intent of the Resolution and consistent with the general guidance provided by DMS, Staff defined County participation as municipal expenditures which will provide for coverage and full functionality at the field user level as implemented through compliance with ongoing operational requirements for implementing that functionality - thereby increasing the number of law enforcement field users with the same functionality as those participating directly on the County's system, and extending/enhancing the County's system by providing for the same field functionality in the event of operational necessity or failure of the County's system back-ups.

Review of the MPSCC June 4, 2012 Re-submittal did not provide any supplemental information to change the County's position that while OS does increase the number of law enforcement officers with whom the County can communicate, in some form or fashion, it does not provide for the full functionality at the field user level. The five areas of functionality that are lost through the interface or the MPSCC design are described as follows.

1. Coverage. It is Staff's position that some of the previously identified portable radio talk-back coverage issues still exist such as not providing a consistent coverage

footprint with the County's system. In addition, there are technical errors in the coverage maps that make them inaccurate and leads the County to question the definition of the 95% percent coverage used to back-up the statement in the beginning of the submittal. Since there can be numerous types of 95% coverage guarantees, yours needs to be specifically defined as either mobile, portable outdoors, or portable in-building, and if the latter, is it light, medium, or heavy density in building coverage? It is our understanding that no signal capturing drive testing was conducted that would substantiate the claim of 95% coverage. There was nothing contained within the re-submittal which would indicate that the drive testing had been conducted and the results documented.

Also in our review, a number of licensing issues were also detected. These include some of the locations being granted an authority to operate by a Special Temporary Authority (STA) versus a FCC License grant and antennas noted at locations higher than actually occurring. At the time of this writing, one of the STA expired this past June and another is expiring in early September. The County highly recommends correcting these issues because, if the MPSCC is required to cease operating at a location due to a license issue, this would directly impact coverage and affect officer safety.

This issue of coverage functionality may be overcome in the future with the addition of sites and eventually clear this particular functionality deficiency, but the improvement of coverage will not by itself justify access to the \$12.50 money.

2. Loss of access to alias data base and functionality of emergency call button. This functionality was a critical component of any system chosen for use by the County and such functionality is lost through the interface. The loss of this functionality through the interface is not disputed. At a meeting in early June, the MPSCC took the position that this functionality was not critical, and other options including the use of cell phones could be used to compensate for the loss of functionality. This MPSCC statement of criticality is not consistent with Staff's understanding of the design criteria and operation but sought an independent opinion from the Sheriff's Office.

The Sheriff's Office Communications and Radio Services Units expressed the importance of the alias database and emergency call button activations as follows: *"Operationally, we use the alias database daily. For example, whenever a unit cuts themselves off (which is too numerous to count) dispatch knows who is calling. Dispatch uses it under normal circumstances when background noise drowns out the deputy's voice such as traffic, or in emergencies like fights etc. Dispatch uses the call alert whenever they are looking for a deputy. On the technical side when the emergency button is pushed, it not only alerts everyone that someone is in trouble, it give the highest priority of service to the talk group the deputy was on and puts it in the top of the busy queue if the channel is busy. Also, if someone is talking and the deputy does not get a channel grant, they can push the button and the dispatcher knows someone is trying to call with emergency traffic. Again, both Communications and Radio Services emphasized that as an agency we use this functionality constantly."*

Pursuant to the talk group interlocal agreement, it is an agency's responsibility to exchange data bases, make the County aware of changes to the alias database, or is required to be able to do a cross reference to their own database. Several of the MPSCC cities have indicated that alias databases have not been exchanged (which functionally doesn't matter in that the information is lost). This loss of functionality has caused the municipalities participating in the MPSCC to be technically out of compliance with the requirements of the talk group interlocal agreement.

The municipalities with 800 conventional systems have the ability to maintain full functionality and comply with the requirements of the interlocal agreement therefore maintaining the definition of participation. This is also the most fundamental difference between why municipalities with 800 conventional systems are eligible for \$12.50 disbursement and municipalities using Open Sky technology are not eligible.

3. Redundancy. The MPSCC re-submittal provided no additional or clarifying information on this point. The County is aware that at a minimum the common talkgroups are split (not redundant) between the two MPSCC interfaces. As an example, the County is aware that West Palm Beach only has one OS console in their dispatch center, so this would leave no secondary facility for the Gardens dispatchers to move to due to a need to evacuate their facility or due to a catastrophic failure. Relocating the dispatchers to the County EOC would not be possible as there are no OS consoles at the EOC and it is questionable as to whether the OS portable radios will function within the EOC itself due to the density of the building.

The County is still not convinced that the OS system is fully redundant. While the County acknowledges and agrees that some portions of the infrastructure are spaced geographically the equipment does not appear to be fully redundant.

4. Communication with Fire Rescue and Public Works Agencies. Yes, the County agrees that there might be one MPSCC fire department on OS (although ability of that one Fire Department to communicate to all trauma centers from the patient cab has not been verified), but the re-submittal did not provide any clarification that there are any public works entities on the system for each of the participating agencies. Because public works is an integral part of recovery, especially after a disaster, the County believes this is an issue of not maintaining functionality.

Handing out OS radios to fire department personnel and/or public works personnel is not sufficient to overcome this functionality deficiency since the physical distribution of radios is not an accepted level in interoperability in Palm Beach County.

As to the recent comments by the MPSCC that the field users previously having to make "two steps" to obtain interoperability, this "two-step process" could have been corrected through alternate programming which certain MPSCC cities choose not to

implement. The Palm Beach Gardens Saber radios could have been programmed (originally or through a subsequent update) with the LE Commons in the "A" Zone just like was described as the current operation.

In summary, the re-submittal did not provide any additional information sufficient to cause the County to change its position regarding the \$12.50 eligibility of Open Sky expenses.

If you have any questions, please do not hesitate to call.

Sincerely,



Audrey Wolf, Director
Facilities Development & Operations

C: Robert Weisman, County Administrator
Nancy Albert, Director Electronic Services and Security
Mark Filla, 800 MHz System Manager
Jim Mize, Chief Assistant County Attorney
Michael Rodriguez, Executive Director Criminal Justice Commission
Richard Radcliffe, Executive Director League of Cities

ATTACHMENT 2



MPSCC

**Municipal Public Safety Communications Consortium
of Palm Beach County, Inc.
a Florida Not-for-Profit Corporation
260 Orange Tree Drive
Atlantis, Florida 33462**

Phone: (561) 965-1700 ♦ Fax: (561) 968-9443

Chairman
Robert Mangold

July 23, 2012

Via E-Mail and Facsimile

Audrey Wolf, Director
Facilities Development & Operations
2633 Vista Parkway
West Palm Beach, FL 33411

RE: Response to Audrey Wolfe's July 11, 2012 Correspondence to the
MPSCC

Dear Ms. Wolf:

I have reviewed your correspondence dated July 11, 2012 providing a "technical response" to the MPSCC's correspondence to Robert Weisman regarding the \$12.50 funding. You also enclosed an unsigned letter from Robert Weisman regarding the \$12.50 funding. Based on your e-mail to me, both correspondences are intended to address the Criminal Justice Commission's ("CJC") request for clarification on \$12.50 eligible expenses.

From a historical perspective, the unsigned letter from Mr. Weisman skips over some key facts:

1. In 1994, the municipalities in Palm Beach County were informed by the CJC that the County's new radio system would not support the municipalities' law enforcement communication needs and the municipalities would need to establish their own public safety system.
2. In 1999, the municipalities in Palm Beach County and the Palm Beach County School Board formed the MPSCC to establish their own municipal public safety communications system.
3. In 2002, after the MPSCC selected the M/A-Com OpenSky system, the Palm Beach County Commission amended its 1999 resolution with Resolution 2002-0192 in order to "encourage interoperability" and to set forth the procedure for disbursement of the \$12.50 funds to municipalities.

After the passage of Resolution 2002-0192, the Palm Beach County Commission directed

the MPSCC as follows with regards to obtaining the \$12.50 funds:

- a. Prepare documentation for Palm Beach County to submit for an amendment to the Palm Beach County ICP to include the MPSCC's system as part of the Palm Beach County ICP; and,
- b. If such an amendment is approved, "the County will recognize certain expenses of the Consortium pursuant to the requirements and procedures of Resolution R2002-0192, which include meeting the minimum acceptable levels of interoperability established by CSOPAC."

Accordingly, in July 2002, the State approved the MPSCC's system as an amendment to the Palm Beach County ICP. Since that time, the MPSCC has attempted on numerous occasions to obtain \$12.50 in accordance with and reliance upon Resolution 2002-0192 and the direction of the County Commission. However, each time, a new issue is created or a new rule is added by you; and, the established procedure of Resolution 2002-0192 and direction of the County Commission are defeated. Your July 11, 2012 correspondence is no different.

As I stated in my June 4 correspondence, the criteria for obtaining the \$12.50 funds is clearly established in Resolution 2002-0192. Specifically, Exhibit "B" to Resolution 2002-0192 sets forth the criteria (which is attached hereto). The criteria does not include any technical requirements for the MPSCC system other than interoperability as established by COPAC nor does it state that prior correspondence from DMS to County staff shall dictate the disbursement. Finally, there is no requirement that County staff conduct a technical review of the MPSCC system or its submittals to other agencies to determine if \$12.50 funds should be distributed.

As to the requirements of Resolution 2002-0192, Exhibit "B", I am very pleased that you have finally agreed in writing that the MPSCC system satisfies the interoperability requirement of Resolution 2002-0192. Thus, moving forward, this requirement should no longer be an impediment to the disbursement of \$12.50 funds to MPSCC's members.

As to the second requirement of Resolution 2002-0192, Exhibit "B", we are all in agreement that the items sought for disbursement must satisfy the requirements of 318.21(10), Florida Statutes (now subsection (9)) and that the items are essentially paid for by the requesting municipality. As to the requirements of section 318.21(9), it simply states in relevant part:

Twelve dollars and fifty cents from each moving traffic violation must be used by the county to fund that county's participation in an intergovernmental radio communication program approved by the Department of Management Services.

As you recognize in your correspondence, section 318.21(9) does not set forth any real requirements; instead, it sets forth as you call it "broad guidance" in terms of the

utilization of \$12.50 funds. As you also recognize in your correspondence, Department of Management Services ("DMS") has most recently stated that it does not regulate nor police the distribution of \$12.50 funds. Further, you also recognize that a strict interpretation of section 318.21(9) is inconsistent with the prior distribution of \$12.50 funds by the County. With this recognition from you, it seems the MPSCC's members should be receiving the \$12.50 funds for enhancing county-wide participation in the Palm Beach County ICP consistent with section of 318.21(9).

Incredulously, without specific guidance or regulation and despite years of distributing funds to the contrary, you now state that the disbursement of \$12.50 requires a system to provide the "same coverage and functionality" as the County's system. As you know, Resolution 2002-0192 has no such requirement. Even DMS' policy for approving an ICP has no such requirement between agencies (see attached). Moreover, this new requirement for "same coverage and functionality" directly contradicts Resolution 2002-0192, especially with regards to disbursement of \$12.50 funds for radios. Resolution 2002-0192 clearly states:

The County will allow Municipal Org funds of municipalities participating in the ICP System via the MPSCC, to purchase portable and mobile subscriber units with funds from the Municipal Org when sufficient equipment required to connect to the Countywide system is purchased and operational.

The above does not state any requirements for the "same coverage and functionality" as the County system. There is no requirement that the MPSCC had to purchase Motorola radios in order to receive \$12.50 funds. If that were the case, the Palm Beach County Commission in conjunction with your office and the County Attorney's office would have clearly and plainly stated such requirements in Resolution 2002-0192.

To the same extent that the County's system has obtained interoperability for those municipalities to participate in the Palm Beach County ICP, the MPSCC has obtained interoperability for its members to participate in the Palm Beach County ICP. And, to the same extent that Palm Beach County disburses \$12.50 pursuant to section 318.21 to those municipalities on its system and participating in the Palm Beach County ICP, Palm Beach County should disburse \$12.50 to those municipalities on the MPSCC's system who also participate in the Palm Beach County ICP. The requirement for the "same coverage and functionality" is an unsupportable requirement which has no basis in section 318.21, Resolution 2002-0192 or any prior direction from the Palm Beach County Commission.

As I stated before, the remainder of the requirements of Resolution 2002-0192 are easily met by MPSCC members and will include the requested Equipment Use Agreement (despite this not being required by other agencies).

As you have in the past, you conducted a "technical review" of the MPSCC system based in part on summation of issues in my June 4 correspondence and a submittal to another agency - in this case, the MPSCC's recent submittal to DMS for an updated, expanded

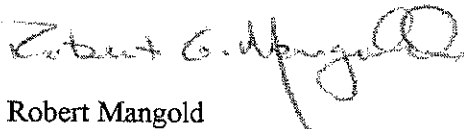
Law Enforcement Communications Plan pursuant to section 287.7101, Florida Statutes. It is unclear why you are doing a "technical review" of the MPSCC system based on my summation of issues and a submittal to another agency? As is clear from your correspondence, my June 4 correspondence and the submittal to DMS does not provide you with the information you truly need for a "technical review" of your alleged issues. For example, you state that there are "technical errors" in the coverage maps provided to DMS; but you also acknowledge that you do not have sufficient information to review the maps. You agree that the MPSCC system has some redundancy but are not "convinced" from either my correspondence or the DMS submittal as to the system being "fully redundant". It also appears that you are relying on third parties for misleading information regarding the MPSCC's system. For example, you claim the MPSCC's has an expired STA (temporary license); yet, had you taken the time to review all MPSCC's licenses (or called me), you would have discovered that the MPSCC received a permanent license for that location over a month before the STA expired.

If the County wants to do a "technical review" of the MPSCC's system, the MPSCC is willing to meet with you and go over each and every aspect of the MPSCC's system from specifics about coverage to system redundancy to radio usage and provide supporting documentation for the same. However, while such a meeting should have nothing to do with disbursement of the \$12.50 funds, I am concerned that even in the face of supporting documentation for the MPSCC's system and its capabilities, you will take issue with this competing system and create yet another hurdle to \$12.50 disbursement. Nonetheless, I am willing to meet with you and your technical advisors to address the questions you have with regards to the MPSCC system.

The bottom-line is that Resolution 2002-0192 and the specific direction from the Palm Beach County Commission govern the disbursement of the \$12.50 funds. There is not and never has been a requirement for the "same coverage and functionality" to be provided by another system in order to disburse the \$12.50 funds.

Please contact me at your earliest convenience should you desire to set up a technical meeting.

Sincerely,



Robert Mangold
Chair

Attachments as stated
cc:
Robert Weisman
Michael Rodriguez
League of Cities
Trela White
MPSCC Members
LEPC Chair

Exhibit B
Procedures for Disbursement from Palm Beach County

Any agency requesting funding from Palm Beach County from the municipal portion of the \$12.50 monies ("Requesting Agency") shall submit to Palm Beach County Facilities Development & Operations a Request for Funding ("Request"). The Request shall include the following.

1. The Request must demonstrate that the Requesting Party is interoperable (pursuant to the acceptable levels of interoperability established by the CSOPAC) with the ICP System. If the Requesting Agency is the MPSCC, it must also include a funded plan for becoming interoperable with the Countywide System.
2. The Request must identify; A) those items for which the Requesting Agency is seeking disbursement which must be compliant with the requirements of FS 318.21(10), and B) evidence that the funding has been committed for those purchases (form to be executed will be provided). If the Agency is the MPSCC, it must also include the non-\$12.50 funding sources for all equipment included the plan for which funding is requested and a copy of the agreement to be signed with the vendor to demonstrate that items for which disbursement is sought are included in the contract, and that there are no on-going obligations being assumed by the County as a result of the MPSCC contract
3. The Request must include a maintenance plan which identifies who will be responsible for the maintenance of the equipment purchased with distributed funds. The agency with responsibility for maintaining the equipment (Maintenance Agency) will be responsible for replacing the equipment, if, or when required.
4. The Request must identify the official of the Requesting Agency that has the ability to bind the Requesting Agency.
5. The Request must include an executed Equipment Use Agreement included as Attachment 1 to this Exhibit.

The Request will be reviewed by the Facilities Development & Operations Dept which will determine compliance with the above. FD&O shall have 30 days to review the request at which time it will either be returned with a letter stating compliance or identifying the necessary modifications to bring the Request into compliance.

Compliant requests of Participating Municipalities or the MPSCC will be approved by Facilities Development & Operations. If FD&O and the Requesting Agency are unable to agree on compliance, the request will be forwarded to an ad hoc group consisting of the County Administrator, the County Attorney, and the League's General Counsel for a final decision.

FD&O shall encumber the approved amount from the disbursement within the Participating Municipality or the individual municipality' (having assigned by resolution, their allocation to the MPSCC) portion of the \$12.50 funds and provide a copy of the request and the approval letter to the Finance Department of the Clerk of the Circuit Court.

The County will disburse to a Requesting Agency who is a Participating Municipality at any time during the calendar year, but in no case more frequently than semi-annually upon receipt of an invoice from the Requesting Agency specifying the amount of the disburseable costs incurred by the Requesting Party. If the Requesting Agency is the MPSCC, disbursements may be made at a frequency identified in its funding plan, but in no case more frequently than monthly. Disbursements shall be made within 21 days of receipt of a request for disbursement which meets the requirements of this Resolution. The total of all disbursements may not exceed the total of the Request.

The first request for disbursement shall include a copy of any contract or purchase order against which the invoice is made. The County may reasonably request evidence that the invoice costs were actually incurred by the Requesting Agency and that the labor, services or materials for which payment is being made are a part of the ICP System.

Each request for disbursement must be signed by the authorized representative of the Requesting Party certifying that the equipment has been received from the vendor and that such payment request is consistent with the approved Request. The request for disbursement may be in whatever format is acceptable to the Requesting Agency's Finance Department and is consistent with the terms of the Requesting Agency's contract or purchase order with the vendor.

The Requesting Agency will be bound to the specifics (ie: type and quantity of equipment, timing, etc.) of the Request. Any modifications to the Request will require re-submittal to FD&O for written approval.

ATTACHMENT 1 TO EXHIBIT B
EQUIPMENT USE AGREEMENT

This Agreement applies to any and all equipment purchased with monies collected pursuant to 318.21(10) F.S.S. and placed in the \$12.50 Intergovernmental Communications Fund ("\$12.50 Fund"). The term Agency refers to an entity which receives funds from the \$12.50 Fund.

- A. The Agency will provide FD&O, at least 30 days prior to the installation of the asset, a list of all equipment purchased with \$12.50 Fund monies. The list shall identify the asset by name, the purchase price of the asset, the work unit to which the asset is assigned. The County will provide the Agency with an asset number for each piece of equipment. The Agency will be responsible for tagging the equipment accordingly. The Agency may chose to have the County tag the equipment and utilize the County's bar coding system if it chooses.
- B. By July 31st of each year, the Agency will provide the County with an inventory of the assets certified by the Agency Inventory Officer. The Agency Inventory Officer shall, at all times, comply with all requirements of any Statute governing local government fixed assets. The Agency Inventory Officer shall be _____ (type name and position of Agency Inventory Officer).
- C. The term of this Agreement is a 30 year period or the life span of the equipment whichever is shorter. During the term of this Agreement, the Agency shall be responsible for maintenance of the equipment.
- D. In the event that the Agency determines that it is appropriate to surplus a piece of equipment prior to the thirty year period, the Agency will provide the County with the equipment that is to be surplus. Upon receipt of the equipment, the asset will be removed from the agencies inventory. The County shall dispose of the equipment.
- E. The Agency will use the equipment/purchases solely for uses allowed pursuant to the 318.21(10) F.S.S, and consistent with the approved Request for Funds.
- F. In the event that the Agency does not adhere to the terms of this Agreement, the County will provide notice and the Agency will have 30 days to cure the default. In the event that the default is not cured, the Agency shall be required to repay the monies disbursed from the \$12.50 Fund within 30 days of the default.

By signing below, the Agency agrees to abide by the terms of this Agreement.

Witness

Signature of Authorized Agency Representative

Date

Print Name and Title of Authorized Agency Representative

Date of County Acknowledgment

Signature of FD&O Director



DEPARTMENT OF MANAGEMENT
SERVICES

4050 Esplanade Way • Tallahassee, Florida 32399-0950

LAWTON CHILES, GOVERNOR

WILLIAM H. LINDNER, SECRETARY

MEMORANDUM

TO: SHERIFFS, COUNTY COMMISSIONERS AND COUNTY ADMINISTRATORS

FROM: GLENN W. MAYNE, DIRECTOR
DIVISION OF COMMUNICATIONS

DATE: OCTOBER 8, 1996

SUBJECT: INTERGOVERNMENTAL RADIO COMMUNICATIONS PROGRAM

In May of 1992, the Florida Legislature created the authority for having an Intergovernmental Radio Communications Program (ICP). Pursuant to this law, the Division of Communications established a policy for authorizing Counties to:

- 1) Enact a \$12.50 surcharge on moving violations, and
- 2) Use the resulting revenues to enhance their public safety radio systems.

This process has provided a means for Counties to improve their radio systems when the systems are shared by two or more public safety entities.

The 1996 Legislature made a significant change to this process. Effective October 1, 1996, there will no longer be a surcharge of \$12.50 per moving violation. Counties may still have an Intergovernmental Radio Communications Program, but must take the \$12.50 revenue stream out of the moving violation fine structure.

The Division of Communications has updated its policy to reflect this change in the law. A copy of the revised policy is enclosed for your information and use.



MEMORANDUM

OCTOBER 8, 1996

PAGE 2

Intergovernmental Radio Communications Programs approved prior to the effective date of this 1996 legislation are still valid. Requests for new approvals of such programs should be sent to:

Glenn W. Mayne, Director
Division of Communications
4050 Esplanade Way, Bldg. 4030
Tallahassee, FL 32399-0950

Please call me at (904) 488-3595 or SUNCOM 278-3595 if you have any questions or comments as to this policy.

GWM:cww:vr:sb892.doc

Enclosure

INTERGOVERNMENTAL RADIO COMMUNICATIONS PROGRAM POLICY

Pursuant to Section 6 of CS for CS for SB1134 and subsequently revised pursuant to Section 49 of CS for SB892, any County which participates in an intergovernmental radio communication program approved by the Division of Communications of the Department of Management Services (DIVCOM) must use \$12.50 from each moving traffic violation to fund that County's participation in the program. An intergovernmental radio communications program is defined to be a cooperative venture that features the participation of two or more local agencies, or one or more local agencies and one or more state agencies.

Approval of such a program will be given by DIVCOM when:

1. The program includes the sharing of support facilities (e.g., towers, shelters, microwave, etc.) by participating entities, or
2. The program includes the establishment of a mutual aid system using common radio frequency channels between participating entities, or
3. The program sets forth a feasible methodology which utilizes the radio frequency spectrum in an efficient manner.