

AGREEMENT

THIS AGREEMENT entered into this, the ____ day of _____, 2016, by and between the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, an urban county government of the Commonwealth of Kentucky pursuant to Chapter 67A of the Kentucky Revised Statutes, with offices at 200 East Main Street, Lexington, Kentucky (hereinafter referred to as "LFUCG") and FAYETTE COUNTY PUBLIC SCHOOLS (hereinafter referred to as "FCPS"), with offices at 701 East Main Street, Lexington, Kentucky 40502.

WITNESSETH

WHEREAS, the parties to this Agreement are committed to delivery of the highest possible level of fire, law enforcement, medical emergency and related services; and

WHEREAS, the parties to this Agreement believe that interoperability is a critical component in providing these services; and

WHEREAS, LFUCG has purchased and provided for installation of a state-of-the-art interoperable public safety radio communications system based upon the 800 megahertz P25 trunked radio system (hereinafter referred to as the "Radio System") that is capable of supporting trunked radio services and capable of being expanded in a manner consistent with current public safety communications technical standards; and

WHEREAS, FCPS has purchased and provided for installation of public safety radio communications equipment required and necessary to communicate across the Radio System and wishes to use its purchased communications equipment across the Radio System within its jurisdiction; and

WHEREAS, the parties to this Agreement desire to participate in the use and support of the Radio System, in order to ensure that it will:

- Provide for efficient and effective support of the delivery of public safety services to people who need help;
- Provide the greatest support possible for firefighters, paramedics, law enforcement officers and others for whom reliable, interoperable communications systems are essential;

NOW, THEREFORE, in consideration of the foregoing premises and in consideration of the mutual undertakings and obligations hereinafter agreements hereinafter set forth, LFUCG and FCPS agree as follows:

I. INCORPORATIONS, COMPLETENESS OF AGREEMENT, AMENDMENTS.

1. The above recitals are incorporated herein by reference, as if fully stated.
2. This Agreement and the documents incorporated herein contain the entire Agreement between the parties, and no statement, promises, or inducements by either party or agent of either party that is not contained in this written Agreement shall be valid and binding. Any alterations, variations, modifications, or waivers of this Agreement shall only be valid when they have been reduced to writing as an amendment to this Agreement and signed by the parties hereto.

II. DUTIES, RESPONSIBILITIES, AND PROVISION OF SERVICES.

1. FCPS shall perform and provide the following duties, responsibilities, and services:
 - a. FCPS shall pay to LFUCG a subscriber fee for the use of the Radio System on a quarterly basis as follows:
 - i. The subscriber fee shall be \$75.00 per subscriber for the first year of this Agreement. The per subscriber fee shall include initial programming of talk groups and encryption keys for each subscriber. Additionally, the fee shall include one (1) annual re-programming of the FCPS subscriber fleet, if necessary.
 - ii. The subscriber fee shall increase to \$85.00 per subscriber in years two (2) through five (5) of this Agreement. In years six (6) through ten (10) the subscriber fee shall increase to \$90.00 per subscriber.
 - b. FCPS shall purchase mobile and portable radios necessary to access the Radio System and shall be responsible for the maintenance of all related consoles, control station radios, mobile radios, hand-held radios for such access;
 - c. FCPS shall operate two-way radio communications equipment in accordance with Federal Communications Commission (hereinafter referred to as the "FCC") regulations;

- d. FCPS shall maintain a fiber or microwave back-haul connection to the Radio System necessary for implementation of the AVTEC Scout dispatch console. The fiber and/or microwave back-haul connections must meet the minimum requirement as set forth herein;
- e. FCPS is responsible for the cost of the installation and reoccurring maintenance of the fiber and/or microwave back-haul connection between the requisite Sites.
- f. FCPS shall ensure that the only authorized and permitted users on the Radio System are FCPS Law Enforcement.

2. LFUCG shall perform and provide the following duties, responsibilities, and services:

- a. LFUCG shall be responsible for the cost of the Radio System maintenance;
- b. LFUCG shall provide technicians, which shall program all necessary encryption keys. LFUCG technicians will also provide and assign Unit Identification numbers for all portable and mobile radio units owned by FCPS that are used on the Radio System;
- c. LFUCG shall invoice FCPS quarterly for its apportioned subscriber fee, based on the number of FCPS subscriber's on the Radio System;
- d. LFUCG shall maintain all required Federal Communication Commission (hereinafter referred to as the "FCC") licenses necessary to operate the Radio System;

III. EFFECTIVE DATE AND TERM OF AGREEMENT.

- 1. This Agreement shall take effect upon execution by both parties hereto, and shall remain in effect for a period of ten (10) years, unless termination at an earlier point in time as further provided herein.
- 2. If no action is taken to terminate this Agreement pursuant to the termination provisions herein, at the end of the initial term of ten (10) years, this Agreement shall automatically renew for additional one (1) year terms.

IV. TERMINATION AND DEFAULT.

- 1. Either party may terminate this Agreement at any time and for any reason by providing notice in writing at least six (6) months in advance. However because of complexity and the interoperability of the Radio Systems, the parties agree to cooperate for a period of time it requires for complete severance of the relationship, provided this period of time is no longer than two (2) years.

2. If either party materially breaches the terms of this Agreement, the other party may terminate this Agreement after providing the breaching party written notice of such breach and the breaching party shall have failed to cure the same within thirty (30) calendar days after receipt of such notice.

V. CONFORMANCE TO PLANS, USE OF FREQUENCIES.

1. All equipment purchased and owned by the parties which operates on the Radio System shall comply with technical and performance standards established by LFUCG based on vendor recommended requirements relating to hardware and/or software.
2. All radios used for law enforcement purposes shall be capable of transmission and reception on frequencies established by the National Public Safety Planning Advisory Committee.
3. All frequencies received by either party in an encrypted mode shall not be re-broadcasted by either party or its divisions, employees, or any other affiliate in an unencrypted mode. Both parties may maintain unencrypted talk groups.

VI. INFRASTRUCTURE AND EQUIPMENT OWNERSHIP.

1. LFUCG and the Bluegrass Airport shall own all infrastructures that each party respectively purchased relating to the Radio System.
2. LFUCG is the owner of the Master Site controller for the Radio System.
3. FCPS is the owner of their purchased public safety radio communications equipment required and necessary to communicate across the Radio System.

VII. PERMITTED USERS, LIMITATIONS, SYSTEM PRIORITY.

1. LFUCG shall establish the System priority of all users/subscribers based on consultation with FCPS.
2. FCPS will not expand subscribers beyond its agency without approval of LFUCG. Any approved expansion may incur additional fees to FCPS.
3. Upon approval of LFUCG, any non-public safety user/subscriber will be afforded a lower priority based on the System priority established by LFUCG.
4. In order to maintain the necessary channel capacity on the Radio System, FCPS shall not utilize telephone interconnect capability on subscriber's radios. FCPS may purchase radios with private talk capability, but use of the feature shall be limited to senior management (equivalent to police rank of lieutenant or higher)

VIII. DATA PRIVACY.

1. Parties agree to abide by all applicable Federal and State laws and regulations concerning confidential and non-public information relating to individuals and/or data.

IX. INDEPENDENT CONTRACTOR AND INDEMNIFICATION.

1. To the extent allowable by law LFUCG and FCPS are and shall remain independent contractors with respect to all services performed under this Agreement. Except as provided, within this Agreement, LFUCG and FCPS shall independently select the means, method, and manner of performing their respective services herein. Nothing is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the LFUCG and FCPS hereto or as consulting either party as the agent, representative, or employee of the other for any purpose or in any manner whatsoever.
2. Each party shall defend, indemnify, and hold the other party, its directors, board members, officers, agents, and employees harmless from and against any claims of third parties and losses, costs, liabilities, damages and expenses (including, but not limited to, reasonable attorneys' fees), arising out of or resulting from the acts or omissions of the other party, or anyone acting on the other party's behalf in connection with this Agreement or its performance; provided, however, neither party shall not be required to indemnify the other against liability for damages to the extent caused by or resulting from a party's own negligence. This shall not be deemed a waiver of sovereign immunity or any other third party defense available to parties.

X. FORCE MAJEUR AND DISCLAIMER OF WARRANTIES.

1. Neither party shall be liable for the delay, failure or interruptions in the Radio System service caused by circumstances beyond their reasonable control.
2. LFUCG makes no warranties, express or implied, including without limitation, any implied warranty of merchantability or fitness for a particular purpose to FCPS in connection with its use of service.

XI. GOVERNING LAW AND COMPLIANCE WITH APPLICABLE LAW.

1. This Agreement shall be governed by, construed and enforced under, subject to, and in accordance to the laws of the Commonwealth of Kentucky and FCC regulations as applicable.
2. The parties acknowledge, agree, and warrant that they shall maintain compliance with all applicable laws, rules and regulations, in connection with this Agreement and their relationship

XII. NOTICES.

All notices under this Agreement shall be in writing and shall be delivered by registered or certified mail, return receipt requested to the addresses specified below.

FOR LFUCG:

FOR FCPS:

Lexington-Fayette Urban County Government
200 East Main Street
Lexington, Kentucky 40507
Attn: Commissioner of Public Safety

Fayette County Public Schools
701 East Main Street
Lexington, Kentucky 40507
Attn: Director of Law Enforcement

IN WITNESS WHEREOF, this Agreement is executed as of the day first written above.

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

By: _____

JIM GRAY, MAYOR

ATTEST:

CLERK OF URBAN COUNTY COUNCIL

FAYETTE COUNTY PUBLIC SCHOOLS

By:  3/16/14

EMMANUEL CAULK, SUPERINTENDENT

 

COMMONWEALTH OF KENTUCKY

COUNTY OF FAYETTE

The foregoing instrument was subscribed and acknowledged before me by Emmanuel Gaulk, as Superintendent, for and on behalf of Fayette County Public Schools, on this the 16th day of March, 2016.

My commission expires: 9/22/17.

Tanya C. Dailey
Notary Public

