

TRUNKED RADIO SERVICES AGREEMENT

By the signatures of their authorized representatives below, the parties agree as follows:

The conventional and repeater radio systems now in use in Waukesha County (the County) do not make efficient use of the radio spectrum and overuse of some channels results in congestion on those channels.

A countywide, 800 MHZ trunked radio system will make more efficient use of the radio spectrum by allowing large numbers of users to share a small number of radio channels through a combination of repeater and computer technologies and is more flexible and reliable than the other technologies currently in use in the County.

In order to coordinate and efficiently operate a countywide system (the System), it is the intent of the parties that Waukesha County, which shall be considered a member of the System, shall be responsible for the day-to-day operation and maintenance of the System and shall also be responsible for the initial financing of the System.

This agreement is entered into in accordance with authority granted to counties, cities, villages and towns under §66.30, Wisconsin Statutes.

ARTICLE I

Establishment of the System

1.1. Construction and Installation of System Infrastructure.

The County shall be responsible for constructing and acquiring all towers, fixed radio equipment, buildings, building improvements and computer hardware and software (the Infrastructure) necessary for operation of the System. Each member of the System shall be responsible for paying a share of the cost of the Infrastructure, as provided in Article II below, and each member shall have an equity interest in the Infrastructure as provided in Section 1.3, below.

1.2. Acquisition of Radios and Other Equipment.

Initial acquisition of radios and other equipment necessary to use the System (Radio Equipment) will be accomplished by the County and distributed to each member. Members can either finance Radio Equipment with the County or can make a lump sum payment for equipment to the County directly. Thereafter, each member of the System shall be responsible for acquiring Radio Equipment. Replacement or additional acquisition of Radio Equipment may be accomplished by each individual municipality or they may request that Waukesha County acquire said equipment on its behalf. Radio Equipment must be of a type approved by the County and purchased from a vendor approved by the County. Regardless of the method or means of acquiring Radio Equipment, each individual municipality shall be responsible for the total costs of the acquisition, maintenance and repair of said equipment. Any programming necessary for equipment operation must be performed by Waukesha County Radio Services or a vendor approved by the County. Each member shall be individually responsible for the cost of this service.

1.3. Ownership of the System.

(a) *Infrastructure.* The County and each member shall have joint ownership of the Infrastructure. The County shall never have less than a 50% equity interest in the Infrastructure. Waukesha County's initial equity interest is expected to be 50% and each member that executes this agreement with the County shall have a proportionate share of the remaining equity interest. The equity interest of all members other than the County is determined based upon the member's proportionate share contribution toward the infrastructure cost, adjusted for additional, withdrawn or expelled members. In the event of the addition of a member at a time when the County's equity interest exceeds 50%, payments by that additional member will first be applied to lower the County's equity interest. When the County's equity interest is decreased to 50%, then payments by additional members, with the exception of the recovery of the cost of capital retained by the County, shall be distributed to existing members in accordance with their percentage of equity interest at the time of the payment.

(b) *Radio Equipment.* Upon distribution of the Radio Equipment to a member, that equipment shall be owned solely by that member.

ARTICLE II
Financing of the System

2.1. Payment of the Infrastructure Costs by Initial Members.

Each member shall issue a note to the County representing its share of the Infrastructure cost ("Note") or may pay its share of the Infrastructure costs in a one-time lump sum payment no later than January 31 of the year next succeeding the date of execution of this agreement. The amount of each member's Note or lump sum payment shall be determined based on the member's proportionate formula determined share as set forth in the cost sharing table titled "Trunked Radio System Charter Member Infrastructure Cost Schedule." In order to ensure each member's contribution and equity interest in the infrastructure reflects actual usage, on or before July 1 of the fourth, seventh and ninth year of the operation of the System, a reconciliation of each member's proportionate actual usage of the overall member's usage will be made against that member's proportionate formula share. The proportionate usage shall be determined in the cost sharing table and a corresponding settlement of payments and reallocation of equity interest will take place. Members with actual usage greater than their cost sharing table formula share will be required to make an additional payment to the County to reflect their actual proportionate usage. These settlement payments are due at the County no later than January 31 of the year following reconciliation. Members with actual usage less than their cost sharing table formula determined share will receive a rebate payment from the County to reflect their proportionate usage. The County will issue rebate payments to members no later than January 31 of the year following reconciliation. The net of the additional and refund payments will be zero. The reconciliation in year four will be based on the member's actual usage after three years of operation of the System. The reconciliation in year seven will be based on the member's actual usage for the fourth, fifth and sixth years of operation of the System. The reconciliation in year nine will be based on the member's actual usage for the seventh and eighth years of operation of the System which will also be the assumed actual usage for the ninth year. The manner of determining a

member's actual usage will be determined by the County and the Advisory Council, shall be mutually agreeable, and may be based on the number of calls or time on the system.

Notes shall be amortized over a period of nine years from their date of issuance with one-ninth of the total principal amount of the note due each year. Notes shall bear interest as follows: (a) for initial members, notes shall bear interest at 0% per annum and (b) for additional members, notes shall bear interest at a rate per annum equal to the County's cost of capital at the time of issuance. Notes shall be authorized pursuant to a resolution substantially in the form attached hereto as "A Resolution Approving Trunked Radio Services Agreement and Authorizing the Issuance of a General Obligation Promissory Note to Waukesha County to Pay Infrastructure Cost of the Trunked Radio System" and shall be in substantially the form provided for in that resolution.

2.2. Payment of Infrastructure Costs by Additional Members.

Additional members will be required to (a) issue an infrastructure note, which includes cost of capital, to the County as provided in Section 2.1, with the same amortization schedule as an initial member's infrastructure note would have through the remaining years of the original nine-year payment schedule and (b) either (i) make a lump sum payment to the County including the amount of the capital cost amortized for the time period before it becomes a member or (ii) participate in the schedule for the remaining years at the County's cost of capital with a lump sum payment in year nine for the years prior to admission. Additional members will participate with members in the reconciliation of infrastructure costs based on actual usage as provided in section 2.1.

2.3. Payment of Radio Equipment Costs.

Initial members may finance Radio Equipment through the County. Initial members who choose to finance initial Radio Equipment purchases through the County shall issue a general obligation promissory note to the County in an amount equal to the cost of the Radio Equipment. Replacement equipment shall be the sole responsibility of each member.

Radio Equipment notes shall be amortized over a period of nine years from their date of issuance with payment due on January 31 of each year of the agreement, beginning with the year next succeeding the date of execution, and shall bear interest at a rate per annum equal to the County's current cost of capital at 4.2%. Radio Equipment notes shall be authorized pursuant to a resolution substantially in the form as the "Resolution Authorizing the Issuance of General Obligation Promissory Note (Equipment Note) to Waukesha County for Trunked Radio System" distributed on September 30, 1999, and shall be in substantially the form provided by that resolution. Additional members are responsible for financing the cost of any radios they acquire.

ARTICLE III

Operation and Maintenance of the System

3.1. County to Operate System.

(a) The County shall be responsible for providing all services necessary to operate the System, including but not limited to personnel, purchasing responsibilities, maintenance of infrastructure equipment and hardware, installation and operation of System software, preparation

of all necessary contracts and billing of all members.

(b) The County shall maintain property insurance to cover repair or replacement of all jointly owned System equipment, including, but not limited to towers, fixed radio equipment, buildings and building improvements, and computer hardware and software, including builder's risk coverage during new construction on an all-risk policy form that insures against the perils of fire, extended coverage, vandalism and malicious mischief.

(c) It shall be the responsibility of each municipality entering into this agreement to maintain all solely owned equipment. Each municipality may request repair and maintenance services from the County under a separate agreement, for an additional cost. Future replacement and/or additional acquisitions are the responsibility of each member.

(d) Each member shall maintain property insurance to cover repair or replacement of all of their solely owned radio equipment associated with the System or self-insure same.

3.2. Payment of Operating Costs.

All initial members and additional members will share in the payment of operating costs. All initial members and additional members shall pay System operation costs, based on adopted operating budget, to the County by January 31 of each year, beginning in 2000 and each year thereafter. Subsequent assessment of the difference between actual and budgeted operational costs will be applied as an adjustment to a future operational budget. The amount of operating costs to be paid by each member each year shall be calculated as follows:

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|--------|---|
| Year 1 | <u>In the Year 2000</u> : The % of total radios owned by the member to the total radios on the System times the proposed operational budget for the System. |
| Year 2 | <u>In the Year 2001</u> : The % of total radios owned by the member to the total radios on the System times the proposed operational budget for the System. |
| Year 3 | <u>In the Year 2002</u> : The % of total radios owned by the member to the total radios on the System times the proposed operational budget for the System adjusted for net differences between year 2000 actual versus operational budget. |
| Year 4 | <u>In the year 2003</u> : The % of use of the System, as calculated between 1/1/2000 and 5/31/2002 times the proposed operational budget adjusted for net differences between year 2001 actual versus operational budget. |
| Year 5 | <u>In the year 2004</u> : The % of use of the System, as calculated between 6/1/2002 and 5/31/2003 times the proposed operational budget adjusted for net differences between year 2002 actual versus operational budget. |
| Year 6 | <u>In the year 2005</u> : The % of use of the System, as calculated between 6/1/2003 and 5/31/2004 times the proposed operational budget adjusted for net differences between year 2003 actual versus operational budget. |
| Year 7 | <u>In the year 2006</u> : The % of use of the System, as calculated between 6/1/2004 and 5/31/2005 times the proposed operational budget adjusted for net differences between year 2004 actual versus operational budget. |
| Year 8 | <u>In the year 2007</u> : The % of use of the System, as calculated between 6/1/2005 and 5/31/2006 times the proposed operational budget adjusted for net differences between year 2005 actual versus operational budget. |

Year 9 In the year 2008: The % of use of the System, as calculated between 6/1/2006 and 5/31/2007 times the proposed operational budget adjusted for net differences between year 2006 actual versus operational budget.

In the year 2009, the difference between actual and budgeted operational costs for the period between 6/1/2007 and 12/31/2008 shall be determined and members shall receive rebates or be assessed additional amounts to be paid by them. The right to received such rebates and the obligation to pay such assessments shall survive termination of this agreement.

ARTICLE IV Advisory Council

An Advisory Council shall be formed made up of a representative of each member which enters into this agreement. The chief executive officer of each member, or his or her designee, shall serve as the representative to the Advisory Council. The Advisory Council shall serve as an advisory body to the Waukesha County Executive and Board on all matters affecting the System, shall review the budget prepared for the System, will hear and mediate disputes among municipalities who participate in the System, will approve additional members who wish to be added to the System, and shall decide, by majority vote, upon the expulsion of members in accordance with the terms of this agreement.

ARTICLE V Withdrawal or Expulsion of Members

5.1. Withdrawal of Members.

Any member may withdraw from the System at any time upon providing written notice to the County and the System Advisory Council. Upon withdrawal, members continue to be responsible for the following:

- a. For 100% of its pro rata share of any authorized unpaid capital or System development costs, evidenced by the Infrastructure notes.
- b. For payment of all costs represented by any Radio Equipment note and any written agreement executed by the member with regard to the System or radio equipment.
- c. If notice of intent to withdraw is received by the County and the System Advisory Council no later than July 1 of any given year, the withdrawing member shall be obligated to pay its proportionate share of operating costs for the year in which the notice is received.
- d. If notice is received by the County and the Advisory Council after July 1 of any given year, the withdrawing member shall be obligated to pay its proportionate share of operating costs for the year notice is received and budgeted operating costs for the following calendar year. The withdrawing member will be billed for the budgeted

operating costs for the following calendar year on January 31 of that year.

At the time of a member withdrawal, all other members' equity interests shall be adjusted by adding to their equity interest share a proportionate share of the withdrawing member's equity. No withdrawing member shall receive, from the County or the other members, any money or other compensation for its equity interest.

5.2. Expulsion of Members.

A member may be expelled from the System and its participation in the System and this Agreement terminated for cause by the County pursuant to majority vote of the advisory council. The following are considered cause for termination:

- a. Misuse of the System or System equipment.
- b. Failure to pay obligations to the County or the System when due.
- c. Failure to pay fines, penalties or forfeitures assessed by another governmental agency related to use of the radio System.

Upon expulsion, the expelled member continues to be responsible for the following:

- a. For 100% of its pro rata share of any authorized unpaid capital or System development costs, evidenced by the Infrastructure note.
- b. For payment of all costs represented by any Radio Equipment note and any written agreement executed by the member with regard to the System or radio equipment.
- c. If termination occurs prior to July 1 of any given year, the expelled member shall be obligated to pay its proportionate share of costs for the year in which expulsion occurs.
- d. If termination occurs after July 1 of any given year, the expelled member shall be obligated to pay its proportionate share of budgeted operating costs for the year notice is received and budgeted operating costs for the following calendar year.
- e. Settlements or judgments for events occurring during membership.

At the time of a member expulsion, all other member's equity interest shall be adjusted by adding to their equity interest share a proportionate share of the expelled member's equity. No expelled member shall receive, from the County or any other member, any money or compensation for its equity interest at the time of the expulsion.

ARTICLE VI
Miscellaneous

6.1. No Assignment.

No party to this agreement may assign its interest in this agreement or in the radio System, including its proportionate equity interest in the System to any other party or individual.

6.2. Responsibility for Fines, Forfeitures or Penalties.

In the event that a fine, forfeiture or penalty is assessed by the Federal Communications Commission for misuse of airwaves or any other violation of federal law or regulation, the member responsible for the violation shall be solely responsible for payment of such fine, forfeiture or penalty.

6.3. Property Insurance Waiver of Subrogation.

The County and each member hereby releases each other from any and all responsibility and liability to the other for any loss or damage, including consequential losses, that either may incur if such property loss or damage is caused by fire or other peril, even if such loss or damage is caused by the fault or negligence of the other party. Each agree that to the extent any policy of insurance provides a right of subrogation in the insurer, or to the extent a right of subrogation exists independent of such policy, each will hold the other harmless for any loss, claim or expense suffered and shall obtain from its insurance carrier a waiver of subrogation for the matters here described in any such policy of insurance.

6.4. Responsibility for Settlements or Judgments.

In the event that a recovery shall be had, either by settlement or judgment, against Waukesha County or any other member as a result of a failure of the trunked radio System, the cost of said settlement or judgment shall be borne by each party to this agreement in accordance with percentage of equity interest calculated for the year of the event which led to the claim giving rise to the settlement or judgment. This paragraph shall apply and the member shall be obligated for its proportionate share of said settlement or judgment even if the member shall have terminated the agreement prior to the settlement or judgment.

Waukesha County shall provide, at no cost to participating municipalities, all legal representation for any litigation directing alleging failure of the System infrastructure and shall have the sole authority to direct said litigation.

6.5. Force Majeure.

Except as otherwise specifically provided herein, neither the County or the member municipalities shall be considered to be in default in the performance of any of its obligations under this agreement, other than obligations to make payments as specified in this agreement or in any other agreement entered into by the parties, when there is the occurrence of an event of Force Majeure, as defined below, and the result is a delay or failure of performance of a party, and in such case, neither party shall be liable for any loss or damage suffered by the other party as a result thereof. Force Majeure, as used herein, shall mean any conditions affecting a party in connection

with the agreement, which condition is beyond the reasonable control of the party, including, without limitation: acts of God, strikes, lockouts, acts of public enemy, wars, blockages, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, civil disturbances, or explosions.

6.6. Conditions on Agreement.

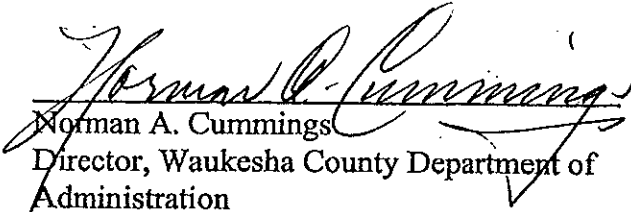
This agreement is only effective if sufficient funds have been appropriated by the Waukesha County Board and said appropriation has been approved by the Waukesha County Executive and a contract has been executed with a vendor chosen by Waukesha County for development and implementation of a System.

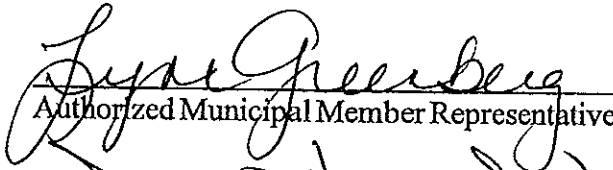
6.7. Effective Date; Term.

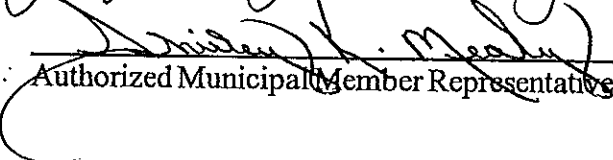
This agreement shall be binding on the parties upon execution and shall terminate at 11:59:59 p.m. on December 31, 2008, except as provided in section 3.2, above.

Date: November 8, 1999

Date: October 14, 1999


Norman A. Cummings
Director, Waukesha County Department of
Administration


Lynn Greenberg
Authorized Municipal Member Representative


Michael J. Mealy
Authorized Municipal Member Representative