



October 18, 2010

MEMORANDUM

TO: District Board of Trustees

FROM: Barbara R. Sloan, President *BRS*

SUBJECT: Continued Contractual Agreement with City of Tallahassee and Campus Police for 800 MHz Radio System

Item Description:

Campus Police Radio Communication System

Overview:

This is a continuing contract that requires updating from the current ten year contract with the City of Tallahassee. This four year contract is required to align all contractual partners to the same contractual date with the City of Tallahassee.

Salient Facts:

This continued contractual agreement is necessary for TCC Police to maintain compatibility with area law enforcement agencies including FAMU Police, Tallahassee Police, EMS and Leon County Sheriff.

Past Actions:

This is a continuation of a contractual agreement that was approved in 1999.

Future Actions:

This a four year contract through 2014.

Funding/Financial Matters:

Currently budgeted item with no increase in contract fees.

Staff Resource:

Teresa Smith

Recommended Action:

Recommend approval

AGREEMENT

THIS AGREEMENT is entered into this _____ day of _____, 2010~~1999~~, by and between the **City of Tallahassee**, a Florida municipal corporation, hereinafter referred to as the "City", on its own behalf and on behalf of Leon County, a political subdivision of the State of Florida, hereinafter collectively referred to as "System Owners", and the **District Board of Trustees, Tallahassee Community College**, Florida, hereinafter referred to as "TCC";

WITNESSETH:

WHEREAS, the System Owners have developed an 800 MHz Trunked Simulcast Radio System ("TSR System") to provide improved communications among and within their agencies including, without limitation, public safety communications; and,

WHEREAS, the Parties have determined that use by TCC of the TSR System for public safety purposes will result in an enhanced communication system which will meet the needs of TCC and will improve routine as well as emergency public safety related communications between the Parties; and,

WHEREAS, the Parties desire to enter into this Agreement to establish basic parameters relating to use of the TSR System by TCC.

NOW THEREFORE, for and in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the Parties hereby agree as follows:

SECTION 1. DEFINITIONS

1.1 "TSR System" or "System" shall mean the entirety of the certain 800 MHz Trunked Simulcast Radio System owned by the System Owner(s), as currently existing and as the same may be expanded or enhanced, to include Backbone Items for voice transmission only but excluding all User Specific Items.

- 1.2 "Backbone Items" shall mean those non-user specific elements of the TSR System which are owned by the System Owner(s) which shall be jointly used or shared by the Parties including, but not be limited to, the towers and other jointly used equipment installed or constructed at transmitter or receiving sites, and related subsystems, as required for the TSR System; equipment storage facilities located at transmitter or receiving sites; base stations; transmitters; receivers; microwave subsystem(s); trunking/simulcast controllers; related software required for operation of the TSR System; and any other jointly used or shared items.
- 1.3 "Capacity Fee" means a one-time charge, as established by the System Manager, paid by a System User for use of certain System capacity allocated to that System User by written agreement relating to use of the System.
- 1.4 "Capacity Fee" means a one-time charge, as established by the System Manager and approved by the Public Safety Communications Board (PSCB), to be paid by TCC for the use of the Capacity as defined in this Agreement. The Capacity Fee will be used to purchase additional channels for the purpose of providing continued use of Capacity on the TSR System as allocated to the System Owners and to the System Users.
- 1.5 "FCC" shall mean the Federal Communications Commission or any successor agency.
- 1.6 "Party" shall mean either a System Owner, TCC, or other System User , as appropriate, and "Parties" shall mean collectively the System Owner(s), TCC, and such other System Users, as appropriate.
- 1.7 "SOPS" shall mean standard operating procedures and policies promulgated by the System Manager which govern the use and operation of the TSR System. The SOPS, as they exist from time to time, shall be incorporated in this Agreement as if specifically set forth herein.

- 1.8 “Subscriber Units” shall mean all radios and other devices with an independent system identification number that are programmed and available for use on the TSR System by a particular System Owner or System User.
- 1.9 “System Key” shall mean a proprietary software protocol “key” or file required for programming all Subscriber Units and other equipment for operation on the TSR System. This unique “key” or file is licensed for each individual Motorola trunked radio system.
- 1.10 “System Manager” shall mean an employee of the City responsible for the day-to-day coordination, operation, and management of the TSR System. The System Manager shall perform the duties assigned under this and any other applicable agreement relating to the TSR System.
- 1.11 “System Operating Cost” shall mean the total yearly cost of operating and maintaining the TSR System, including without limitation: maintenance, repair and replacement of the Backbone Items, compensation of the System Manager, and reserve funding for equipment replacement, as determined by the System Manager.
- 1.12 “System Operating Fee” shall mean the fee, as established by the System Manager, paid by a System User for use of the TSR System.
- 1.13 “System Owner(s)” shall mean the City and Leon County. Each may be individually referred to as a “System Owner.
- 1.14 “System User” shall mean an entity, other than a System Owner, authorized to use the TSR System pursuant to written agreement.
- 1.15 "System Users' Group" shall mean representatives designated by each Party to meet regularly and to advise the System Manager regarding System coordination, operation, and management.

- 1.16 "Talk Group" shall mean an electronic resource or path, established by the System Manager within the TSR System, which permits use of the TSR System for two-way communications among particular radios and other related User Specific Equipment.
- 1.17 "User Specific Items" shall mean those elements of the System required for each Party's individual communications system, purchased, installed and/or used individually by each Party, as permitted by the System Manager or by agreement with or among the System Owner(s), and shall include, but not be limited to, radios, encryption devices, computer terminals, dispatch consoles, applicable console interface electronics and other communications equipment. Each Party shall be responsible for developing its own requirements for User Specific Items, providing for acquisition of such Items; and for providing for, and supervising, the installation, operation, and maintenance of such Items at locations determined by such Party. However, no Party's User Specific Items will be developed, specified, acquired, installed, operated or electronically connected to the system without prior review and approval of the System Manager.

SECTION 2. LICENSING AND USE OF TSR SYSTEM

- 2.1 Licenses. The Parties agree that the FCC licenses for all radio channels included in the System shall be held in the name of the City and shall be licensed as one interoperable 800 MHz trunked simulcast radio system.
- 2.2 Use by TCC. The TSR System shall be configured to provide for the use of ~~eighteen (18)~~ twenty-four (24) Subscriber Units and a minimum of two (2) Talk Groups by the Named System User as provided herein. The Named System User(s) may use such talk groups, and other joint use talk groups as permitted from time to time by the System Manager, only in relation to the conduct of public safety and other permitted operations by the Named System User(s), provided that such use shall be consistent with maintaining the

maximum efficiency of the TSR System and shall be carried out in accordance with the SOPS and other policies, regulations, instructions, and directions issued by the System Manager.

SECTION 3. TITLE TO BACKBONE AND USER SPECIFIC ITEMS

Each Party shall have and retain title to its User Specific Items. Title to all Backbone Items shall vest and remain in the System Owner(s). Each Party shall have the right to use such Backbone Items as permitted under this Agreement and other applicable agreements. Notwithstanding the foregoing, title to any proprietary software required for the operation of the TSR System shall remain in the owner of such software, subject to licenses to each Party which will permit its independent use by such Party and will include appropriate warranties running directly to each Party; provided, however, that the System Key shall be the sole property of the City and only the City shall have the right to use the System Key. Each radio used in relation to the TSR System will be programmed by the City. Whenever the need for such programming is caused by the City, it will be accomplished at no cost to TCC. Whenever the need for such programming is caused by TCC, it will be accomplished at no cost up to three (3) times annually, after which TCC shall pay a \$25.00 charge for each subsequent programming of a radio.

SECTION 4. PAYMENTS AND TERM

4.1 Payments for Equipment. TCC shall be responsible for purchasing all User Specific Items required for its communication system and use of the TSR System, as permitted by this Agreement. Such User Specific Items must be acceptable to the System Owners for use with the TSR System. This requires prior review and approval of such User Specific Items by the System Manager.

- 4.2 System Operating Fee. TCC shall pay to the System Owners, for use of the TSR System as permitted by this Agreement, a monthly System Operating Fee for each Subscriber Unit which shall be calculated annually prior to October 1; to be effective the following July, in accordance with the following formula: System Operating Fee = ((System Operating Cost divided by Total Subscriber Units) multiplied by System User Subscriber Units) divided by 12. The “Total Subscriber Units” as used in the foregoing formula shall be determined by the System Owners.
- 4.3 Term. TCC shall be permitted to use the TSR System, as provided in this Agreement, for a period of ten (10) years (the “Initial Term”) which shall commence on the date of record listed on the first page of this Agreement. TCC shall further have the right to extend the term of this Agreement for an additional period of five (5) years (the “Additional Term”) which shall commence on the day following the end of the Initial Term. TCC may exercise such right by providing written notice of its intent to extend the term of this Agreement for the Additional Term no earlier than one (1) year and no later than six (6) months prior to the end of the Initial Term and by making timely payment of the System Operating Fee as set forth in Section 4.2. If TCC fails to timely give such notice or pay such fee, then this Agreement shall terminate and TCC shall have no further rights to use the TSR System.

SECTION 5. ADMINISTRATION AND MANAGEMENT OF THE TSR SYSTEM

- 5.1 System Manager. The System Manager shall be responsible for the coordination, operation, maintenance and management of the System, on a day-to-day basis, and for promulgation of the SOPS.
- 5.2 System User Group. The System User Group shall consist of the System Manager, who

shall serve as the chair of the Group, three (3) other representatives from the City, and one representative from each other System Owner, if any, and one representative from each System User, as permitted by the System Manager. Representatives to serve on the System User Group shall be appointed by the applicable Party. Furthermore, each Party may appoint one or more designees to attend meetings when the subject under consideration requires additional specialized or technical information. The System User Group shall meet at least semi-annually to advise and make recommendations to the System Manager regarding operation and maintenance of the System. Special meetings of the System User Group may be called upon at least two days prior written notice to the members of the Group, at any time that a member believes that a meeting is necessary to carry out the Group's responsibilities. Notwithstanding recommendations by the System User Group, the System Manager and the System Owner(s) shall have final authority and control over the coordination, operation, and management of the System.

SECTION 6. RESPONSIBILITIES OF THE PARTIES

- 6.1 Each Party shall be responsible for development and design of its User Specific Items and shall be responsible for the costs associated with the purchase and installation of such Items, regardless of which Party arranges for the purchase and regardless of whether they are acquired from a single vendor or acquired pursuant to a multi-party contract. Each Party also shall be responsible for loss, damage or destruction of its User Specific Items and for maintaining all of its User Specific Items in proper working condition meeting the manufacturer's specifications. Each party shall timely and completely comply with all provisions of the SOPS promulgated by the System Manager.
- 6.2 The System Owner(s) shall have the following responsibilities:

- (a) The City shall hold in its name, for the benefit of the Parties, the necessary FCC licenses for the TSR System radio channels with copies provided to system users.
- (b) The System Owner(s) shall designate persons to serve on the System User Group.
- (c) The System Owner(s) shall use their best efforts to provide the sites and facilities at the transmitter/receiver sites required for the installation at such locations of the Backbone Items on or before the dates contained in the implementation schedule.
- (d) Following their completion, the System Owner(s) shall provide for the operation and maintenance of the Backbone Items, subject to payment of fees in accordance with applicable agreements between the City and other Parties.
- (e) The City shall utilize the System Key to program all radios to be used on the TSR System.
- (f) The System Owner(s) shall manage the TSR System.

6.3 TCC shall:

- (a) Promptly make payments to the City as provided in this Agreement.
- (b) Designate a person to serve on the System User Group.
- (c) Be responsible for maintaining its User Specific Items including, without limitation, portable radios, battery chargers, mobile data terminals, and dispatch console units.
- (d) Provide required, dedicated telephone lines from the designated location(s) at the TCC Police Department to the electronic bank located at the Tallahassee Police Department for the connection of consoles, logging recorder interfaces, SIMS

terminals, System Watch terminal, and other electronic equipment, as applicable, necessary for dispatch operation connection into the TSR System by TCC.

6.4 All Backbone Items, including those purchased for expansion of the TSR System to provide TCC coverage in accordance with the Motorola Agreement, will be covered by such warranties, if any, as may be provided by the manufacturer, Motorola, Inc. which warranties are not transferred, assigned, or extended hereby. **THE SYSTEM OWNER(S) DOES NOT WARRANT ANY EQUIPMENT, NOR DOES IT WARRANT COVERAGE BY THE TSR SYSTEM, NOR DOES IT WARRANT THE TSR SYSTEM OR ANY COMPONENTS THEREOF. ALL WARRANTIES, IF ANY, AS TO EQUIPMENT, COVERAGE BY THE TSR SYSTEM, AND THE TSR SYSTEM, AND ALL COMPONENTS OF THE TSR SYSTEM (INCLUDING, WITHOUT LIMITATION, BACKBONE ITEMS AND USER SPECIFIC ITEMS) AND SERVICES TO BE PROVIDED BY THE SYSTEM OWNER(S) (WHETHER THROUGH ITS OWN EMPLOYEES OR THROUGH CONTRACTORS), INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE, WITH RESPECT TO THE SYSTEM OWNER(S), ARE SPECIFICALLY WAIVED BY TCC AND THE SAME ARE NEGATED HEREBY.**

SECTION 7. NOTICES

Any notice permitted or required to be given under the terms of this Agreement shall be in writing, addressed to the Party to whom it is directed, and delivered to it by courier service providing a written record of the date of delivery, or by U.S. certified mail, postage prepaid, return receipt requested, to the address shown below or to such other address as such Party may from time to time designate by written notice.

To City: **ISS Department**
System Manager (800 MHz System)
City of Tallahassee
300 South Adams Street
Tallahassee, FL 32301

To TCC: **E.E. Eunice**
Chief of Campus Police
Tallahassee Community College
444 Appleyard Drive
Tallahassee, FL 32304

SECTION 8. INDEMNIFICATION

To the extent permitted by law and without waiving any defense of sovereign immunity, TCC agrees to indemnify, defend and hold harmless the City and County, and their officials, officers, and employees, from and against all liabilities, damages, costs and expenses, resulting from or arising out of any acts or omissions of TCC, or its officials, officers, or employees relating in any way to this Agreement or to use by TCC of the TSR System.

SECTION 9. WITHDRAWAL FROM TSR SYSTEM

9.1 TCC may, upon three hundred sixty five (365) days advance written notice to the System Owner(s), withdraw from the System if it determines that such withdrawal would be in its

best interest. Promptly following the giving of such notice, and prior to the expiration of such three hundred sixty five (365) day period, TCC shall:

- (a) If such withdrawal takes place prior to completion of the System, at no cost to the remaining Party or Parties, cause the plans and specifications for the System to be revised (if necessary), and cause such changes to be made to the System as may be required to delete TCC from the System.
- (b) If such withdrawal takes place after the System is operational, at no cost to the remaining Party or Parties, develop the plans and specifications needed to make such changes to the System as may be required to delete TCC from such System. In such event, TCC shall not be entitled to any reimbursement or refund from the City or any other Party related to its costs incurred in acquiring, operating, or maintaining its User Specific Items or associated facilities.

9.2 Promptly following notice by TCC that it will withdraw from the System, TCC shall take the necessary steps to acquire new radio channel licenses from the FCC according to its own needs. All channels and talk groups used by TCC, including without limitation any expansion channels which may be added to the TSR System for use by TCC, shall remain the property of the System Owner(s).

9.3 Upon compliance with 9.1 and 9.2 above, this Agreement shall terminate as to TCC. Nothing contained herein shall constitute a waiver of the right of any Party to damages occasioned by any breach of this Agreement by another Party. Should it choose to withdraw from the TSR System, TCC shall not be entitled to, nor shall it have any claim for, reimbursement or repayment of any amounts paid by such Party to the System Owner(s) pursuant to the requirements of this Agreement.

SECTION 10. TERMINATION

The System Owner(s) shall have the right to terminate this Agreement for default if TCC fails, at any time and in any way, to comply with any term or condition of this Agreement; provided, however, that the City first gives written notice of such failure to TCC and TCC fails to cure such default within thirty (30) days following the delivery of such written notice.

SECTION 11. MISCELLANEOUS

- 11.1 Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Any action to enforce any of the provisions of this Agreement must be maintained in Tallahassee, Leon County, Florida.
- 11.2 Waiver. Failure to insist upon strict compliance with any term, covenant or condition of this Agreement shall not be deemed a waiver of it. No waiver or relinquishment of a right or power under this Agreement shall be deemed a waiver of that right or power at any other time.
- 11.3 Modification. Agreement shall not be extended, changed or modified, except in writing duly executed by the parties hereto.
- 11.4 Binding Effect. This Agreement shall be binding upon the successors and, subject to below, assigns of the parties hereto.
- 11.5 Assignment. Because of the unique nature of the relationship between the parties and the terms of this Agreement, neither party hereto shall have the right to assign this Agreement or any of its rights or responsibilities here under to any third party without the express written consent of the other party to this Agreement.

- 11.6 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the matters contained herein, and all prior agreements or agreements or arrangements between them with respect to such matters are superseded by this Agreement.
- 11.7 Headings. Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.
- 11.8 Ambiguity. This Agreement has been negotiated by the parties with the advice of counsel and, in the event of an ambiguity herein, such ambiguity shall not be construed against any party as the author hereof.
- 11.9 Public Bodies. It is expressly understood that the signatories to this Agreement are subdivisions or agencies of the State of Florida. Nothing contained herein shall be construed as a waiver or relinquishment by either to claim such exemptions, privileges and immunities as may be provided to them by law.
- 11.10 Force Majeure. A party shall be excused from performance of an obligation under this Agreement to the extent, and only to the extent, that such performance is affected by a "Force Majeure Event" which term shall mean any cause beyond the reasonable control of the party affected, except where such party could have reasonably foreseen and reasonably avoided the occurrence, which materially and adversely affects the performance by such party of its obligations under this Agreement. Such events shall include, but not be limited to, an act of God; disturbance, hostility, war, or revolution; strike or lockout; epidemic; accident; fire; storm, flood, or other unusually severe weather or act of nature; or any requirements of law.

11.11 Authorized representatives. Each party hereto hereby represents that its execution, delivery, and performance of this Agreement have been duly authorized by all requisite action, that the Agreement has been duly and validly executed and delivered by that party, and that the Agreement constitutes the legal, valid, and binding obligation of that party enforceable in accordance with its terms.

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

Attest:

CITY OF TALLAHASSEE

By: _____
Gary Herndon, City Treasurer-Clerk

By: _____
Anita R. Favors, City Manager

**DISTRICT BOARD OF TRUSTEES,
TALLAHASSEE COMMUNITY COLLEGE**

By: _____

(Type or print name and title of signatory)

Date: _____

A G R E E M E N T

THIS AGREEMENT is entered into this _____ day of _____, 2010, by and between the **City of Tallahassee**, a Florida municipal corporation, hereinafter referred to as the "City", on its own behalf and on behalf of Leon County, a political subdivision of the State of Florida, hereinafter collectively referred to as "System Owners", and the **District Board of Trustees, Tallahassee Community College**, Florida, hereinafter referred to as "TCC";

W I T N E S S E T H:

WHEREAS, the System Owners have developed an 800 MHz Trunked Simulcast Radio System ("TSR System") to provide improved communications among and within their agencies including, without limitation, public safety communications; and,

WHEREAS, the Parties have determined that use by TCC of the TSR System for public safety purposes will result in an enhanced communication system which will meet the needs of TCC and will improve routine as well as emergency public safety related communications between the Parties; and,

WHEREAS, the Parties desire to enter into this Agreement to establish basic parameters relating to use of the TSR System by TCC.

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- 1.3 "Capacity Fee" means a one-time charge, as established by the System Manager and approved by the Public Safety Communications Board (PSCB), to be paid by TCC for the use of the Capacity as defined in this Agreement. The Capacity Fee will be used to purchase additional channels for the purpose of providing continued use of Capacity on the TSR System as allocated to the System Owners and to the System Users.
- 1.4 "FCC" shall mean the Federal Communications Commission or any successor agency.
- 1.5 "Party" shall mean either a System Owner, TCC, or other System User, as appropriate, and "Parties" shall mean collectively the System Owner(s), TCC, and such other System Users, as appropriate.
- 1.6 "Subscriber Units" shall mean all radios and other devices with an independent system identification number that are programmed and available for use on the TSR System by a particular System Owner or System User.
- 1.7 "System Manager" shall mean an employee of the City responsible for the day-to-day coordination, operation, and management of the TSR System. The System Manager shall perform the duties assigned under this and any other applicable agreement relating to the TSR System.

- 1.8 “System Operating Cost” shall mean the total yearly cost of operating and maintaining the TSR System, including without limitation: maintenance, repair and replacement of the Backbone Items, compensation of the System Manager, and reserve funding for equipment replacement, as determined by the System Manager.
- 1.9 “System Operating Fee” shall mean the fee, as formulated by the Public Safety Communications Board and established by the System Manager, paid by a System User for use of the TSR System.
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- 1.11 “System User” shall mean an entity, other than a System Owner, authorized to use the TSR System pursuant to written agreement.
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- 2.1 Licenses. The Parties agree that the FCC licenses for all radio channels included in the System shall be held in the name of the City and shall be licensed as one interoperable 800 MHz trunked simulcast radio system.
- 2.2 Use by TCC. The TSR System shall be configured to provide for the use of eighteen (25) Subscriber Units and a minimum of two (2) Talk Groups by the Named System User as provided herein. The Named System User(s) may use such talk groups, and other joint use talk groups as permitted from time to time by the System Manager, only in relation to the conduct of public safety and other permitted operations by the Named System User(s), provided that such use shall be consistent with maintaining the maximum efficiency of the TSR System and shall be carried out in accordance with the SOPS and other policies, regulations, instructions, and directions issued by the System Manager.

SECTION 3. TITLE TO BACKBONE AND USER SPECIFIC ITEMS

Each Party shall have and retain title to its User Specific Items. Title to all Backbone Items shall vest and remain in the System Owner(s). Each Party shall have the right to use such Backbone Items as permitted under this Agreement and other applicable agreements. Notwithstanding the foregoing, title to any proprietary software required for the operation of the TSR System shall remain in the owner of such software, subject to licenses to each Party which will permit its independent use by such Party and will include appropriate warranties running directly to each Party; provided, however, that the System Key shall be the sole property of the City and only the City shall have the right to use the System Key. Each radio used in relation to the TSR System will be programmed by the City. Whenever the need for such programming is caused by the City, it will be accomplished at no cost to TCC. Whenever the need for such programming is caused by TCC, it will be

accomplished at no cost up to three (3) times annually, after which TCC shall pay a \$25.00 charge for each subsequent programming of a radio.

SECTION 4. PAYMENTS AND TERM

- 4.1 Payments for Equipment. TCC shall be responsible for purchasing all User Specific Items required for its communication system and use of the TSR System, as permitted by this Agreement. Such User Specific Items must be acceptable to the System Owners for use with the TSR System. This requires prior review and approval of such User Specific Items by the System Manager.
- 4.2 System Operating Fee. TCC shall pay to the System Owners, for use of the TSR System as permitted by this Agreement, a monthly System Operating Fee for each Subscriber Unit which shall be calculated based on 25 (twenty-five) Subscriber Units as of the date of this Agreement, in accordance with the following formula: System Operating Fee = ((System Operating Cost divided by Total Subscriber Units) multiplied by System User Subscriber Units) divided by 12 or \$23.65 (twenty-three dollars and sixty-five cents) per Subscriber Unit. The "Total Subscriber Units" as used in the foregoing formula shall be determined by the System Owners.
- 4.3 Term. TCC shall be permitted to use the TSR System, as provided in this Agreement, for a period of three (3) years (the "Initial Term") which shall commence on the date of record listed on the first page of this Agreement.

SECTION 5. ADMINISTRATION AND MANAGEMENT OF THE TSR SYSTEM

- 5.1 System Manager. The System Manager shall be responsible for the coordination, operation, maintenance and management of the System, on a day-to-day basis, and for promulgation of the SOPS.

SECTION 6. RESPONSIBILITIES OF THE PARTIES

- 6.1 Each Party shall be responsible for development and design of its User Specific Items and shall be responsible for the costs associated with the purchase and installation of such Items, regardless of which Party arranges for the purchase and regardless of whether they are acquired from a single vendor or acquired pursuant to a multi-party contract. Each Party also shall be responsible for loss, damage or destruction of its User Specific Items and for maintaining all of its User Specific Items in proper working condition meeting the manufacturer's specifications. Each party shall timely and completely comply with all provisions of the SOPS promulgated by the System Manager.
- 6.2 The System Owner(s) shall have the following responsibilities:
- (a) The City shall hold in its name, for the benefit of the Parties, the necessary FCC licenses for the TSR System radio channels with copies provided to system users.
 - (b) The System Owner(s) shall use their best efforts to provide the sites and facilities at the transmitter/receiver sites required for the installation at such locations of the Backbone Items on or before the dates contained in the implementation schedule.
 - (c) Following their completion, the System Owner(s) shall provide for the operation and maintenance of the Backbone Items, subject to payment of fees in accordance with applicable agreements between the City and other Parties.
 - (d) The System Owner(s) shall manage the TSR System.
- 6.3 TCC shall:
- (a) Promptly make payments to the City as provided in this Agreement.
 - (b) Be responsible for maintaining its User Specific Items including, without limitation, portable radios, battery chargers, mobile data terminals, and dispatch console units.

- (c) Provide required, dedicated telephone lines from the designated location(s) at the TCC Police Department to the electronic bank located at the Tallahassee Police Department for the connection of consoles, logging recorder interfaces, SIMS terminals, System Watch terminal, and other electronic equipment, as applicable, necessary for dispatch operation connection into the TSR System by TCC.

6.4 All Backbone Items, including those purchased for expansion of the TSR System to provide TCC coverage in accordance with the Motorola Agreement, will be covered by such warranties, if any, as may be provided by the manufacturer, Motorola, Inc. which warranties are not transferred, assigned, or extended hereby. **THE SYSTEM OWNER(S) DOES NOT WARRANT ANY EQUIPMENT, NOR DOES IT WARRANT COVERAGE BY THE TSR SYSTEM, NOR DOES IT WARRANT THE TSR SYSTEM OR ANY COMPONENTS THEREOF. ALL WARRANTIES, IF ANY, AS TO EQUIPMENT, COVERAGE BY THE TSR SYSTEM, AND THE TSR SYSTEM, AND ALL COMPONENTS OF THE TSR SYSTEM (INCLUDING, WITHOUT LIMITATION, BACKBONE ITEMS AND USER SPECIFIC ITEMS) AND SERVICES TO BE PROVIDED BY THE SYSTEM OWNER(S) (WHETHER THROUGH ITS OWN EMPLOYEES OR THROUGH CONTRACTORS), INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE, WITH RESPECT TO THE SYSTEM OWNER(S), ARE SPECIFICALLY WAIVED BY TCC AND THE SAME ARE NEGATED HEREBY.**

SECTION 7. NOTICES

Any notice permitted or required to be given under the terms of this Agreement shall be in writing, addressed to the Party to whom it is directed, and delivered to it by courier service providing a written record of the date of delivery, or by U.S. certified mail, postage prepaid, return receipt requested, to the address shown below or to such other address as such Party may from time to time designate by written notice.

To City: **ISS Department**
System Manager (800 MHz System)
City of Tallahassee
300 South Adams Street
Tallahassee, FL 32301

To TCC: **E.E. Eunice**
Chief of Campus Police
Tallahassee Community College
444 Appleyard Drive
Tallahassee, FL 32304

SECTION 8. INDEMNIFICATION

To the extent permitted by law and without waiving any defense of sovereign immunity, TCC agrees to indemnify, defend and hold harmless the City and County, and their officials, officers, and employees, from and against all liabilities, damages, costs and expenses, resulting from or arising out of any acts or omissions of TCC, or its officials, officers, or employees relating in any way to this Agreement or to use by TCC of the TSR System.

SECTION 9. WITHDRAWAL FROM TSR SYSTEM

9.1 TCC may, upon three hundred sixty five (365) days advance written notice to the System Owner(s), withdraw from the System if it determines that such withdrawal would be in its best interest. Promptly following the giving of such notice, and prior to the expiration of such three hundred sixty five (365) day period, TCC shall:

- 9.2 Promptly following notice by TCC that it will withdraw from the System, TCC shall take the necessary steps to acquire new radio channel licenses from the FCC according to its own needs. All channels and talk groups used by TCC, including without limitation any expansion channels which may be added to the TSR System for use by TCC, shall remain the property of the System Owner(s).
- 9.3 Upon compliance with 9.1 and 9.2 above, this Agreement shall terminate as to TCC. Nothing contained herein shall constitute a waiver of the right of any Party to damages occasioned by any breach of this Agreement by another Party. Should it choose to withdraw from the TSR System, TCC shall not be entitled to, nor shall it have any claim for, reimbursement or repayment of any amounts paid by such Party to the System Owner(s) pursuant to the requirements of this Agreement.

SECTION 10. TERMINATION

The System Owner(s) shall have the right to terminate this Agreement for default if TCC fails, at any time and in any way, to comply with any term or condition of this Agreement; provided, however, that the City first gives written notice of such failure to TCC and TCC fails to cure such default within thirty (30) days following the delivery of such written notice.

SECTION 11. MISCELLANEOUS

- 11.1 Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Any action to enforce any of the provisions of this Agreement must be maintained in Tallahassee, Leon County, Florida.
- 11.2 Waiver. Failure to insist upon strict compliance with any term, covenant or condition of this Agreement shall not be deemed a waiver of it. No waiver or relinquishment of a right

or power under this Agreement shall be deemed a waiver of that right or power at any other time.

- 11.3 Modification. Agreement shall not be extended, changed or modified, except in writing duly executed by the parties hereto.
- 11.4 Binding Effect. This Agreement shall be binding upon the successors and, subject to below, assigns of the parties hereto.
- 11.5 Assignment. Because of the unique nature of the relationship between the parties and the terms of this Agreement, neither party hereto shall have the right to assign this Agreement or any of its rights or responsibilities here under to any third party without the express written consent of the other party to this Agreement.
- 11.6 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the matters contained herein, and all prior agreements or agreements or arrangements between them with respect to such matters are superseded by this Agreement.
- 11.7 Headings. Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.
- 11.8 Ambiguity. This Agreement has been negotiated by the parties with the advice of counsel and, in the event of an ambiguity herein, such ambiguity shall not be construed against any party as the author hereof.
- 11.9 Public Bodies. It is expressly understood that the signatories to this Agreement are subdivisions or agencies of the State of Florida. Nothing contained herein shall be construed as a waiver or relinquishment by either to claim such exemptions, privileges and immunities as may be provided to them by law.
- 11.10 Force Majeure. A party shall be excused from performance of an obligation under this Agreement to the extent, and only to the extent, that such performance is affected by a “Force

Majeure Event” which term shall mean any cause beyond the reasonable control of the party affected, except where such party could have reasonably foreseen and reasonably avoided the occurrence, which materially and adversely affects the performance by such party of its obligations under this Agreement. Such events shall include, but not be limited to, an act of God; disturbance, hostility, war, or revolution; strike or lockout; epidemic; accident; fire; storm, flood, or other unusually severe weather or act of nature; or any requirements of law.

11.11 Authorized representatives. Each party hereto hereby represents that its execution, delivery, and performance of this Agreement have been duly authorized by all requisite action, that the Agreement has been duly and validly executed and delivered by that party, and that the Agreement constitutes the legal, valid, and binding obligation of that party enforceable in accordance with its terms.

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

Attest:

CITY OF TALLAHASSEE

By: _____
Gary Herndon, City Treasurer-Clerk

By: _____
Anita R. Favors, City Manager

**DISTRICT BOARD OF TRUSTEES,
TALLAHASSEE COMMUNITY COLLEGE**

By: _____

(Type or print name and title of signatory)

Date: _____

