

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2020	2021	2022	2023	2024
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	(\$20,464)	(\$20,464)	(\$20,464)	(\$20,464)	(\$20,464)
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>(\$20,464)</u>	<u>(\$20,464)</u>	<u>(\$20,464)</u>	<u>(\$20,464)</u>	<u>(\$20,464)</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes No _____
 Does this item include the use of federal funds? Yes _____ No

Budget Account

No:

Fund 0001 Dept 410 Unit 4150 Revenue Source 4900 (\$7,068.8)
 Fund 3801 Dept 411 Unit B209 Revenue Source 3728 (\$13,395.2)

B. Recommended Sources of Funds/Summary of Fiscal Impact:

The revenue is based on 40 units: maintenance fee 176.72/unit = \$7,068.8;
 renewal/replacement fee 334.88/unit = \$13,395.2

C. Departmental Fiscal Review: [Signature]

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

[Signature] 1/22/2020
 OFMB [Signature] 1/21
 LH 1/22

[Signature] 1/23/2020
 Contract Development and Control
 1/23/2020 TD

B. Legal Sufficiency:

[Signature] 2/23/2020
 Assistant County Attorney

C. Other Department Review:

 Department Director

This summary is not to be used as a basis for payment.

AMENDED AND RESTATED INTERLOCAL AGREEMENT

THIS AMENDED AND RESTATED INTERLOCAL AGREEMENT (“Agreement”) is made and entered into on this ____ day of _____, ____ by and between Palm Beach County, a political subdivision of the State of Florida (“County”) and the Port of Palm Beach a special independent taxing district and political subdivision of the State of Florida (“Participant”).

WITNESSETH

WHEREAS, on July 11, 2017, the County and the Participant entered into an Interlocal Agreement R2017-0871, (the 2017 Interlocal Agreement) setting forth the terms and conditions by which the County would provide direct access to the County’s Public Safety Radio System to the Participant; and

WHEREAS, to set forth the terms and conditions for all direct access, this Agreement amends and restates, in its entirety, and replaces, the 2017 Interlocal Agreement; and

WHEREAS, the County and the Participant are continually identifying more effective service delivery methods which result in enhanced public safety services and overall savings to the taxpayers of the County and the Participant; and

WHEREAS, the County has purchased, designed, installed, and operates a Public Safety Radio System (County’s System) that supports the needs of the Palm Beach County Sheriff’s Office, Palm Beach County Fire Rescue, Palm Beach County Emergency Medical Services, and various Palm Beach County general government agencies; and

WHEREAS, the County and the Participant have determined that the ability to provide interoperable communications is critical to the effective and efficient provision of public safety and general government services; and

WHEREAS, it has been determined to be mutually beneficial to both Parties to execute this Agreement which sets forth the parameters under which the Participant can directly access the County’s System saving the taxpayers of both the County and the Participant money as well as providing the public safety benefit of interoperability; and

WHEREAS, connection to the County’s System through a Municipal Hub is not technically feasible; and

WHEREAS, Section 163.01, Florida Statutes, permits public agencies to enter into Agreements to jointly exercise any power, privilege or authority which such agencies share in common and which each might exercise separately.

NOW THEREFORE, in conjunction with the mutual covenants, promises and representations contained herein, the parties hereto agree as follows:

SECTION 1: PURPOSE

The purpose of this Agreement is to set forth the parameters under which the County will provide access to County's System to the Participant. This Agreement also identifies the conditions of use, the cost of access and on-going use, and the ability of the Participant to participate in the operational decisions relating to the County's System.

SECTION 2: DEFINITIONS

2.01 Common Talk Groups: Talk groups established on the County's System that are made available to County agencies, municipalities and other non-County agencies for interoperable communications between agencies for the purpose of providing mutual assistance and planning and execution of on-scene operations.

2.02 County Talk Groups: Talk groups established on the County's System that are made available to County agencies providing for inter-departmental communications. These talk groups are reserved for particular departments/agencies and only available to outside departments by separate agreement.

2.03 CRSSC: Countywide Radio System Steering Committee established to oversee implementation of the policies established and to modify existing policies or create new policies as required over the life of the System

2.04 Master Site: The location of the County's SmartZone™ Controller.

2.05 Microwave System: A County owned and maintained communications system utilizing frequencies in the microwave range to route audio and control signals between sites in a multi-site communications system.

2.06 Participant Equipment: Also known as "agency radios," are Participant owned P25 compliant handheld and mobile radios and control stations that operate in the 800 MHz spectrum that have the ability to be programmed and used on the County's System.

2.07 Parties: All entities that have executed this Agreement which include the County and the Participant.

2.08 Radio Aliases: The unique name assigned to an operator's radio that displays on the dispatcher's console when a radio transmits.

2.09 Roaming Feature: A feature of the SmartZone™ Controller that allows units from specified talk groups to register onto communications systems associated with the SmartZone™ Controller when beyond the coverage of their primary system. Additionally these talk groups are assigned communications channels on the systems where units are registered when there is talk group activity

2.10 SmartZone Controller or Controller: The SmartZone Controller is the central computer that manages and controls the operation of the County's System. The SmartZone Controller manages access to System features, functions, and talk-groups.

2.11 System: The Public Safety Trunked Radio System funded, purchased, installed, maintained and owned by the County. The System includes fixed transmitting and receiving equipment, a microwave system for communications between sites, System control and management equipment, a SmartZone controller located at the Master Site and other related equipment.

2.12 System Manager: An employee within the Electronic Services & Security Division of the Department of Facilities Development & Operations with the title Radio System Manager who is responsible for day to day administration and management of the System and the County's designated contact person pursuant to various sections of this Agreement.

SECTION 3: ADMINISTRATION

3.01 System Contact. The Palm Beach County Electronic Services & Security Division's System Manager is the Participant's day to day contact and can be reached at 561-233-0837. The Electronic Services & Security Division is staffed from 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding County holidays. After hours emergency contact is made through the County's Emergency Operations Dispatch Center at 561-712-6428 and the appropriate contact will be made.

3.02 CRSSC. The System Maintenance and Administration Plan as referenced on **Attachment I** hereto, identifies the general procedures for the management of the System and procedures for input through the user committees into operating procedure development. The plan establishes the Countywide Radio System Steering Committee (CRSSC), which is responsible for overseeing and implementing the policies and procedures for the County's System.

The CRSSC is supported by User Committees in each discipline utilizing the System. The Participant shall assign representatives to attend User Committee meetings for each of the law enforcement, fire-rescue, and public works disciplines for which the Participant has subscriber units programmed on the System. Participants at these meetings will discuss all System maintenance and administration issues. As agreed to by the User Committee members, issues discussed and approved at the meetings shall be forwarded to the System Manager and/or the CRSSC for final approval and implementation.

3.03 Compliance with System Policies and Procedures. The Participant shall follow all policies and standard operating procedures in place at the time of this Agreement, as well as those developed in the future and issued to the Participant by the System Manager. The Participant agrees to comply with any enforcement actions required by these policies and procedures for misuse or abuse of the County's System.

SECTION 4: COUNTY SYSTEM AND RESPONSIBILITIES

4.01 County System. The County System consists of eleven (11) transmit and receive sites with co-located microwave equipment and three (3) microwave only sites that provide network connectivity as well as the SmartZone Controller.

4.02 County Responsibilities for System Maintenance and Operations. The County shall be responsible for the maintenance and operation of the County's System, including all costs associated with permitting and licensing.

4.03 Routine Maintenance. The County will perform routine and preventative maintenance on the System according to its established procedures. This maintenance includes trouble shooting and making all repairs on a 24/7/365 basis as well as performing preventive maintenance on the System including, but not limited to, radio and microwave equipment, control/management and alarm systems, towers and equipment shelters and backup power generators and air conditioners. Neither this maintenance nor the annual System maintenance charge includes dispatch consoles.

4.04 Coverage and Scheduled Outages. The County shall maintain the coverage within the Participant's municipal boundaries as described in the County's contract with Motorola throughout the term of this Agreement except for times of scheduled preventive maintenance, where it will be required to disable portions of the network for a pre-determined length of time or during times of system failures. The Participant shall be notified of scheduled preventive maintenance, pursuant to the policies and procedures referenced on **Attachment I** hereto.

4.05 Other Outages. The County will respond to emergencies and provide notifications of System problems and time for System restoration to the Participant Representative within the time frames identified in **Attachment I**.

4.06 Mapping Management. The County shall be responsible for talk group and fleet mapping management in accordance with the procedures and policies identified in **Attachment I**.

4.07 Replacement Fund Management. The County shall be responsible for the management of the Replacement Fund and, through same, responsible for the capital replacement or expansion of System equipment and infrastructure as set forth in **Section 6.03**.

SECTION 5: PARTICIPANT EQUIPMENT AND RESPONSIBILITIES

5.01 Participant Equipment. The Participant's Equipment will be P25 compliant 800 MHz mobile, portable, and control station equipment programmed to be used on the County's System. . Equipment other than that manufactured by Motorola shall be approved by the System Manager prior to purchase by the Participant. The Participant is required to keep its equipment in proper operating condition and the Participant is solely responsible for maintenance of its radio equipment.

5.02 Participant Representative. Within 15 days of execution of this Agreement, the Participant is to provide the County with a single Participant Representative who is the Participant's single point of contact for matters relating to this Agreement.

5.03 Authorized Contacts/Programming. Within 15 days of the execution of this Agreement, the Participant is to provide the County with a list of persons/positions, which are authorized to request programming changes to existing units or new units. No programming will be undertaken by the Participant until requested and approved in writing by the System Manager.

5.03.01 Programming Limitations. The Participant will only program the internal talkgroups and the Common Talk Groups into its radio that are authorized by the County to the Participant for its use. The Participant shall **not** program talk groups of other agencies into its radios without a letter of authorization or a signed agreement from the County. The System Manager shall be provided with all such authorization letters from cities.

5.03.02 Required Talk Groups. The Participant will be required to program the Common Talk Groups which reside on the System for use by the Participant for interagency communications into its radios. The calling talk groups, in addition to all of the operational talk-groups for the applicable disciplines, shall be required as a minimum. The Participant may include Common Talk Groups as necessary to meet their operational requirements. These talk groups shall be in addition to the mutual aid channels required by the Florida Region Plan.

5.03.03 Encryption. The Participant may use encryption for its day-to-day operation in addition to covert investigative operations. The Participant will request and program the encryption slot assignment provided by the System Manger prior to implementing encryption. There is no requirement to provide the encryption key to the System Manager unless the County provides maintenance to the Participants radios under a separate agreement.

5.03.04 Reassignment to Hub. If regionalized Hub systems are added to the System and if required to maintain capacity on the System, the Participant may be requested to reassign its radios to one of the Hub systems. If the Participant is requested to be reassigned, the Participant shall agree to reassign its radios to the Hub providing that the County maintains the equivalent radio coverage within the Participant's boundaries and County pays to reprogram the Participant's radios.

5.04 County Confidential Information. The Participant shall receive certain access codes to the County's System to enable the talk groups to be programmed into the Participant's equipment. *The access codes are considered to be exempt and confidential security system information under F.S. 119.071(3) and must not be released to the public or unauthorized persons.* The access codes are to be treated as confidential information and the Participant is responsible for safeguarding and protecting the confidentiality of the code information from release to unauthorized parties. All confidential security system information and data obtained, developed, or supplied by the County ("Confidential Information") will be kept confidential by

the Participant and will not be disclosed to any other party, directly or indirectly, without the County's prior written consent, unless required by law or lawful order. All system parameters shall remain the County's property, and may only be reproduced or distributed with the written permission of the County. The Participant agrees that the County has sole and exclusive ownership of all right, title and interest to the Confidential Information and may be recalled at any time.

5.04.01 Authorized Parties. Service staff directly employed by the Participant shall be considered authorized to receive access and programming codes for the maintenance of the Participant's radio equipment. Commercial service providers are not considered authorized to receive access to programming codes for the System. If the Participant plans to use commercial services for its system or subscriber unit maintenance, the Participant must include confidentiality requirements in its contracts with the commercial service providers acceptable to the System Manager before access or programming codes may be released to these companies.

5.04.02 Commercial Service Providers. Commercial maintenance service providers are **not** considered authorized to receive access to programming codes for the County's System, unless meeting the requirements of **Sections 5.04.03** and/or **5.04.04** below. If the Participant does not have employees capable of programming Participant radio equipment or prefers to have others program Participant radio equipment, it may request that the Palm Beach County Sheriff's Office, Palm Beach County Fire Rescue or Palm Beach County Electronic Services & Security Division program Participant's radio equipment under the terms of a separate agreement.

5.04.03 County Review of Existing Service Provider Agreements. If the Participant uses a commercial service provider to program Participant radio equipment at the time of execution of this Agreement, and desires that the commercial service provider program the Participant radio equipment with the talk groups, the Participant must submit its existing contract with the commercial service provider to the System Manager for review. The review will focus on whether the contract terms between the Participant and the commercial service provider are adequate to protect the County's System from misuse, harm or release of access and programming codes to unauthorized persons. Notwithstanding the previous statement, the County retains the right, in its sole opinion with or without written reason or cause, to approve or disapprove the use of a commercial service provider. If approved, the System Manager will release the access and programming codes to the commercial service provider. The Participant will be responsible for ensuring that the commercial service provider adheres to the terms of this Agreement pertaining to the proper use of programming codes and radio equipment and pertaining to the safeguarding and protection of the confidentiality of the access codes. If not approved, the Participant shall use the Palm Beach County Sheriff's Office, Palm Beach County Fire Rescue, or the Palm Beach County Electronic Services & Security Division to program Participant radio equipment with talk groups.

5.04.04 Review of Bid Documents for Service Provider. If the Participant intends to use a commercial service provider to program Participant radio equipment with

the Common Talk Groups, the Participant shall submit the appropriate bid documents/contract to the System Manager for approval prior to soliciting a bid or quote from the commercial service provider. The System Manager will work with the Participant to develop the appropriate language for the contract which will allow for approval of the commercial service provider. Notwithstanding the previous statement, the County retains the right, in its sole opinion with or without written reason or cause, to approve or disapprove the use of a commercial service provider. If approved, the System Manager will release the access and programming codes to the commercial service provider. The Participant will be responsible for ensuring that the commercial service provider adheres to the terms of this Agreement pertaining to the proper use of the programming codes and radio equipment use and the terms requiring the safeguarding and protection of the confidentiality of the access codes. If not approved, the Participant shall use the Palm Beach County Sheriff's Office, Palm Beach County Fire Rescue, or Palm Beach County Electronic Services & Security Division to program Participant radio equipment with talk groups.

5.04.05 Survival. The provisions of this section regarding the Participant's duty to keep the County's access codes confidential shall survive the termination or expiration of this Agreement.

5.05 Federal Shared Encryption Key. The County's System is configured to allow for end to end encryption. If the Participant desires encryption, the Participant must request a CKR assignment from the County's System Manager. The Federal Shared Encryption Key ("Key") is available for use by local law enforcement agencies who require direct radio interoperability with federal agencies and is used on Law Enforcement Common 6E through 10E talk groups on the County's System. The Key is considered to be exempt and confidential security system information under F.S. 119.071(3) and must not be released to the public or to unauthorized persons. If the Participant requests use of the Key, the Participant shall be responsible for safeguarding and protecting the confidentiality of the Key from release to unauthorized parties. Service staff directly employed by the Participant shall be considered authorized to receive access to the Key. *Commercial service providers are not considered authorized to receive access to the Key.* Keyloading of the Participant's end user radios must only be done by the Participant itself or another authorized law enforcement agency. The Participant must also store the Participant's encryption key loader(s) in a secure and locked location when not in use. The Participant must immediately notify the County's System Manager if the Participant has reason to believe the confidentiality of the Key has been compromised or an encrypted radio has been lost or stolen. The Participant shall not program the Key into any non-law enforcement radio. The Participant must delete the Key from any radio to be repaired by non-agency personnel, removed from service or sent to surplus for disposal. The Participant must not provide any Key encrypted radios to any non-public safety personnel. The provisions of this section regarding the Participant's duty to keep the Key confidential shall survive the termination or expiration of this Agreement.

5.06 Malfunctioning Participant Equipment. The Participant is solely responsible for the performance and the operation of the Participant Equipment and any damages or liability resulting from the use thereof. Should the County identify malfunctioning Participant

Equipment; the County will request that the Participant discontinue use of the specific device until the repairs are completed. The County may, after proper written notification to the Participant, disable the equipment from the System if the device is causing interference to the System.

5.07 Stolen or Lost Radios. In the case of lost or stolen equipment, the Participant will notify the System Manager by e-mail authorizing the System Manager to disable the equipment. The Participant will provide the Radio ID number and the serial number of the radio. The System Manager will advise via e-mail when the radio has been disabled. A request by the Participant to re-activate a disabled unit must be in writing by e-mail to the System Manager.

5.08 Subscriber Unit Information. The Participant must provide the County with an initial inventory of the radios that are proposed to be programmed onto the System. The Participant will provide the following information to the County:

1. Radio manufacturer and model numbers.
2. Radio serial numbers.
3. Requested aliases to be programmed.
4. List of programming changes requested.
5. Talk group required.
6. Common talk groups required.
7. Other agency talk groups required.

The System Manager will then compile this information and transmit back to the Participant a matrix of the approved talk groups, aliases, and radio ID numbers prior to the Participant's radios being programmed into the System. The Participant is responsible for adhering to the talk group and radio ID allocations established by the County. The County's talk group and radio ID allocations are on file with the County and available upon request.

5.09 Costs. Participant agrees to pay to County the costs set out in **Section 6** hereof.

5.10 Limitation. Nothing in this Agreement shall represent a commitment by the County or shall be construed as intent by the County to fund any portion of the Participant's Equipment.

SECTION 6: COSTS TO PARTICIPANT AND BILLING

6.01 One Time System Access Charge. The Participant will pay a one-time System access charge for each subscriber unit on the System in the amount of \$3,234.00 per unit. Each subscriber unit added to the System will be charged the same amount at the time the unit is programmed for System access. In the event of any termination of the Agreement, the one-time access charges will not be reimbursed.

6.02. Annual System Maintenance Charge. The Participant will pay the County an annual maintenance charge of \$176.72 per unit for maintenance of the System. In the event of termination of this Agreement by the County and with no fault of the Participant, the Participant

shall be reimbursed the pro rata share of maintenance fees based on the date of termination. In the event of termination by the Participant, no maintenance fees will be reimbursed.

6.03 System Renewal and Replacement Fund Contribution.

6.03.01 Establishment of the Replacement Fund. The County implemented an 800 MHz System Renewal and Replacement Fund (“Replacement Fund”). The purpose of this fund is to provide a structured “savings plan” by which the cost of the equipment renewal and replacement is prorated over the estimated life of the System and paid on an annual basis throughout that life. The Replacement Fund is used for replacement of existing dispatch consoles. The Replacement Fund may be used to expand the System as determined appropriate by the County, however the Replacement Fund will not be used to expand or add dispatch consoles.

6.03.02 Replacement Fund Contribution. The Participant shall pay the County \$334.88 per unit per year for the Replacement Fund. In the event of a termination of this Agreement by the Participant or the County, the Participant will not be reimbursed for any contributions to the Replacement Fund.

6.04 Tri-Annual Review of Costs to Participant. The County may review and update the fees and charges identified in Sections 6.01, 6.02, and 6.03 once every three (3) years beginning in January 2021 and every 3 years thereafter (i.e. adjustments will be calculated in January 2021, 2024, 2027, 2030 etc.) and noticed to Participant by April 1st to be effective for the County’s next fiscal year beginning October 1st. In any case, the cost shall be equal to that charged to a County Department. These revised fees and charges will be applicable for the upcoming fiscal year and will automatically become a part of this Agreement on October 1st of the applicable year.

6.05 Budgeting for Costs. The Participant is responsible for estimating the number of units which it will have on the System for the upcoming fiscal year and budgeting accordingly based on the fees and charges described in this Section 6. In order to assist the Participant, the County will compile a list of the active radios that the Participant has on the System in the current year and provide this to the Participant for informational purposes only. The Participant shall be responsible for budgeting for any additional radios that it proposes to add to the System in the current fiscal year.

6.06 Billing Schedule.

6.06.01 Invoice for Maintenance Charge and Replacement Fund Contribution. Each November 15th, the County will invoice the Participant for the number of radios that were on the System as of the prior September 30th using the per unit fees and charges described in Sections 6.02 and 6.03 of the Agreement. If the effective date of this Agreement is between November 15th and September 30th, the Participant will be charged pursuant to Section 6.06.02 below.

6.06.02 Adding Radios. Any additional radios which the Participant requests to operate on the System will be charged fees for a full year pursuant to **Sections 6.02 and 6.03**, regardless of the time of the year that the additional unit is programmed into the System.

6.06.03 Invoice for Access Charges. The County shall prepare and transmit a separate invoice for the one-time access charge pursuant to **Section 6.01** of this Agreement within 10 days of the Participant's request for subscriber units to be programmed on the System. The Participant shall pay the one-time access charge at any time prior to October 15th of each year, following the effective date of this Agreement.

6.06.04 Payment. Upon receipt of any invoice, the Participant will immediately review same and report any discrepancies to the County within 10 days of receipt. Payment will be due to the County within 30 days of receipt of the invoice (except for invoices issued pursuant to **Section 6.06.03**).

Payment for all invoices shall be sent to:

Facilities Development & Operations
Fiscal Manager
2633 Vista Parkway
West Palm Beach, FL 33411-5603
Attn: 800 MHz Interlocal Agreement # _____, Invoice # _____

SECTION 7: ROAMING

As of this time, the System does not support the use of roaming and private call. In the future the County may activate some or all of these features should the loading of the System allow. The Participant will not program these features into the Participant's radios. If roaming and/or private call are allowed on the System in the future, the Participant may, at its own expense, reprogram the Participant's radios. The County will provide an amendment to this Agreement defining the uses and required programming should these features become available on the System.

SECTION 8: GPS

8.01 GPS Feature. The Participant shall have the authority to implement GPS reporting from its subscriber radios to the County's SmartZone Controller and use that information for personnel tracking. The Participant recognizes that the County does not currently use this feature of the County's System. As a result, the Participant may need to purchase additional hardware and software licenses to implement the GPS feature.

8.02 Ownership. GPS hardware and/or software purchased by the Participant that is installed directly into the County's SmartZone Controller will become part of the County's System and ownership will automatically transfer to the County at the expiration of any manufacturer warranty. After transfer of ownership, the County agrees to maintain the GPS components located at the SmartZone Controller and include them in the County's Master

Service Agreement. The County will maintain a database of active and reserved end user licenses allocable to the Participant.

8.03 Replacement. When at the end of the useful life of any GPS hardware or software that is part of the County's System, the County may choose not to replace the GPS hardware and software if there are no County users of the GPS feature.

8.04 No Responsibility for Third Party Claims. Neither the County nor the Participant shall be liable to each other or for any third party claim which may arise out of implementation of the GPS tracking feature, upon whatever cause of action any claim is based. The GPS tracking feature is designed to assist qualified law enforcement, fire, and other emergency service professionals. It is not intended to be a substitute for the exercise of judgment or supervision of these professionals. Both Parties acknowledge that the responsibility for providing law enforcement, fire, or other emergency services rests with the agency which is providing such service and not necessarily either party to this Agreement.

SECTION 9: LIABILITY

9.01 No Representation as to Fitness. The County makes no representations about the design or capabilities of the County's System. The Participant has decided to enter into this Agreement and use the County's System based on its review of the System design, System coverage, manufacturing and installation details contained in the County's contract with Motorola and review of any subsequent field measurements and testing data as may exist. The County agrees to use its best reasonable efforts to provide the Participant with the use of the System described in the Agreement, but makes no guarantee as to the continual, uninterrupted use of the System, or its fitness for the communication needs of the Participant.

9.02 No Waiver of Sovereign Immunity. The Parties to this Agreement and their respective officers and employees shall not be deemed to assume any liability for the acts, omissions and negligence of the other party. Nothing in this Agreement shall be construed as a waiver of the sovereign immunity of the County or Participant pursuant to §768.28, Florida Statutes. Each party shall be liable for its own actions and negligence and, to the extent permitted by law, the Participant shall indemnify, defend and hold harmless the County against any actions, claims or damages arising out of the Participant's negligence in connection with this Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes §768.28, nor shall the same be construed to constitute agreement by either party to indemnify the other for such other party's negligent, willful or intentional acts or omissions.

9.03 No Responsibility for Third Party Claims. Neither the County nor the Participant shall be liable to each other or for any third party claim, which may arise out of the services provided hereunder or of the radio System itself, its operation or use, or its failure to operate as anticipated, upon whatever cause of action any claim is based. The System is designed to assist qualified law enforcement, fire, and other emergency service professionals. It is not intended to be a substitute for the exercise of judgment or supervision of these professionals. Both parties acknowledge that the responsibility for providing law enforcement, fire, or other emergency

services rests with the agency which is providing such service and not necessarily either party to this Agreement.

9.04 No Consequential Damages. The terms and conditions of this Agreement incorporate all the rights, responsibilities, and obligations of the parties to each other. The remedies provided herein are exclusive. The County and the Participant waive all other remedies with respect to each other, including, but not limited to, consequential and incidental damages.

9.05 Survival. The provisions of this section shall survive the termination or expiration of this Agreement.

SECTION 9A: INSURANCE

Without waiving the right to sovereign immunity as provided by Section 768.28, Florida Statutes, (Statute), the Participant represents that it is self-insured with coverage subject to the limitations of the Statute, as may be amended.

If Participant is not self-insured, Participant shall, at its sole expense, purchase and maintain in full force and effect at all times during the life of this contract, insurance coverage at limits not less than those contained in the Statute.

Should Participant purchase excess liability coverage, Participant agrees to include County as an Additional Insured.

The Participant agrees to maintain or to be self-insured for Workers' Compensation insurance in accordance with Chapter 440, Florida Statutes.

Should Participant contract with a third-party (Contractor) to perform any service related to the Agreement, Participant shall require the Contractor to provide the following minimum insurance:

- Commercial General Liability insurance with minimum limits of \$1,000,000 combined single limit for property damage and bodily injury per occurrence and \$2,000,000 per aggregate. Such policy shall be endorsed to include Participant and County as Additional Insureds. Participant shall also require that the Contractor include a Waiver of Subrogation against County.
- Business Automobile Liability insurance with minimum limits of \$1,000,000 combined single limits for property damage and bodily injury per occurrence.
- Workers' Compensation insurance in compliance with Chapter 440, Florida Statutes, and which shall include coverage for Employer's Liability with minimum limits of \$1,000,000 each accident.

When requested, the Participant shall provide an affidavit or Certificate of Insurance evidencing insurance or self-insurance.

Compliance with the foregoing requirement shall not relieve the Participant of its liability and obligations under this Agreement.

SECTION 10: OWNERSHIP OF ASSETS

All assets maintained under **Section 5.01** of this Agreement will remain assets of the Participant at all times. Parts incorporated into assets owned by Participant will immediately become a part of the asset and will be the property of the Participant. All other assets involved in the System will remain the County's, despite the Participant's financial contribution to their maintenance, renewal and replacement.

SECTION 11: TERM OF AGREEMENT

11.01 Initial Term. The initial term of this Agreement is for five (5) years and shall commence immediately upon full execution of this Agreement.

11.02 Renewals. The Agreement may be renewed for two (2) additional terms of five (5) years each. At least six (6) months prior to the expiration of this Agreement's term, the Participant shall provide the County with a request to renew this Agreement. Such renewal will require approval of both parties and the County may not unreasonably withhold its approval of the renewal.

11.03 Existing Interlocal Terminated. This Agreement when effective terminates and replaces the Interlocal Agreement between County and Participant R2017-0871.

SECTION 12: AMENDMENTS TO THIS AGREEMENT

This Agreement may be amended from time to time by written amendment executed by both the Board of County Commissioners and the Participant Council.

SECTION 13: TERMINATION

This Agreement may be terminated by either party, with or without cause. Any termination shall be effective only on October 1st of any year and shall be with a minimum of six (6) months notice. In the event of termination, repayment of financial contributions made by the Participant to the County System will be made according to **Section 6** of this Agreement. It will be the responsibility of the Participant to reprogram the Participant's radios removing the County's System information from its radios.

SECTION 14: ANNUAL BUDGET APPROPRIATIONS

The County's and the Participant's performance and obligations to pay pursuant to this Agreement are contingent upon annual appropriation for its purpose by the Board of County Commissioners and the Participant's Council.

SECTION 15: NOTICES

Any notice given pursuant to the terms of this Agreement shall be in writing and be delivered by Certified Mail, Return Receipt Requested. The effective date of such notice shall be the date of receipt, as evidenced by the Return Receipt. All notices shall be addressed to the following:

As to the County:

County Administrator
Palm Beach County
301 North Olive Avenue
West Palm Beach, FL 33401

Director, Facilities Development & Operations
2633 Vista Parkway
West Palm Beach, FL 33411-5603

With copies to:

Radio System Manager
2633 Vista Parkway
West Palm Beach, FL 33411

County Attorney's Office
301 North Olive Avenue
West Palm Beach, FL 33401

As to the Participant:

Chairman, Port of Palm Beach
1 East 11th Street
Riviera Beach, FL 33404

With a copy to:

Security Manager, Port of Palm Beach
1 East 11th Street
Riviera Beach, FL 33404

SECTION 16: APPLICABLE LAW

This Agreement shall be governed by the laws of the State of Florida.

SECTION 17: FILING

A copy of this Agreement shall be filed with the Clerk & Comptroller, Palm Beach County.

SECTION 18: ENTIRE AGREEMENT

This Agreement and any Attachments attached hereto and forming a part thereof as if fully set forth herein, constitute all agreements, conditions and understandings between the County and the Participant concerning the System. All representations, either oral or written, shall be deemed to be merged into this Agreement. Except as herein otherwise provided, no subsequent alteration, waiver, change or addition to this Agreement shall be binding upon the County or Participant unless reduced to writing and signed by them.

SECTION 19: DELEGATION OF DUTY

Nothing contained herein shall be deemed to authorize the delegation of the Constitutional or Statutory duties of the County's or the Participant's officers.

SECTION 20: PALM BEACH COUNTY OFFICE OF THE INSPECTOR GENERAL AUDIT REQUIREMENTS

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General is authorized with the power to review past, present and proposed County contracts, transactions, accounts and records. The Inspector General's authority includes, but is not limited to, the power to audit, investigate, monitor, and inspect the activities of entities contracting with the County, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

SECTION 21: NO THIRD PARTY BENEFICIARY

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the County and/or Participant.

SECTION 22: NON-DISCRIMINATION

The County is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the Participant warrants and represents that throughout the term of the Agreement, including any renewals thereof, if applicable, all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or

expression, or genetic information. Failure to meet this requirement shall be considered default of the Agreement.

SECTION 23: ASSIGNMENT

Participant may not assign, mortgage, pledge, or encumber this Agreement in whole or in part, without prior written consent of County, which may be granted or withheld at the County's absolute discretion. This provision shall be construed to include a prohibition against an assignment, mortgage, pledge, encumbrance or sublease, by operation of law, legal process, receivership, bankruptcy, or otherwise, whether voluntary or involuntary.

SECTION 24: SEVERABILITY

If any term of the Agreement or the application thereof to any person or circumstance shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement, or the application of such term to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term of the Agreement shall be valid and enforceable to the fullest extent permitted by law.

SECTION 25: COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

SECTION 26: EFFECTIVE DATE

This Agreement is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners and shall become effective only when signed by all Parties and approved by the Palm Beach County Board of County Commissioners.

THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first above written.

ATTEST:

**SHARON R. BOCK
CLERK & COMPTROLLER**

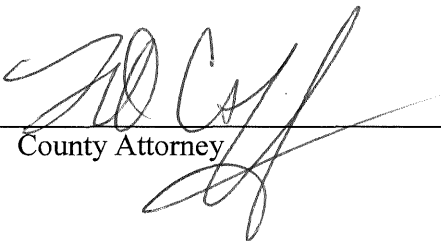
**PALM BEACH COUNTY, a political
subdivision of the State of Florida**

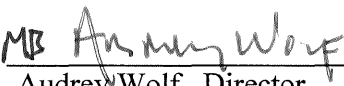
By: _____
Deputy Clerk

By: _____
, Mayor

**APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:**

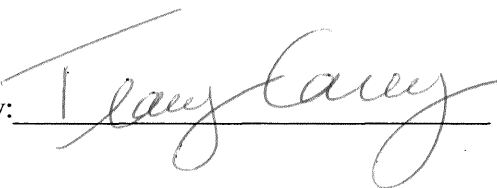
**APPROVED AS TO TERMS AND
CONDITIONS:**

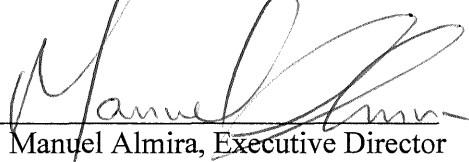
By:  _____
County Attorney

By:  _____
Audrey Wolf, Director
Facilities Development & Operations

ATTEST:

PORT OF PALM BEACH DISTRICT

By:  _____

By:  _____
Manuel Almira, Executive Director

**APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:**

By:  _____

Attachment I

PALM BEACH COUNTY PUBLIC SAFETY RADIO SYSTEM POLICIES AND PROCEDURES

Policy / Procedure Title

1. Countywide Use of 800 MHz System (O.P. # I-01)
 2. Countywide Use of 800 MHz System Talk Groups (O.P. # I-04)
 3. Monitoring and Evaluation of Public Safety Radio System Talk Groups (O.P. # I-05)
 4. Emergency Medical Communications (O.P. # I-06)
 5. Reporting of Problems and Modifications of the Public Safety Radio System (O.P. # I-07)
 6. Countywide Use of Public Safety Radio System During Times of Catastrophic Failure which result in non-trunking “conventional” operation (O.P. # I-10)
 7. System Maintenance and Administration Plan
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