

AGREEMENT

THIS AGREEMENT made and entered into this, the _____ day of _____, 2015, 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 the **LEXINGTON-FAYETTE URBAN COUNTY AIRPORT BOARD**, with offices at 4000 Terminal Drive, Suite 206, Lexington, Kentucky (hereinafter referred to as the “Airport”).

WITNESSETH

WHEREAS, LFUCG and the Airport are equally committed to the delivery of the highest level of fire, law enforcement, emergency medical and related services; and

WHEREAS, LFUCG and the Airport 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 MHz P25 trunked Radio System (hereinafter referred to as the “Radio System”) that is capable of supporting trunked Radio services and being expanded in a manner consistent with current public safety communications technical standards; and

WHEREAS, the Airport 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, LFUCG and the Airport 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 those in need;
- Provide the greatest support possible for firefighters, paramedics, law enforcement officers and others for whom reliable, interoperable communications Systems are essential;
- Provide for the collection and provision of data needed to monitor the continuing effectiveness of Radio System to assure that the applicable standards are met;

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

I. DEFINITIONS.

The terms listed below shall have the following meanings when appearing in this Agreement, unless otherwise noted.

1. "AMENDMENT" means any change made in writing to this Agreement as submitted to and approved by the governing bodies of LFUCG and the Airport.
2. "AUTHORIZED USERS" refers to the Airport personnel who are duly authorized by this Agreement to utilize the Radio System.
3. "CMRS BOARD" refers to the Commercial Mobile Radio Service Emergency Telecommunications Board.
4. "AIRPORT RADIO COMMUNICATIONS EQUIPMENT" means portable, mobile, fixed control stations, dispatch consoles, or related hardware purchased by the Airport for use within the Radio System. In the event that the Airport dissolves this Agreement or otherwise leaves the system, the Airport shall retain ownership of any Airport Radio Equipment purchased with its own funds.
5. "CPS" means the LFUCG Commissioner of Public Safety or his/her designee.
6. "FCC" means the Federal Communications Commission as established by The Communications Act of 1934.
7. "INFRASTRUCTURE" refers, collectively to the equipment (including hardware and software) that supports the shared use of mobile and portable radios on the Radio System band frequencies licensed to the LFUCG for public safety and other authorized use and/or the equipment (including hardware and software) that supports operation of the Radio System.
8. "INFRASTRUCTURE ENHANCEMENT" means acquisition and installation of the Radio System equipment (including hardware and/or software) that serves to enhance the performance of (or add capabilities to) the Radio System.
9. "INFRASTRUCTURE MAINTENANCE" means those services required to maintain the operating capability of the Radio System, including, but not limited to, replacement of worn or broken components as well as the maintenance of and utilities for transmission sites, insurance premiums, and any other related items.
10. "NPSPAC" refers to the National Public Safety Planning Advisory Committee.

11. "SPARES" means the hardware and portable transportable consoles that LFUCG maintain for system maintenance at all sites.
12. "RADIO SYSTEM" means the LFUCG'S 800 MHz P25 trunked Radio System.
13. "MASTER SITE" means the LFUCG building housing the radio infrastructure that includes, but is not limited to, racks, radios, combiners, cabling, grounding, time clock, generator, antenna, microwave, order wire, and similar equipment.
14. "TOWER SITE" means the Airport tower housing the radio infrastructure that includes, but is not limited to, racks, radios, combiners, cabling, grounding, time clock, generator, antenna, microwave, order wire, and similar equipment.
15. "LIMITED MAINTENANCE" means the Airbus software support that includes software updates for features and functionality of the P25 system. It is provided at no additional charge for three years following the purchase, after which an annual payment is required for years 4 through 10.
16. "OPTIONAL MAINTENANCE" is Extended Warranty Services and means the optional Airbus hardware and software support that is renewable annually and may be discontinued by the customers. Services include corrective and preventive maintenance, 24x7 technical support help desk, on-site support (Airbus has sub-contracted delivery of services through Owens Communications).
17. "PURCHASE AGREEMENT" means the agreement between Lexington Fayette Urban County Government and Lexington-Fayette Urban County Airport Corporation and Airbus DS Communications for the purchase of a new 800 MHz digital radio system. It also means subsequent amendments for infrastructure enhancement.

II. TERM

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.
3. Either party may terminate the Agreement at the end of the term by sending notice in writing at least six (6) months in advance.

III. 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 the complexity and interoperability of the Radio Systems, the parties agree to cooperate for the 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 the 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.

IV. CONFORMANCE TO PLANS

1. LFUCG and the Airport Equipment operating on the Radio System shall comply with technical and performance standards established by LFUCG based on vendor recommended requirements for hardware and/or software.
2. Encryption keys will only be programmed by LFUCG Division of Police technicians.
3. LFUCG Division of Police technicians will provide and assign Unit ID numbers of the Airport's portable and mobile Radios that are used on the Radio System.

V. INFRASTRUCTURE OWNERSHIP

1. LFUCG and the Airport shall own infrastructure associated with the Radio System that each party respectively purchased independently from Airbus DS Communication (f/k/a Cassidian Communications) unless otherwise stated within this Agreement. Neither party shall be responsible or be party to the independent agreements each has with Airbus DS Communications.
2. Neither LFUCG nor the Airport shall be expected to purchase Radio Communications Equipment except as may be required to provide System functionality unique to either party or necessary to maintain interoperability between the LFUCG and Airport systems.
3. LFUCG is the owner of the Master Site controller for the Radio System.
4. The Airport is the owner of its multi-cast site and must maintain a fiber back-haul connection to the LFUCG System. The fiber back haul connections must meet minimum LFUCG System requirements as

provided herein. The Airport is responsible for the cost of the installation and reoccurring maintenance of the fiber back-haul connection between the Tower Site and the Master Site.

VI. MAINTENANCE

1. LFUCG and the Airport shall be responsible for the cost of Limited and Optional maintenance (as defined above) in accordance with Section 5 of this Agreement. LFUCG and the Airport shall be responsible for the cost of installation for those portions of Radio System and/or infrastructure associated with the Radio System that each party respectively purchased.
2. The Airport shall be responsible for the following:
 - a. Tower Structure site work and related infrastructure maintenance;
 - b. Cost of hardware, and the replacement or equipment utilized by LFUCG to repair the system;
 - c. The cost of infrastructure enhancements at its Tower Site, which include, but are not limited to, the Airport's requested hardware and channel additions to either the airport multi-cast System or LFUCG simul-cast System;
 - d. The cost and maintaining a properly connected generator at its Tower Site that is capable of operating continuously for a minimum of three (3) days without refueling;
 - e. The cost of routine or emergency maintenance to its Tower Structure.
3. LFUCG shall be responsible for the following:
 - a. Equipment repair of the Tower Site to include the use of spares and/or equipment purchase paid by Airport in accordance with § VI (2)(b) as set forth in Airbus DS Communications Agreement with LFUCG;
 - b. An optional maintenance and repair contract with Airbus DS Communications that provides a three year warranty on all parts and equipment (the "Warranty") as set forth in the Purchase Agreement;
 - c. First-line infrastructure routine maintenance and support for the Tower Site. For each maintenance call, LFUCG will provide 4 hours of maintenance and will invoice the Airport for work for all work over the initial four (4) hours of maintenance at the actual hourly rate of the technicians performing the work.

4. The Airport shall be responsible to LFUCG for 8% of LFUCG'S annual Limited and Optional maintenance contract with Airbus (or another third party) for the Radio System ("Maintenance Fee"). If the cost of the maintenance increases based on additions or upgrades, the party requesting the upgrade or additions shall be responsible for the correlating increase of the annual maintenance of the Radio System.

VII. METHOD OF BILLING AND INVOICING

1. LFUCG shall invoice the Airport through its designated liaison for the actual cost of repairs associated with the Airport's Radio System incurred pursuant to § VI (2) (b). This arrangement does not preclude the Airport from paying Airbus DS Communications or another authorized vendor directly for repair or replacement parts placed on its system.
2. LFUCG shall invoice the Airport annually for its portion of Maintenance Fee.

VIII. FCC LICENSE AND USE OF FREQUENCIES

1. LFUCG shall be responsible for the maintenance of all FCC licenses required to operate the Radio System, including the Airport multi-cast site.
2. All LFUCG and Airport Radios used for law enforcement purposes shall be capable of transmission and reception on NPSPAC frequencies.
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.
4. The Airport shall operate two-way Radio equipment in accordance with the regulations of the FCC.

IX. RADIO SYSTEMS USES AND LIMITATIONS

1. Only Airport public safety and non-public safety (non-sworn users) shall be permitted users on the Radio System. The Airport will not expand users beyond its agency without approval of the CMRS Board. The expansion of users may incur fees to Airport.
2. LFUCG and Airport non-public safety users shall be afforded a lower System priority than public safety users. LFUCG will establish the System priority of all users based on consultation with the Airport.
3. The Airport shall not utilize telephone interconnect capability on subscribers Radio, in order to ensure that the channel capacity of the Radio System will not be unnecessarily reduced. The Airport 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).

X. DATA PRIVACY

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

XI. DISPUTE RESOLUTION

1. Complaints from either party relative to operating-cost allocation, system performance standards, maintenance and other matters relating to this Agreement are within the purview of the CMRS Board.
2. Such complaints shall be forwarded to the LFUCG Commissioner of Public Safety. Depending on the scope of the complaint, the CPS shall direct the complaint to either the CMRS Board or Lexington Division of Police for assessment and any action as may be necessary. If the CPS determines that the complaint requires the attention of the CMRS Board, the CPS shall be responsible for bringing the matter to the attention of the CMRS Board as soon as appropriate, but no later than the next meeting of the CMRS Board. The CMRS Board shall take such action and render a disposition to the complaint as the CMRS Board determines to be appropriate.
3. In the event that either party disagrees with the decision of the CMRS Board, that party has a right to pursue an original action in Fayette Circuit Court.

XII. COMPLETENESS OF AGREEMENT

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.

XIII. INDEPENDENT CONTRACTOR AND INDEMNIFICATION

1. To the extent allowable by law LFUCG and the Airport are, and shall remain, independent contractors with respect to all services performed under this Agreement. Except as provided within this Agreement, LFUCG and the Airport 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 the Airport hereto or as constituting 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.

XIV. 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.

XV. RECORD RETENTION

The parties agree to maintain all records relative to this Agreement and the use of the system during the period in which such System is used by both parties for seven years beyond the expiration or termination date of the Agreement.

XVI. FORCE MAJEUR AND DISCLAIMER OF WARRANTIES

1. Neither party shall be liable for the delay, failure or interruptions in 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 the Airport in connection with its use of service.

XVII. 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:

Lexington-Fayette Urban County
Government

200 East Main Street

Lexington, Kentucky 40507

Attn: Commissioner of Public Safety

For the Airport:

Bluegrass Airport

4000 Terminal Drive

Suite 206

Lexington, Kentucky 40510

Attn: Director of Public Safety and
Operations