

FOLLOW ALL PROCEDURES ON BACK OF THIS FORM

Contract # 220092
Number Assigned by Purchasing Dept.



CONTRACT REVIEW

BOARD MEETING DATE:

WHEN BOARD APPROVAL IS REQUIRED DO NOT PLACE ITEM ON AGENDA UNTIL REVIEW IS COMPLETED
 Must Have Board Approval over \$100,000.00

Date Submitted: 1/26/2022

Name of Contract Initiator: Bryce Ellis Telephone #: 66853

School/Dept Submitting Contract: Transportation Cost Center # 9010

Vendor Name: Clay County, Florida

Contract Title: Inter-local Agreement between Clay County and School Board for use of County's Radio System

Contract Type: New Renewal Amendment Extension Previous Year Contract #

Contract Term: 5 years from effective date Renewal Option(s): 2 additional 5 year terms

Contract Cost:

BUDGETED FUNDS – SEND CONTRACT PACKAGE DIRECTLY TO PURCHASING DEPT

Funding Source: Budget Line # MIL Money & Capital (LCIF)

Funding Source: Budget Line # _____

NO COST MASTER (COUNTY WIDE) CONTRACT - SEND CONTRACT PACKAGE DIRECTLY TO PURCHASING DEPT

INTERNAL ACCOUNT - IF FUNDED FROM SCHOOL IA FUNDS – SEND CONTRACT PACKAGE DIRECTLY TO SBAO

REQUIRED DOCUMENTS FOR CONTRACT REVIEW PACKAGE (when applicable):

____ Completed Contract Review Form

____ SBAO Template Contract or other Contract (NOT SIGNED by District / School)

____ SIGNED Addendum A (if not an SBAO Template Contract)*

**This Statement MUST BE included in the body of the Contract:
"The terms and conditions of Addendum A are hereby incorporated into this Agreement and the same shall govern and prevail over any conflicting terms and/or conditions herein stated."*

____ Certificate of Insurance (COI) for General Liability & Workers' Compensation that meet these requirements:
COI must list the School Board of Clay County, Florida as an Additional Insured and Certificate Holder. Insurer must be rated as A- or better.
General Liability = \$1,000,000 Each Occurrence & \$2,000,000 General Aggregate.
Auto Liability = \$1,000,000 Combined Single Limit (\$5,000,000 for Charter Buses).
Workers' Compensation = \$100,000 Minimum
[If exempt from Workers' Compensation Insurance, vendor/contractor must sign a Release and Hold Harmless Form. If not exempt, vendor/contractor must provide Workers' Compensation coverage].

____ State of Florida Workers Comp Exemption (<https://apps.fldfs.com/bocexempt/>) (If Applicable)

____ COVID-19 Waiver (If Applicable)

____ Release and Hold Harmless (If Applicable)

RECEIVED
JAN 26 2022
PURCHASING

RECEIVED

1/26/2022
SBAO

**** AREA BELOW FOR DISTRICT PERSONNEL ONLY ****

CONTRACT REVIEWED BY:	COMMENTS BELOW BY REVIEWING DEPARTMENT
Purchasing Department <i>B78</i>	SBCC requested & County agreed to allow SBCC Transportation/Bus Radios to use the County's Radio System. The County voted for option 3: SBCC pays County \$174,504.60 for infrastructure PLUS \$65,304.60 for subscriber/maintenance/operations cost for a total annual cost of \$239,809.20. Further negotiation is expected but first we need to finalize an Inter-local Agreement.
Review Date <i>1/26/2022</i>	
School Board Attorney <i>JB</i>	Purchasing (in Green) & Operation (in Pink) made revisions to the County's draft Inter-local Agreement.
Review Date <i>2/18/22</i>	<i>see addition p. 6 of 12</i>
Other Dept. as Necessary	
Review Date	

PENDING STATUS: YES NO **IF YES, HIGHLIGHTED COMMENTS ABOVE MUST BE CORRECTED BY INITIATOR**

FINAL STATUS **APPROVED** Revised by School Board 3/3/2022 DATE *2/22/2022*
-B78

**INTERLOCAL AGREEMENT BETWEEN CLAY COUNTY, FLORIDA
AND THE SCHOOL BOARD OF CLAY COUNTY, FLORIDA
FOR USE OF CLAY COUNTY'S RADIO SYSTEM**

THIS INTERLOCAL AGREEMENT BETWEEN CLAY COUNTY, FLORIDA AND THE SCHOOL BOARD OF CLAY COUNTY, FLORIDA FOR USE OF CLAY COUNTY'S RADIO SYSTEM ("Agreement"), is made and entered into as of this day of _____ 2022 ("Effective Date"), by and between Clay County, a political subdivision of the State of Florida (the "County"), and the School Board of Clay County, a body corporate and political subdivision of the State of Florida ("School Board").

RECITALS

WHEREAS, Chapter 163, Florida Statutes, permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage; and

WHEREAS, on April 1, 2016, the County and Motorola Solutions, Inc. ("Motorola") entered into that certain 800 MHz Public Safety Radio System Agreement, designated by the County as Clay County Agreement/Contract No. 2015/2016-85, as amended, for the purchase and implementation of an 800 MHz Public Safety Radio System ("Radio System Agreement"); and

WHEREAS, in accordance with the Radio System Agreement, the County owns and operates an 800 MHz Public Safety Radio Communications System, together with the Microwave System supporting same ("Radio System") that is used by the County and public law enforcement and safety services or entities dispatched by the County or authorized by the County to use the Radio System; and

WHEREAS, the Radio System includes the Tower Sites, equipment shelters, real property, equipment, software, and incidental hardware and materials that are combined together into an integrated system, including, but not limited to the P25 equipment; and

WHEREAS, on December 8, 2020, the County and Motorola entered into that certain Agreement for Public Safety Radio Tower Equipment Shelter Upgrades, designated by the County as Clay County Agreement/Contract No. 2020/2021-78, for the complete replacement of the County's radio tower equipment communication shelters at the designated tower sites to include MSB 12 • x 16' shelter, 50 kW outdoor generator, 500 gallon LP tank, UPS, HVAC and backup HVAC, Cam Locks, upgraded tower lights (at the designated tower site locations), and remote monitoring; and

WHEREAS, the School Board's current radio dispatch system used by its Transportation Department is inadequate in terms of technology, efficiency, coverage, uniformity, and interoperability with the County's Radio System; and

WHEREAS, the School Board is preparing to implement a new and improved radio dispatch system for its school bus transportation program and has requested the County's approval to connect with and share use of the Radio System to facilitate the School Board's communication upgrades and interagency communication (School Board's May 26, 2021 letter attached as **Attachment A**); and

WHEREAS, the School Board will purchase all of the necessary equipment and services to use the County's Radio System; and

WHEREAS, the County's Radio System is capable of expansion; and

WHEREAS, acquiring, implementing, operating, and maintaining a brand new, standalone radio dispatch system would still lack crucial interlocal communication and bear undue time, complexity, complications, and excessive cost for the School Board; and

WHEREAS, the parties wish to set forth uniform terms and conditions that encompass the School Board's use of the Radio System for its school bus transportation program.

NOW THEREFORE in consideration of the premises and mutual covenants contained herein, and for other good and valuable consideration, the receipt and the adequacy of which are mutually acknowledged, with each party accordingly waiving any challenge to the sufficiency of such consideration, it is mutually covenanted, promised and agreed by the parties hereto as follows:

1. Florida Interlocal Cooperation Act. This Agreement is entered into pursuant to the provisions of Section 163.01, Florida Statutes, commonly known as the "Florida Interlocal Cooperation Act of 1969", and all applicable portions of the Act are made a part hereof and incorporated herein as if set forth in full, including, but not limited to the following specific provisions:
 - a. All of the privileges and immunities and limitations from liability, exemptions from laws, ordinances and rules, and all pensions and relief, disability, workers' compensation and other benefits which apply to the activity of officers, agents, or employees of the parties hereto when performing their respective functions within their respective territorial limits for their respective agencies, shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents or employees extraterritorially under the provisions of this Agreement.
 - b. This Agreement does not and shall not be deemed to relieve any of the parties hereto of any of their respective obligations or responsibilities imposed upon them by law except to the extent of the actual and timely performance of those obligations or responsibilities by one or more of the parties to this Agreement, in which case performance provided hereunder may be offered in satisfaction of the obligation or responsibility.
 - c. As a condition precedent to its effectiveness, and pursuant to Section 163.01(11), Florida Statutes, this Agreement and any subsequent amendments hereto shall be filed with the Clerk of the Circuit Court of the County.

2. Purpose and Scope of Use.

- a. The Parties desire to mutually enter into an agreement allowing the Clay County School District's Bus Transportation Department access to the County's Radio System. The sharing of the Radio System will allow for an efficient way for the School Board dispatch system to be brought up to date while enhancing two-way communication capabilities between the County and Clay County School District.

This Agreement addresses the School Board's integration and use of the Radio System (the "Services"). This enhanced relationship will be especially important during disaster recovery as Public Services coordinates the transition from emergency repairs to long-term restoration activities under Federal Emergency Management Agency (FEMA) Emergency Support Function #3-Public Works and Engineering.

The County grants permission for the School Board to operate up to 256 mobile and/or portable radios and 2 consoles on the Radio System with up to 5 talk groups/channels. This permission may be modified and/or amended throughout the term(s) of this Agreement upon mutual written agreement of the County and the School Board.

- b. The School Board agrees and hereby acknowledges that the School Board's use of the Radio System shall be on an "AS IS" basis. The County owns the Radio System thus the County shall give best efforts to manage an operable Radio System. The County makes no representation or warranty of any kind, express or implied, whatsoever in this Agreement, including, without limitation, radio coverage or backhaul reliability warranties or commitments.

- c. The School Board understands and acknowledges that it shall be responsible to provide all necessary equipment to integrate with the Radio System at its sole cost and expense as further addressed herein and that no equipment will be sold to the School Board under this Agreement.
 - d. The County shall maintain ownership, management, operation, and decision making over the Radio System and shall be solely responsible for managing, operating, and maintaining the Radio System to include infrastructure as established in the Radio System Agreement.
 - e. The Radio System is designed to have user and channel priorities. For instance, first responder users/channels will generally get a higher priority on the Radio System than other users/channels. The School Board understands and acknowledges that the County shall maintain, at its discretion, user and channel priorities but shall give best efforts so that the School Board has operable communications at all time.
 - f. The County will be responsible for the technical configurations, design and operational aspects of the Radio System. Any proposed designs or considerations by the School Board for its use of the Radio System are subject to review and approval by the County. The County will also be responsible for providing technical assistance to the School Board in establishing templates, fleet Inaps, and operational policies.
 - g. The School Board shall be responsible for all costs, fees, and expenses associated with the purchase, programming, licensing, connections to the Radio System, and repair of subscriber units, radios, and consoles required for the School Board's intended use. In the event a subscriber unit acquired by the School Board is lost or stolen, the School Board shall immediately notify the County.
 - h. As more fully set forth in paragraph 6, the School Board shall be responsible for its proportional share of any and all upgrades and maintenance of the Radio System and equipment as necessary to maintain their subscriber equipment,, throughout the term(s) of this Agreement. The School Board understands and acknowledges the costs, fees, and expenses associated with these upgrades and maintenance may be modified or increased throughout the term(s) of this Agreement upon mutual agreement in writing by both parties. The parties agree to discuss and conduct reviews, at least annually, to address any changes or modifications, including, but not limited to, costs, fees, and expenses associated with maintenance, equipment, growth of the parties, and user fees. The School Board agrees to pay its proportional share of operating costs for access to the County Radio System.
 - i. The County solely retains the right to admit any other entity onto the Radio System under a separate agreement.
3. FCC License. The School Board radio communications shall be under the County's Federal Communications Commission (FCC) license, which includes the 800 MHz Public Safety Radio Communications System and the Microwave System.
 4. Talk Group Restrictions. To protect the County's public safety operation against traffic congestion and channel access delays due to the School Board's use of the Radio System, the County retains the right to set a limit to the number of simultaneous radio transmissions by the School Board. The limitation will be based on the School Board's radio use and the number of frequencies that may be added to the Radio System to accommodate the additional traffic. The County shall make best efforts so that the School Board has operable communications at all times.
 5. Term and Termination.

- a. This Agreement shall commence on the Effective Date and shall remain in full force and effect for a period of five (5) years from the Effective Date, until otherwise terminated as provided herein. This Agreement may be renewed for two additional five (5) year terms if it is deemed to be in the County's best interest to do so and upon mutual agreement of the School Board.
 - b. This Agreement may be terminated by either party for any reason, with or without cause, by providing written notice to the other party at least 18 months in advance of the specified effective date of the termination. The parties will discuss and work together on a plan for final termination. The School Board shall be responsible for its share of costs or fees due for maintenance or repair it may be obligated at the time of termination. The County shall be responsible for costs or fees due to termination of the Agreement.
6. Payment of Costs, Fees, and Expenses. In consideration of the use of the Radio System, the School Board agrees to compensate the County as described herein. All payments required under this Agreement shall be made in accordance with the Local Government Prompt Payment Act, which provides that payments will be made not later than 45 days from receipt of proper invoice.
- a. Radio System Modifications: The School Board is solely responsible for the cost and expense of any modifications to the Radio System required to incorporate the School Board's intended use. The County may make changes to the Radio System infrastructure which may require the School Board to update/reconfigure School Board equipment at the School Board expense... Such costs and expenses include, but are not limited to, the following:
 - i. School Board equipment such as radios, base stations, consoles, antenna systems, subscribers, accessories, and spares.
 - ii. School Board system software licenses and license upgrades. School Board subscriber code plug development, installation, programming and firmware upgrades.
 - iii. School Board subscriber fleet mapping, code plug development, installation, programming and firmware upgrades.
 - iv. School Board engineering, project management, installation, labor, and required permits. Its proportional share of facility improvements such as enhancements in towers and shelters, electrical, HVAC, UPS, generators, etc required to incorporate the School Board's intended use.
 - b. Radio System and Equipment Maintenance: The School Board is solely responsible for the cost and expense of the following:
 - i. School Board Replacement or repair of any equipment added for the purpose of this integration and any of its future enhancements.
 - ii. Maintenance, repair, and replacement of School Board subscriber equipment including accessories, firmware upgrades, feature enhancements, programming, and fleet mapping.
 - c. Radio System Upgrades:
 - i. To ensure that the Radio System remains current and able to accommodate new features and capabilities along the way, from time to time, the County may enter into a System Upgrade Agreement (SUA) with Motorola or other similar agreement. Per SUA provisions, Motorola replaces or upgrades certain hardware and software and provides the labor to do so. As such upgrades are encompassing and impact the entire Radio System, the School Board shall financially contribute in a timely manner toward any SUA or similar type agreement for its proportionate share of the upgrade required to incorporate the School Board's intended use.

- ii. At any time deemed necessary, the County may add additional features or functionalities to the Radio System, which might require the School Board to contribute additional fees throughout the term of this Agreement that are proportionate to additions directly impacting the School Board.
 - d. User Fees: The School Board shall pay subscriber, maintenance, and operation costs in the amount of \$65,304.60. This User Fee shall be paid by the School Board to the County at the beginning of each annual term of the Agreement.
7. Equipment Ownership. Any infrastructure equipment installed for the purpose of this integration, as set forth in the Agreement, initially and at any point thereafter, along with all system software will become property of the County upon installation. The School Board shall retain ownership of its subscriber units and consoles. Any legacy equipment, transmission lines, hardware, and antennas located in the County's Tower Sites and which will be decommissioned by the School Board following full integration into the County's Radio System, must be removed by the School Board at its sole cost and expense.
8. Goods and Services. The School Board shall use only goods and services approved by the County. The equipment and services must be compatible on the Radio System. All equipment shall meet or exceed current standards of the Electronic Industries Alliance (EIA) and the Telecommunications Industry Association (TIA), and the rules and regulation of the FCC. Additionally, all equipment shall be the type accepted by the FCC and comply with APCO P 25 Standards. All work shall be performed in accordance with applicable industry standards employing manufacture certified hardware, software, and practices. Any work performed by employment of non-certified equipment or services authorized by the School Board shall immediately cease and if such causes any degradation to the Radio System performance, the School Board shall, at its sole cost and expense, promptly remedy the problem.
9. Regulatory Issues and Compliance.
- a. It shall be the responsibility and obligation of the School Board to seek and promptly pay for, as may apply, all approvals including federal, state, county, municipal or other governmental authority having jurisdiction over the School Board required to enter into this Agreement.
 - b. The School Board agrees to observe, be financially responsible for, and abide by all applicable statutes, laws, ordinances, rules and regulations, including but not limited to those of the Federal Aviation Administration (FAA) and FCC concerning the performance of this Agreement.
 - c. The School Board further agrees to operate its radios and any related equipment so as not to cause interference with other users on the Radio System. The School Board recognizes that applicable FAA and FCC rules and other statutes, laws, ordinances, and regulations may change from time to time to which extent the School Board shall be responsible to be familiar and compliant with such.
10. Governance and Dispute Resolution. The parties shall resolve all disputes that may arise during the term(s) of this Agreement in accordance with the provisions described in this paragraph.
- a. The parties will attempt to settle any dispute arising from this Agreement through negotiation and a spirit of mutual cooperation. The dispute will be escalated to appropriate higher-level managers of the parties, if necessary.
 - b. The County shall have full and final control and authority on all decisions related to technical configuration, design, management, and operational aspects of the Radio System. Any configuration, design, management, or operational issues will be directed to the County's E911 and LMR System Coordinator in writing.

- c. The County shall approve and authorize the School Board's programming and fleet map template for use on the Radio System. Fleet maps will be developed in collaboration between the School Board and County. The School Board's fleet map will be the sole basis for the operation of the School Board's subscriber units on the Radio System.
- d. This Agreement will not limit any party from taking legal action to protect the public against a threat to its health, safety, and welfare from a situation for which the dispute resolution process specified in this paragraph would not provide an adequate and timely solution. This paragraph will constitute an alternative dispute resolution process for purposes of Section 164.1041(1), Florida Statutes.

11. DISCLAIMER OF WARRANTIES AND LIMITATIONS OF REMEDIES.

- a. THE COUNTY HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, DIRECT OR INDIRECT, EXPRESS OR IMPLIED, WRITTEN OR ORAL, IN CONNECTION WITH ANY EQUIPMENT UTILIZED UNDER THIS AGREEMENT OR SERVICES PROVIDED BY THE COUNTY INCLUDING BUT NOT LIMITED TO, ANY AND ALL EXPRESS AND IMPLIED WARRANTIES OF SUITABILITY, DURABILITY, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.
- b. THE SCHOOL BOARD ACKNOWLEDGES AND AGREES THAT ITS SOLE AND EXCLUSIVE REMEDY IN CONNECTION WITH ANY DEFECTS IN ANY EQUIPMENT UTILIZED UNDER THIS AGREEMENT, INCLUDING MANUFACTURE OR DESIGN, SHALL BE AGAINST THE MANUFACTURER OF THE EQUIPMENT UNDER THE MANUFACTURERS' WARRANTIES AND THAT THE COUNTY SHALL HAVE NO LIABILITY TO THE SCHOOL BOARD IN ANY EVENT FOR ANY LOSS, DAMAGE, INJURY, OR EXPENSE OF ANY KIND OR NATURE RELATED DIRECTLY OR INDIRECTLY TO ANY EQUIPMENT UTILIZED BY THE SCHOOL BOARD UNDER THIS AGREEMENT.

12. LIMITATIONS OF LIABILITY.

- a. THE SCHOOL BOARD UNDERSTANDS AND ACKNOWLEDGES THAT (A) OCCASIONAL INTERRUPTIONS OR IRREGULARITIES IN THE SERVICES MAY OCCUR; AND (B) ANY POTENTIAL HARM FROM INTERRUPTIONS OR IRREGULARITIES IN THE SERVICES IS SPECULATIVE IN NATURE. THE COUNTY SHALL NOT ASSUME RESPONSIBILITY OTHER THAN THAT CONTAINED IN THE AGREEMENT. ACCORDINGLY, THE SCHOOL BOARD AGREES THAT EXCEPT AS LIMITED BY LAW, THE COUNTY'S SOLE LIABILITY FOR LOSS OR DAMAGE ARISING OUT OF MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, ERRORS, OR DEFECTS IN THE SERVICES OR TRANSMISSION OF SERVICES PROVIDED BY THE RADIO SYSTEM, THE COUNTY, OR ANY TRANSPORT PROVIDER, OR FOR LOSSES OR DAMAGES ARISING OUT OF FAILURE OF THE COUNTY OR ANY TRANSPORT PROVIDER TO MAINTAIN PROPER STANDARDS OR MAINTENANCE AND OPERATION, SHALL BE AS FOLLOWS:
 - i. THE COUNTY SHALL NOT IN ANY EVENT BE LIABLE FOR SERVICES OR EQUIPMENT INTERRUPTIONS OR DELAYS IN TRANSMISSION, ERRORS OR DEFECTS IN SERVICES OR EQUIPMENT WHEN CAUSED BY ACTS OF GOD, FIRE, WAR, RIOTS, GOVERNMENT AUTHORITIES, DEFAULT OF SUPPLIERS OR OTHER CAUSES BEYOND THEIR OR ANY CARRIER'S CONTROL.
 - ii. THE COUNTY SHALL NOT BE LIABLE FOR ANY DAMAGE, ACCIDENT, INJURY OR THE LIKE OCCASIONED BY THE USE OF THE RADIO SYSTEM, EXCEPT PROVIDED HEREIN.

- iii. THE COUNTY WILL NOT BE HELD RESPONSIBLE FOR SITE TRUNKING CONDITIONS OR OUTAGES CAUSED BY MUTUALLY AGREED UPON MAINTENANCE TASKS THAT MAY REQUIRE COMPONENTS OF THE RADIO SYSTEM TO GO OFFLINE.
- b. ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT THE COUNTY WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE. TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT.
- c. The provisions of this paragraph shall survive the expiration or termination of this Agreement.

13. Default and Remedy.

- a. Default. If the School Board fails to comply with provisions of this Agreement; fails to make payments as outlined herein; uses the Radio System in a manner that causes harmful interference with or degradation to the Radio System; configures equipment without the County's authorization; fails to use equipment in accordance with the FCC licensing; interferences with radio frequencies or channels or otherwise causes interference with other users on the Radio System; or fails to comply with applicable rules, laws and regulations, including the FAA and FCC, the County may consider the School Board to be in default and may assert a default claim by giving the School Board a written Notice of Default. The School Board shall have thirty (30) days after receipt of the Notice of Default to either cure the default or, if the default is not curable within thirty (30) days, provide a written cure plan to the County describing how and when the default will be cured. The School Board will begin implementing the cure plan immediately after receipt of notice by the County that it approves the plan.
- b. In the event the School Board fails to cure or the County does not approve the cure plan, the County has the right, at its option, to immediately terminate this Agreement, deny the School Board access to the Radio System and impose separate charges for both disconnection and reconnection expenses. If disconnection takes place, the School Board may also be subject to additional costs for any equipment reprogramming as may be required for reconnection. All of the rights and remedies of the County in the Agreement are cumulative to, and not in lieu of, every other right and remedy in this Agreement and afforded by law and equity.

14. Liability and Indemnification.

- a. Each party agrees that it shall be solely responsible for the negligence, willful misconduct, or wrongful acts of its directors, officers, employees, representatives, agents, and volunteers. Notwithstanding anything stated to the contrary in the Agreement, nothing contained herein is intended to serve as a waiver of either parties' sovereign immunity protections nor does it extend the parties' liability beyond the limits established in Section 768.28, Florida Statutes.
- b. In the event the Radio System is down and unavailable to the School Board, the School Board shall hold the County harmless. In such event, the County will exercise due diligence to restore the Radio System as quickly, as reasonably, and as practically as possible.
- c. No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent, staff, or employee of the County in his or her individual capacity, and no member, officer, agent, staff, or employee of the County shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.
- d. The provisions of this paragraph shall survive the expiration or termination of this Agreement.

15. Public Records and Audit.

- a. The access to disclosure, non-disclosure, or exemption of records, data, documents, and/or materials, associated With this Agreement shall be subject to the applicable provisions of the Florida Public Records Law (Chapter 1 19, Florida Statutes), and other applicable State or Federal law. The parties shall comply with all requirements of Chapter 1 19, Florida Statutes, to the extent applicable to the records and documents associated with this Agreement that are in its possession or under its control. A request to inspect or copy public records relating to the Agreement must be made directly to the County.
- b. The parties shall retain all records relating to this Agreement for a period of at least five (5) years after the Agreement terminates. All records shall be kept in such a way as will permit their inspection pursuant to Chapter 119, Florida Statutes. The County, upon written reasonable notice, shall have the right to audit and inspect any records of the School Board relating to this Agreement to ensure compliance with the terms of this Agreement.

IF THE SCHOOL BOARD HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SCHOOL BOARD'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (904) 278-4754, publicrecords@claycountygov.com, POST OFFICE BOX 1366, GREEN COVE SPRINGS, FLORIDA 32043.

16. Independent Contractor. Each party will perform its duties under this Agreement as an independent contractor. The parties and their personnel will not be considered to be employees or agents of the other party. None of the provisions of this Agreement shall be construed to create, or be interpreted as, a joint venture, partnership or formal business organization of any kind.
17. Notice. Any notice required or desired to be given hereunder, or any items required or desired to be delivered hereunder, may be served or delivered personally or by certified mail, return receipt requested, postage prepaid, or by any reliable and nationally recognized overnight delivery service, addressed as follows:

To School Board:

The School Board of Clay County, Florida
900 Walnut Street
Green Cove Springs, Florida 32043
Attention: Superintendent of Schools
Copy to: Transportation Director

To County:

Clay County
477 Houston Street
Post Office Box 1 366
Green Cove Springs, Florida 32043
Attention: County Manager
Copy to: E911 and LMR System
Coordinator

Notice may also be delivered to such other addresses as the party to be served may direct by written notice to the other party. If such notice is sent or delivery is made by registered or certified mail, such notice or delivery shall be deemed as served, made and effective seventy-two (72) hours after posting.

18. No Assignment. The School Board shall not assign or otherwise transfer, in whole or in part, any of its rights, duties, or obligations under this Agreement to any other party without the prior written consent of

the County, which consent may be withheld by the County for any or no reason. Any such assignment attempted by the School Board without such prior written consent shall be null and void.

19. No Third-Party Beneficiaries. Any other provisions of this Agreement to the contrary notwithstanding, no third-party beneficiaries are intended or contemplated under this Agreement, and no third-party shall be deemed to have rights or remedies arising under this Agreement against either party to this Agreement.
20. Amendment. The Agreement may only be modified or amended upon mutual written agreement of the County and the School Board. No oral agreements or representation shall be valid or binding upon either party.
21. Further Assurances. Each party agrees that it will execute and deliver to the other promptly upon demand any and all documents or other instruments, and take such other action as is necessary to give effect to the terms and intent of this Agreement.
22. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any litigation, mediation, or other action proceeding between the parties arising out of this Agreement lies in Clay County, Florida.
23. Attorneys' Fees. In the event either party shall retain an attorney to litigate on its behalf against the other party regarding the enforcement or interpretation of this Agreement or regarding the rights, remedies, or obligations of the parties arising under this Agreement, the party prevailing on the majority of its claims, or which successfully defends against a majority of the other party's claims, shall be entitled to an award of reasonable attorney's fees, costs, and expenses against the other party, including fees, costs, and expenses incurred from the date of referral of the dispute to the prevailing party's attorney through the conclusion of litigation, or incurred in bankruptcy or on appeal. Nothing contained herein is intended to serve as a waiver of sovereign immunity and extend the County's liability beyond the limits established in Section 768.28, Florida Statutes.
24. Waiver. No waiver by either party of any term or condition of this Agreement will be deemed or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different section, subsection, paragraph, subparagraph, clause, phrase, or other provision of this Agreement.
25. Severability. If any provision of this Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement, and this Agreement shall be enforced as if such invalid and unenforceable provision had not been contained herein. In no event shall the School Board or its assigns have any cause of actions against the officers or employees of the County, or against any elected official of the County based upon or materially related to any finding by any court that any or all provisions of this instrument violate Florida law.
26. Headings. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of any or all of the provisions hereof.
27. Counterparts. The Agreement may be executed in one or more counterparts and by the separate parties in separate counterparts, each of which shall be deemed to constitute an original and all of which shall be deemed to constitute the one and the same agreement.
28. Entire Agreement. It is mutually acknowledged and agreed by the parties hereto that this Agreement contains the entire agreement between the County and the School Board with respect to the subject matter of this Agreement, and that there are no verbal agreements, representations, warranties or other understandings affecting the same.

29. Authority. The parties agree to utilize electronic signatures and that the digital signatures of the parties set forth below are intended to authenticate this Agreement and have the same force and effect as manual written signatures. Each person signing on behalf of the parties represents and warrants that he/she has full authority to execute this Agreement on behalf of such party and that the Agreement will constitute a legal and binding obligation of such party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

Clay County, a political subdivision of the
State of Florida

By: _____
Mike Celia
Its Chairman

ATTEST:

Tara S. Green
Clay County Clerk of Court and Comptroller
Ex Officio Clerk to the Board

The School Board of Clay County, Florida

By: _____
Mary Bolla
Chairperson

ATTEST:

David Broskie
Superintendent of Schools

Attachment A



CLAY COUNTY DISTRICT SCHOOLS

900 WALNUT STREET, GREEN COVE SPRINGS, FL 32043

P (904) 336-6500 F (904) 336-6536 W oneclay.net

SUPERINTENDENT OF SCHOOLS

David S. Broskie

BOARD MEMBERS:

Janice Kerekes, District 1
Beth Clark, District 2
Tina Bullock, District 3
Mary Bolla, District 4
Ashley Gilhousen, District 5

To: Clay County Board of County Commissioners
From: David Broskie, Superintendent
Clay County District Schools
Subject: Joint Use of Communications System
Date: May 26, 2021

The Clay County School District Transportation Department is in critical need of upgrades to its outdated radio dispatching system. Recognizing this need, the District has an opportunity and is currently preparing to implement, a new and improved radio dispatch system for its school bus transportation program. However, in order for this upgrade to proceed, the District needs to request the BCC's approval to connect with and share usage of, some of its existing radio infrastructure with the District.

The District will be purchasing the equipment needed for this upgrade (as listed in the addendum below) and no costs will be incurred by the County. The upgraded radio system will allow the District to adhere to the new Project 25 communication standards that were developed to provide enhanced digital voice and data communication systems to public safety and first responders. Additionally, the system upgrades will assist the District in complying with the recently enacted "Alyssa's law" that requires school districts to implement a panic alert solution by the beginning of the 2021-2022 school year. Enhanced communications with emergency first responders is a key part of this panic alert solution and significant coordination with the County's emergency management staff in the planning of this upgrade has already occurred and will continue throughout the project's implementation.

If the request is approved, the District will have improved security for our bus drivers, better tools in place to address the impacts of unsafe situations, improved radio communication quality throughout the county and the ability to configure multiple voice channels which will increase overall transportation system efficiency. Furthermore, the District has, and shall continue to, work closely with the BCC's Emergency Management Department in times of countywide evacuations by transporting those that are sick, disabled or in an unsafe location. The implementation of these radio system upgrades will greatly assist both the District and the BCC in those activities as well.

As such, the Clay County School District respectfully requests the BCC's approval to share the County's radio infrastructure in order to facilitate the District's necessary communications upgrades. Thank you very much your time and consideration to this request.

Respectfully,

David Broskie
Superintendent, Clay County District Schools

Addendum

- (2) MCC7500e Console Operators
- (240) APX1500 Mobile Radios
- (5) Spare APX1500 Mobile Radios not installed
- (1) APX Console Radio and Antenna
- (10) APX 900 Portable Radios

Revisions by School Board

Clay County Agreement/Contract No. 2021/2022-

INTERLOCAL AGREEMENT BETWEEN CLAY COUNTY, FLORIDA AND THE SCHOOL BOARD OF CLAY COUNTY, FLORIDA FOR USE OF CLAY COUNTY'S RADIO SYSTEM

THIS INTERLOCAL AGREEMENT BETWEEN CLAY COUNTY, FLORIDA AND THE SCHOOL BOARD OF CLAY COUNTY, FLORIDA FOR USE OF CLAY COUNTY'S RADIO SYSTEM ("Agreement"), is made and entered into as of this day of 2022²⁴ ("Effective Date"), by and between Clay County, a political subdivision of the State of Florida (the "County"), and the School Board of Clay County, a body corporate and political subdivision of the State of Florida ("School Board").

RECITALS

WHEREAS, Chapter 163, Florida Statutes, permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage; and

WHEREAS, on April 1, 2016, the County and Motorola Solutions, Inc. ("Motorola") entered into that certain 800 MHz Public Safety Radio System Agreement, designated by the County as Clay County Agreement/Contract No. 2015/2016-85, as amended, for the purchase and implementation of an 800 MHz Public Safety Radio System ("Radio System Agreement"); and

WHEREAS, in accordance with the Radio System Agreement, the County owns and operates an 800 MHz Public Safety Radio Communications System, together with the Microwave System supporting same ("Radio System") that is used by the County and public law enforcement and safety services or entities dispatched by the County or authorized by the County to use the Radio System; and

Poor Quality

WHEREAS, the Radio System includes the Tower Sites, equipment shelters, real property, equipment, software, and incidental hardware and materials that are combined together into an integrated system, including, but not limited to the P25 equipment; and

WHEREAS, on December 8, 2020, the County and Motorola entered into that certain Agreement for Public Safety Radio Tower Equipment Shelter Upgrades, designated by the County as Clay County Agreement/Contract No. 2020/2021-78, for the complete replacement of the County's radio tower equipment communication shelters at the designated tower sites to include MSB 12 • x 16' shelter, 50 kW outdoor generator, 500 gallon LP tank, UPS, HVAC and backup HVAC, Cam Locks, upgraded tower lights (at the designated tower site locations), and remote monitoring; and

WHEREAS, the School Board's current radio dispatch system used by its Transportation Department is inadequate in terms of technology, efficiency, coverage, uniformity, and interoperability with the County's Radio System; and

WHEREAS, the School Board is preparing to implement a new and improved radio dispatch system for its school bus transportation program and has requested the County's approval to connect with and share use of the Radio System to facilitate the School Board's communication upgrades **and interagency communication** (School Board's May 26, 2021 letter attached as Attachment A); and

WHEREAS, the School Board will purchase all of the necessary equipment and services to use the **County's** Radio System; and

WHEREAS, the **County's** Radio System is capable of expansion; and

WHEREAS, acquiring, implementing, operating, and maintaining a brand new, standalone radio **dispatch** system would **still lack crucial interlocal communication and** bear undue time, complexity, complications, and excessive cost for the School Board; and

WHEREAS, the parties wish to set forth uniform terms and conditions that encompass the School Board's use of the Radio System for its school bus transportation program.

NOW THEREFORE in consideration of the premises and mutual covenants contained herein, and for other good and valuable consideration, the receipt and the adequacy of which are mutually acknowledged, with each party accordingly waiving any challenge to the sufficiency of such consideration, it is mutually covenanted, promised and agreed by the parties hereto as follows:

Florida Interlocal Cooperation Act. This Agreement is entered into pursuant to the provisions of Section 163.01, Florida Statutes, commonly known as the "Florida Interlocal Cooperation Act of 1969", and all applicable portions of the Act are made a part hereof and incorporated herein as if set forth in full, including, but not limited to the following specific provisions:

- a. All of the privileges and immunities and limitations from liability, exemptions from laws, ordinances and rules, and all pensions and relief, disability, workers' compensation and other benefits which apply to the activity of officers, agents, or employees of the parties hereto when performing their respective functions within their respective territorial limits for their respective agencies, shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents or employees extraterritorially under the provisions of this Agreement.
- b. This Agreement does not and shall not be deemed to relieve any of the parties hereto of any of their respective obligations or responsibilities imposed upon them by law except to the extent of the actual and timely performance of those obligations or responsibilities by one or more of the parties to this Agreement, in which case performance provided hereunder may be offered in satisfaction of the obligation or responsibility.

- c. As a condition precedent to its effectiveness, and pursuant to Section 163.01(11), Florida Statutes, this Agreement and any subsequent amendments hereto shall be filed with the Clerk of the Circuit Court of the County.

2. Purpose and Scope of Use.

- a. The Parties desire to mutually enter into an agreement allowing the Clay County School District's Bus Transportation Department to access to the County's Radio System. The sharing of ~~this~~ the Radio System will allow for an efficient way for the School Board dispatch system to be brought up to date while ~~providing an effective upto date shall bring the~~ enhancing two-way communication capabilities between of the County and Clay County School District's.

This Agreement addresses the School Board's integration and use of the Radio System (the "Services"). This enhanced relationship will be especially important during disaster recovery as Public Services coordinates the transition from emergency repairs to long-term restoration activities under Federal Emergency Management Agency (FEMA) Emergency Support Function #3-Public Works and Engineering. ~~The School Board's use of the Radio System is related to its school bus transportation program and communications involving transportation during emergency type events such as countywide evacuations.~~

The County grants permission for the School Board to operate up to 256 mobile and/or portable radios and 2 consoles on the Radio System with up to 5 talk groups/channels. This permission may be modified and/or amended throughout the term(s) of this Agreement upon mutual written agreement of the County and the School Board.

- b. The School Board agrees and hereby acknowledges that the School Board's use of the Radio System shall be on an "AS IS" basis. ~~The County owns the Radio System thus the County shall give best efforts to manage an operable Radio System.~~ The County makes no representation or warranty of any kind, express or implied, whatsoever in this Agreement, including, without limitation, radio coverage or backhaul reliability warranties or commitments.
- c. The School Board understands and acknowledges that it shall be responsible to provide all necessary equipment to integrate with the Radio System at its sole cost and expense as further addressed herein and that no equipment will be sold to the School Board under this Agreement.
- d. The County shall maintain ownership, management, operation, and decisionmaking over the Radio System and shall be solely responsible for managing, operating, and maintaining the Radio System to include ~~infrastructure~~ as established in the Radio System Agreement.

- e. The Radio System is designed to have user and channel priorities. For instance, first responder users/channels will generally get a higher priority on the Radio System than other users/channels. The School Board understands and acknowledges that the County shall maintain, at its discretion, user and channel priorities **but shall give best efforts so that the School Board has operable communications at all time..**
 - f. The County will be responsible for the technical configurations, design and operational aspects of the Radio System. Any proposed designs or considerations by the School Board for its use of the Radio System are subject to review and approval by the County. The County will also be responsible for providing technical assistance to the School Board in establishing templates, fleet Inaps, and operational policies.
 - g. The School Board shall be responsible for all costs, fees, and expenses associated with the purchase, programming, licensing, connections to the Radio System, and repair of subscriber units, radios, and consoles required for the School Board's intended use. In the event a subscriber unit acquired by the School Board is lost or stolen, the School Board shall immediately notify the County. ~~The County shall have full access and use of any excess licenses paid by the School Board as part of the Radio System.~~
 - h. As more fully set forth in paragraph 6, the School Board shall be responsible for its proportional share of any and all upgrades and maintenance of the Radio System and equipment as necessary to maintain their subscriber equipment, ~~including infrastructure,~~ throughout the term(s) of this Agreement. The School Board understands and acknowledges the costs, fees, and expenses associated with these upgrades and maintenance may be modified or increased throughout the term(s) of this Agreement **upon mutual agreement in writing by both parties..** The parties agree to discuss and conduct reviews, at least annually, to address any changes or modifications, including, but not limited to, costs, fees, and expenses associated with maintenance, equipment, growth of the parties, and user fees. The School Board agrees to pay its proportional share of **operating costs for access to the County Radio System.** ~~all costs, fees, and expenses, as may be amended, throughout the term(s) of this Agreement.~~
 - i. The County solely retains the right to admit any other entity onto the Radio System under a separate agreement.
3. FCC License. The School Board radio communications shall be under the County's Federal Communications Commission (FCC) license, which includes the 800 MHz Public Safety Radio Communications System and the Microwave System.
4. Talk Group Restrictions. To protect the County's public safety operation against traffic congestion and channel access delays due to the School Board's use of the Radio System, the County retains the right to set a limit to the number of simultaneous radio transmissions by the School Board. The limitation will be based on the School Board's radio use and the number of

frequencies that may be added to the Radio System to accommodate the additional traffic. **The County shall make best efforts so that the School Board has operable communications at all times.**

5. Term and Termination.

- a. This Agreement shall commence on the Effective Date and shall remain in full force and effect for a period of five (5) years from the Effective Date, until otherwise terminated as provided herein. This Agreement may be renewed for two additional five (5) year terms if it is deemed to be in the County's best interest to do so and upon mutual agreement of the School Board.
- b. This Agreement may be terminated by either party for any reason, with or without cause, by providing written notice to the other party at least 18 months in advance of the specified effective date of the termination. The parties will discuss and work together on a plan for final termination. The School Board shall be ~~solely~~ responsible for ~~any~~ **its share of** costs or fees due for maintenance or repair it ~~may~~ **may** be obligated at the time of ~~termination~~ **termination**. The County shall ~~not~~ be responsible for ~~any~~ **its share of** costs or fees due to termination of the Agreement.

6. Payment of Costs, Fees, and Expenses. In consideration of the use of the Radio System, the School Board agrees to compensate the County as described herein. All payments required under this Agreement shall be made in accordance with the Local Government Prompt Payment Act, which provides that payments will be made not later than 45 days from receipt of proper invoice.

- a. Radio System Modifications: The School Board is solely responsible for the cost and expense of any modifications to the Radio System required to incorporate the School Board's intended use. The County may make changes to the Radio System ~~and~~ infrastructure which may require the School Board to update/reconfigure ~~its~~ **School Board** equipment **at the School Board expense.** ~~These costs and expenses shall be the responsibility of the School Board.~~ Such costs and expenses include, but are not limited to, the following:
 - i. ~~Its~~ **School Board** equipment such as radios, base stations, consoles, antenna systems, subscribers, accessories, and spares.
 - ii. ~~Its~~ **School Board** system software licenses and license upgrades. ~~Its~~ **School Board** subscriber code plug development, installation, programming and firmware upgrades.
 - iii. ~~Its~~ **School Board** subscriber fleet mapping, code plug development, installation, programming and firmware upgrades.
 - iv. ~~Its~~ **School Board** engineering, project management, installation, labor, and required permits. Its proportional share of facility improvements such as enhancements in towers and shelters, electrical, HVAC, UPS, generators, etc **required to incorporate the School Board's intended use.**
 - vi. ~~Its subscriber fleet mapping, code plug development, installation, programming and firmware upgrades.~~

- b. Radio System and Equipment Maintenance: The School Board is solely responsible for the cost and expense of the following:
 - i. ~~Its proportional share of ongoing infrastructure maintenance and spare parts, including, but not limited to, base stations, antenna systems, etc.~~
 - ii. **School Board** Replacement or repair of any equipment added for the purpose of this integration and any of its future enhancements.
 - iii. Maintenance, repair, and replacement of ~~its~~**School Board** subscriber equipment including accessories, firmware upgrades, feature enhancements, programming, and fleet mapping.

c. Radio System Upgrades:

- i. To ensure that the Radio System remains current and able to accommodate new features and capabilities along the way, from time to time, the County may enter into a System Upgrade Agreement (SUA) with Motorola or other similar agreement. Per SUA provisions, Motorola replaces or upgrades certain hardware and software and provides the labor to do so. As such upgrades are encompassing and impact the entire Radio System, the School Board shall financially contribute in a timely manner toward any SUA or similar type agreement for its proportionate share of the upgrade **required to incorporate the School Board's intended use**.
- ii . At any time deemed necessary, the County may add additional features or functionalities to the Radio System, which might require the School Board to contribute additional fees throughout the term of this Agreement that are proportionate to additions directly impacting the School Board.

in the Amount of \$65,304.60 ↓

- d. User Fees: The School Board shall pay subscriber, maintenance, and operation costs ~~along with its proportionate share of infrastructure costs at an annual rate of \$174,504.60.~~ This User Fee shall be paid by the School Board to the County at the beginning of each annual term of the Agreement.

7. Equipment Ownership. Any infrastructure equipment installed for the purpose of this integration, as set forth in the Agreement, initially and at any point thereafter, along with all system software will become property of the County upon installation. The School Board shall retain ownership of its subscriber units and consoles. Any legacy equipment, transmission lines, hardware, and antennas located in the County's Tower Sites and which will be decommissioned by the School Board following full integration into the County's Radio System, must be removed by the School Board at its sole cost and expense.

8. Goods and Services. The School Board shall use only goods and services approved by the County. The equipment and services must be compatible on the Radio System. All equipment shall meet or exceed current standards of the Electronic Industries Alliance (EIA) and the Telecommunications Industry Association (TIA), and the rules and regulation of the FCC. Additionally, all equipment shall be the type accepted by the FCC and comply with APCO P 25

Standards. All work shall be performed in accordance with applicable industry standards employing manufacture certified hardware, software, and practices. Any work performed by employment of non-certified equipment or services authorized by the School Board shall immediately cease and if such causes any degradation to the Radio System performance, the School Board shall, at its sole cost and expense, promptly remedy the problem.

9. Regulatory Issues and Compliance.

- a. It shall be the responsibility and obligation of the School Board to seek and promptly pay for, as may apply, all approvals including federal, state, county, municipal or other governmental authority having jurisdiction over the School Board required to enter into this Agreement.
- b. The School Board agrees to observe, be financially responsible for, and abide by all applicable statutes, laws, ordinances, rules and regulations, including but not limited to those of the Federal Aviation Administration (FAA) and FCC concerning the performance of this Agreement.
- c. The School Board further agrees to operate its radios and any related equipment so as not to cause interference with other users on the Radio System. The School Board recognizes that applicable FAA and FCC rules and other statutes, laws, ordinances, and regulations may change from time to time to which extent the School Board shall be responsible to be familiar and compliant with such.

10. Governance and Dispute Resolution. The parties shall resolve all disputes that may arise during the term(s) of this Agreement in accordance with the provisions described in this paragraph.

- a. The parties will attempt to settle any dispute arising from this Agreement through negotiation and a spirit of mutual cooperation. The dispute will be escalated to appropriate higher-level managers of the parties, if necessary.
- b. The County shall have full and final control and authority on all decisions related to technical configuration, design, management, and operational aspects of the Radio System. Any configuration, design, management, or operational issues will be directed to the County's E91-1 and LMR System Coordinator in writing.
- c. The County shall approve and authorize the School Board's programming and fleet map template for use on the Radio System. Fleet maps will be developed in collaboration between the School Board and County. The School Board's fleet map will be the sole basis for the operation of the School Board's subscriber units on the Radio System.
- d. This Agreement will not limit any party from taking legal action to protect the public against a threat to its health, safety, and welfare from a situation for which the dispute resolution process specified in this paragraph would not provide an adequate and timely solution. This paragraph will constitute an alternative dispute resolution process for purposes of Section 164.1041(1), Florida Statutes.

11. DISCLAIMER OF WARRANTIES AND LIMITATIONS OF REMEDIES.

- a. THE COUNTY HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, DIRECT OR INDIRECT, EXPRESS OR IMPLIED, WRITTEN OR ORAL, IN CONNECTION WITH ANY EQUIPMENT UTILIZED UNDER THIS AGREEMENT OR SERVICES PROVIDED BY THE COUNTY INCLUDING BUT NOT LIMITED TO, ANY AND ALL EXPRESS AND IMPLIED WARRANTIES OF SUITABILITY, DURABILITY, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.
- b. THE SCHOOL BOARD ACKNOWLEDGES AND AGREES THAT ITS SOLE AND EXCLUSIVE REMEDY IN CONNECTION WITH ANY DEFECTS IN ANY EQUIPMENT UTILIZED UNDER THIS AGREEMENT, INCLUDING MANUFACTURE OR DESIGN, SHALL BE AGAINST THE MANUFACTURER OF THE EQUIPMENT UNDER THE MANUFACTURERS' WARRANTIES AND THAT THE COUNTY SHALL HAVE NO LIABILITY TO THE SCHOOL BOARD IN ANY EVENT FOR ANY LOSS, DAMAGE, INJURY, OR EXPENSE OF ANY KIND OR NATURE RELATED DIRECTLY OR INDIRECTLY TO ANY EQUIPMENT UTILIZED BY THE SCHOOL BOARD UNDER THIS AGREEMENT.

12. LIMITATIONS OF LIABILITY.

- a. THE SCHOOL BOARD UNDERSTANDS AND ACKNOWLEDGES THAT (A) OCCASIONAL INTERRUPTIONS OR IRREGULARITIES IN THE SERVICES MAY OCCUR; AND (B) ANY POTENTIAL HARM FROM INTERRUPTIONS OR IRREGULARITIES IN THE SERVICES IS SPECULATIVE IN NATURE. THE COUNTY SHALL NOT ASSUME RESPONSIBILITY OTHER THAN THAT CONTAINED IN THE AGREEMENT. ACCORDINGLY, THE SCHOOL BOARD AGREES THAT EXCEPT AS LIMITED BY LAW, THE COUNTY'S SOLE LIABILITY FOR LOSS OR DAMAGE ARISING OUT OF MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, ERRORS, OR DEFECTS IN THE SERVICES OR TRANSMISSION OF SERVICES PROVIDED BY THE RADIO SYSTEM, THE COUNTY, OR ANY TRANSPORT PROVIDER, OR FOR LOSSES OR DAMAGES ARISING OUT OF FAILURE OF THE COUNTY OR ANY TRANSPORT PROVIDER TO MAINTAIN PROPER STANDARDS OR MAINTENANCE AND OPERATION, SHALL BE AS FOLLOWS:
 - i. THE COUNTY SHALL NOT IN ANY EVENT BE LIABLE FOR SERVICES OR EQUIPMENT INTERRUPTIONS OR DELAYS IN TRANSMISSION, ERRORS OR DEFECTS IN SERVICES OR EQUIPMENT WHEN CAUSED BY ACTS OF GOD, FIRE, WAR, RIOTS, GOVERNMENT AUTHORITIES, DEFAULT OF SUPPLIERS OR OTHER CAUSES BEYOND THEIR OR ANY CARRIER'S CONTROL.
 - ii. THE COUNTY SHALL NOT BE LIABLE FOR ANY DAMAGE, ACCIDENT, INJURY OR THE LIKE OCCASIONED BY THE USE OF THE RADIO SYSTEM, EXCEPT PROVIDED HEREIN.

iii. THE COUNTY WILL NOT BE HELD RESPONSIBLE FOR SITE TRUNKING CONDITIONS OR OUTAGES CAUSED BY MUTUALLY AGREED UPON MAINTENANCE TASKS THAT MAY REQUIRE COMPONENTS OF THE RADIO SYSTEM TO GO OFFLINE.

b. ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT THE COUNTY WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE. TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT.

c. The provisions of this paragraph shall survive the expiration or termination of this Agreement.

13. Default and Remedy.

a. Default. If the School Board fails to comply with provisions of this Agreement; fails to make payments as outlined herein; uses the Radio System in a manner that causes harmful interference with or degradation to the Radio System; configures equipment without the County's authorization; fails to use equipment in accordance with the FCC licensing; intertères with radio frequencies or channels or otherwise causes interference with other users on the Radio System; or fails to comply with applicable rules, laws and regulations, including the FAA and FCC, the County may consider the School Board to be in default and may assert a default claim by giving the School Board a written Notice of Default. The School Board shall have thirty (30) days after receipt of the Notice of Default to either cure the default or, if the default is not curable within thirty (30) days, provide a written cure plan to the County describing how and when the default will be cured. The School Board will begin implementing the cure plan immediately after receipt of notice by the County that it approves the plan.

b. In the event the School Board fails to cure or the County does not approve the cure plan, the County has the right, at its option, to immediately terminate this Agreement, deny the School Board access to the Radio System and impose separate charges ~~to~~for both disconnection and reconnection expenses. If disconnection takes place, the School Board may also be subject to additional costs for any equipment reprogramming as may be required for reconnection. All of the rights and remedies of the County in the Agreement are cumulative to, and not in lieu of, every other right and remedy in this Agreement and afforded by law and equity.

14. Liability and Indemnification.

a. Each party agrees that it shall be solely responsible for the negligence, willful misconduct, or wrongful acts of its directors, officers, employees, representatives, agents, and volunteers. Notwithstanding anything stated to the contrary in the

Agreement, nothing contained herein is intended to serve as a waiver of either parties' sovereign immunity protections nor does it extend the parties' liability beyond the limits established in Section 768.28, Florida Statutes.

- b. In the event the Radio System is down and unavailable to the School Board, the School Board shall hold the County harmless. In such event, the County will exercise due diligence to restore the Radio System as quickly, as reasonably, and as practically as possible.
- c. No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent, staff, or employee of the County in his or her individual capacity, and no member, officer, agent, staff, or employee of the County shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.
- d. The provisions of this paragraph shall survive the expiration or termination of this Agreement.

15. Public Records and Audit.

- a. The access to disclosure, non-disclosure, or exemption of records, data, documents, and/or materials, associated With this Agreement shall be subject to the applicable provisions of the Florida Public Records Law (Chapter 1 19, Florida Statutes), and other applicable State or Federal law. The parties shall comply with all requirements of Chapter 1 19, Florida Statutes, to the extent applicable to the records and documents associated with this Agreement that are in its possession or under its control. A request to inspect or copy public records relating to the Agreement must be made directly to the County.
- b. The ~~parties~~ parties shall retain all records relating to this Agreement for a period of at least five (5) years after the Agreement terminates. All records shall be kept in such a way as will permit their inspection pursuant to Chapter 119, Florida Statutes. The County, upon written reasonable notice, shall have the right to audit and inspect any records of the School Board relating to this Agreement to ensure compliance with the ~~terms~~ terms of this Agreement.

IF THE SCHOOL BOARD HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SCHOOL BOARD'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (904) 278-4754, publicrecords@claycountygov.com, POST OFFICE BOX 1366, GREEN COVE SPRINGS, FLORIDA 32043.

16. Independent Contractor. Each party will perform its duties under this Agreement as an independent contractor. The parties and their personnel will not be considered to be employees or agents of the other party. None of the provisions of this Agreement shall be construed to create, or be interpreted as, a joint venture, partnership or formal business organization of any kind.

17. Notice. Any notice required or desired to be given hereunder, or any items required or desired to be delivered hereunder, may be served or delivered personally or by certified mail, return receipt requested, postage prepaid, or by any reliable and nationally recognized overnight delivery service, addressed as follows:

To School Board:

The School Board of Clay
County, Florida
900 Walnut Street
Green Cove Springs, Florida
32043

Attention: Superintendent of
Schools

Copy to: Transportation
Director

To County:

Clay County
477 Houston Street
Post Office Box 1 366

Green Cove Springs, Florida
32043

Attention: County Manager
Copy to: E91 1 and LMR
System Coordinator

Notice may also be delivered to such other addresses as the party to be served may direct by written notice to the other party. If such notice is sent or delivery is made by registered or certified mail, such notice or delivery shall be deemed as served, made and effective seventy-two (72) hours after posting.

18. No Assignment. The School Board shall not assign or otherwise transfer, in whole or in part, any of its rights, duties, or obligations under this Agreement to any other party without the prior written consent of the County, which consent may be withheld by the County for any or no reason. Any such assignment attempted by the School Board without such prior written consent shall be null and void.

19. No Third-Party Beneficiaries. Any other provisions of this Agreement to the contrary notwithstanding, no third-party beneficiaries are intended or contemplated under this Agreement, and no third-party shall be deemed to have rights or remedies arising under this Agreement against either party to this Agreement.

20. Amendment. The Agreement ~~in~~ may only be modified or amended upon mutual written agreement of the County and the School Board. No oral agreements or representation shall be valid or binding upon either party.

21. Further Assurances. Each party agrees that it will execute and deliver to the other promptly upon demand any and all documents or other instruments, and take such other action as is necessary to give effect to the terms and intent of this Agreement.
22. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any litigation, mediation, or other action proceeding between the parties arising out of this Agreement lies in Clay County, Florida.
23. Attorneys' Fees. In the event either party shall retain an attorney to litigate on its behalf against the other party regarding the enforcement or interpretation of this Agreement or regarding the rights, remedies, or obligations of the parties arising under this Agreement, the party prevailing on the majority of its claims, or which successfully defends against a majority of the other party's claims, shall be entitled to an award of reasonable attorney's fees, costs, and expenses against the other party, including fees, costs, and expenses incurred from the date of referral of the dispute to the prevailing party's attorney through the conclusion of litigation, or incurred in bankruptcy or on appeal. Nothing contained herein is intended to serve as a waiver of sovereign immunity and extend the County's liability beyond the limits established in Section 768.28, Florida Statutes.
24. Waiver. No waiver by either party of any term or condition of this Agreement will be deemed or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different section, subsection, paragraph, subparagraph, clause, phrase, or other provision of this Agreement.
25. Severability. If any provision of this Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement, and this Agreement shall be enforced as if such invalid and unenforceable provision had not been contained herein. In no event shall the School Board or its assigns have any cause of actions against the officers or employees of the County, or against any elected official of the County based upon or materially related to any finding by any court that any or all provisions of this instrument violate Florida law.
26. Headings. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of any or all of the provisions hereof.
27. Counterparts. The Agreement may be executed in one or more counterparts and by the separate parties in separate counterparts, each of which shall be deemed to constitute an original and all of which shall be deemed to constitute the one and the same agreement.
28. Entire Agreement. It is mutually acknowledged and agreed by the parties hereto that this Agreement contains the entire agreement between the County and the School Board with respect to the subject matter of this Agreement, and that there are no verbal agreements, representations, warranties or other understandings affecting the same.

29. Authority. The parties agree to utilize electronic signatures and that the digital signatures of the parties set forth below are intended to authenticate this Agreement and have the same force and effect as manual written signatures. Each person signing on behalf of the parties represents and warrants that he/she has full authority to execute this Agreement on behalf of such party and that the Agreement will constitute a legal and binding obligation of such party.

||

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

Clay County, a political subdivision of the State of Florida

By:
Mike Celia
[ts Chairman
ATTEST:

Tara S. Green
Clay County Clerk of Court and Comptroller
Ex Officio Clerk to the Board

The School Board of Clay County, Florida

Mary Bolla
Chairperson ATTEST:

David Broskie
Superintendent of Schools

Remove

