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MEMORANDUM

To: Mayor and City Council
From: Kimberly Greer, Assistant to the City Manager
Date: September 1, 2011 (for September 12, 2011)
Subject: Radio System IGA

ITEM DESCRIPTION

Staff recommends entering into an Intergovernmental Agreement (IGA) with DeKalb County for the use of the countywide 800 MHz radio system.

BACKGROUND

Under the City's current IGA with DeKalb County, which will terminate in October 2011, all emergency services dispatching and related police communication occurs on the countywide 800 MHz radio system.

In March, the City Council authorized the Mayor to enter into an Agreement with ChatComm for the provision of enhanced 911 communication services following a six month transition period. As part of the transition process, staff has been working with DeKalb County to negotiate a new IGA to provide for the continued use of the countywide 800 MHz radio system.

Under the negotiated IGA, the only costs City would be responsible for are the already incurred costs of the equipment necessary to be a user on the system and associated maintenance costs for that equipment.

Attached to this memorandum is a draft version of the IGA as received from DeKalb County on August 19th. Since that date, staff has continued to work with DeKalb and both parties have agreed to a few minor changes but DeKalb was unable to provide an updated version in advance of today's agenda circulation deadline. Staff will provide an updated version of the IGA in advance of the September 12, 2011 Work Session.

RECOMMENDATION

Staff recommends the City Council authorize the Mayor to enter into an Intergovernmental Agreement with DeKalb County for continued use of the countywide 800 MHz radio system.

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**INTERGOVERNMENTAL AGREEMENT
 FOR THE PROVISION OF 800 MHz RADIO SYSTEM ACCESS
 BETWEEN
 DEKALB COUNTY, GEORGIA and
 THE CITY OF DUNWOODY, GEORGIA**

THIS INTERGOVERNMENTAL AGREEMENT, is made and entered into by and between DeKalb County, Georgia, a political subdivision of the state of Georgia (hereinafter the "County"), and the City of Dunwoody, a municipal corporation, (hereinafter "City" or "User") on ___ day of _____, 2011.

RECITALS

WHEREAS, the County is the sole owner and operator of an 800 MHz radio system (hereinafter "the County System"); and

WHEREAS, various County departments and municipalities, including Police, Sheriff, Marshal, Fire, Public Works, General Services Administration, School Board, city of Pine Lake, city of Clarkston, and city of Lithonia are presently users on the System; and

WHEREAS, it is desirable to have a unified system that includes users on the System who protect the citizens of DeKalb County; and

WHEREAS, User is a municipality located within the County that provides public safety services to protect the citizens of the City in DeKalb County; and

NOW THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the County and the User agree as follows:

ARTICLE 1

PURPOSE OF AGREEMENT

The purpose of the Agreement is to provide the City with access to the County's 800 MHz Radio System. The County therefore grants to User a ten (10) year revocable license to use _____ radio units on the County's System, subject to the terms and conditions of this Agreement.

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ARTICLE 2

TERM OF AGREEMENT

The term of this Agreement is for ten (10) years, beginning _____ at 0000 hours and ending at 2400 hours on _____. User's license may be revoked only for good cause and only after User has had an opportunity to show cause why its license should not be revoked before the Review Board, as defined in Article ____ of this Agreement (hereinafter "Review Board"). Such license is not intended to and does not grant to User any property interest in the County System.

ARTICLE 3

LICENSE USE

The User shall limit the number of all subscriber units including but not limited to mobile, portable, and radio data modems, to _____. User may request additional units by making formal application with supporting documentation of need to the DeKalb County Public Safety/911 Director or his/her designee (hereinafter "Director"). The application for additional units shall be reviewed and approved or denied by the Director. The Director, in reviewing an application, will take into account system loading, air time usage, number of system busies, and will make a decision based on maintaining the efficiency of the County's System for all users. All requests for additional units shall be made at least thirty (30) days prior to the beginning of the County's fiscal year. In extraordinary cases, additional units may be requested and added after such time and the cost of those additions shall be calculated on a pro rata basis of the original fiscal year contribution. Any application denied may be appealed to the Review Board. User is absolutely prohibited from selling, assigning or otherwise transferring its license to use the County System, in whole or in part, to any other person or entity.

ARTICLE 4

EQUIPMENT

The User shall be solely responsible for purchasing and maintaining all equipment necessary to be a user on the County System. All subscriber units must be approved by type by the Director. A conforming products list is available from the Emergency 911 Center and will be updated from time to time. Products not listed will not be accepted. All maintenance performed on User's units must be certified by a Motorola certified technician, or otherwise consented to in writing by the Director. The County shall maintain and support the core of the County System.

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ARTICLE 5

SECURITY CONSTRAINTS/DEFECTIVE EQUIPMENT

The User shall comply with Motorola Software security constraints. The User shall have any of its devices, equipment, or subscriber units, which cause any problems on the System immediately taken out of service and repaired by User. User shall be responsible for all repair costs and for any damages or consequences arising out of such problematic device, equipment, or unit.

ARTICLE 6

TRAINING

The User shall guarantee that all persons who will be operating subscriber units are adequately trained. Proof of training will be required within three (3) months of being on the County System. The County will provide training to a User representative who will in turn be responsible for training all other persons authorized by the City to operate a unit on the County System.

ARTICLE 7

LEGAL COMPLIANCE

(a) The City and the County shall comply with all applicable federal and state law, and county ordinances. The User shall guarantee that its employees who are trained and authorized to use the System do so in compliance with all applicable federal, state, and county laws, codes, regulations and ordinances, as well as this Agreement. Alleged violations of any applicable law, code, regulation, ordinance, or this agreement will be reviewed by the Chief.

(b) Upon finding a violation has occurred, the Director, in his/her discretion may require the User to remove a unit(s) from the System, place the User on probation for a certain period of time not to exceed six (6) months, and/or take other reasonable action. Persistent violations or misuse of the County System may result in User being removed entirely from the County System after User has had an opportunity to show cause why its license should not be revoked before the Review Board.

(c) All direct and indirect expenses arising out of violations or misuse by User and its employees and agents shall be borne by User. Additionally, User shall be responsible, at the request of the County, for responding to or assisting the County in responding to any correspondence or complaint received by the County from state or federal regulatory agencies

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involving User's units. User shall execute any releases which may be deemed legal or hold harmless agreements in favor of the County as requested by the County.

ARTICLE 8

REVIEW BOARD

Any action taken by the Director may be appealed by the City to the Review Board. The Review Board shall be comprised of the Executive Assistant, the Finance Director, and the DeKalb County Marshal and their decision shall be final.

ARTICLE 9

USE OF COUNTY SYSTEM

The User shall restrict its use of the County System to legitimate business-related purposes of the User. The County System shall not be used to conduct personal or unrelated business, except that which is incidental and occasional. The User shall abide by any rules and regulations promulgated by the County regarding the use of the County System. The User shall have the right to review the rules and regulations prior to their adoption and to make suggested changes if any rules or regulations present a conflict with the reasonable operation of the User's System. Changes or exceptions to the rules or regulations will voluntarily be made by the County upon a showing by the User of such a conflict. The County shall give adequate notification to User of violations, service interruption, and of the removal of units from operation on the County System. The County shall use best efforts to answer questions and facilitate use of the County System by User.

ARTICLE 10

REGULATORY MANDATES

The User shall comply with any and all mandate(s) issued by authorized regulatory agencies. If, subsequent to this Agreement being entered into, technical or other changes are mandated by a regulatory agency, User will have the opportunity to remain on the System if User is able to timely comply with the mandate(s). The County will in no way be responsible for bringing User into compliance with the mandate(s) or be responsible for any direct or indirect, tangible or intangible costs, damages, or losses incurred due to the mandates. Notwithstanding the foregoing, User agrees that should the County decide to comply with the mandate(s) in a time period that is shorter than required by the regulatory agency, User agrees to comply within that shorter time period so long as the County provides User at least one (1) year prior notice. If User is unable to comply with the mandate(s) within the applicable time allowed (either by a regulatory agency or the County), User agrees it shall be removed in whole or in part from the County System.

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ARTICLE 11**UPGRADES**

The County shall provide User one (1) year prior notice for any voluntary upgrades or other compliance mandates to the County System that will affect User. The User shall reply within three (3) months of receipt of notice from the County. The County will have the sole discretion to update or change the System to include a change in vendor. The County will not be responsible for any expenditure, losses, or other claims caused by or attributable to such voluntary upgrades and/or changes to the County System.

ARTICLE 12**USE OF VOICE CHANNEL AND EQUIPMENT**

The parties agree that dedication of the affected channel is to accommodate the additional radio traffic anticipated by the increase in police units of the User's use of the system. The channel dedicated to User will remain a part of the System for so long as DeKalb County continues to operate the System and the User continues to have access and use of the System. Under any circumstance in which DeKalb County discontinues operation of the System, or the User should no longer have or need access to the system, then the channel dedicated to User will be reassigned to another User or removed from the System.

ARTICLE 13**TERMINATION AND DEFAULT REMEDIES**

In the event that either party shall default on its obligation under this Agreement, failure to remit payment as required by this Agreement or failure to provide access to the 800 MHz system, the other party may provide the breaching party with a written notice of default specifying the basis for the default and advising the defaulting party of the time frame to cure the default. All defaults shall be cured within a 30 day time period. The non-defaulting party may grant the defaulting party additional time to cure the default. The non-defaulting party may elect to terminate the Agreement if the default is not remedied in the agreed upon cure period. All notices under this provision shall be administered in accordance with Article 16 of this Agreement. The County and User reserve all available remedies afforded by law to enforce any term or condition of this Agreement.

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ARTICLE 14

AMENDMENTS

This Agreement may be modified at any time during the term by mutual written consent of both parties so long as such consent is approved by official action of the County's Governing Authority and official action of the City Council.

ARTICLE 15

NOTICES

All notices, statements, modifications, amendments, demands, requests, consents, approvals, or authorizations, hereunder given by either party to the other shall be in writing and sent by registered or certified mail, postage prepaid. The parties agree to give each other non-binding duplicate facsimile notice. Notices shall be addressed to the parties as follows:

If to the County:

Executive Assistant
1300 Commerce Drive, 6th Floor
Decatur, Georgia 30030
404-371-2883, Office number
404-371-3015, Facsimile number

With a copy to:

County Attorney
1300 Commerce Drive, 5th Floor
Decatur, Georgia 30030
404-371-3014, Office number
404-371-3024, Facsimile number

If to the City:

City Manager
City of Dunwoody
41 Perimeter Center East, Ste. 250
Dunwoody, Georgia 30346
Office number: 678-382-6700
Facsimile number: 770-396-4705

With a copy to:

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City Attorney
41 Perimeter Center East, Ste. 250
Dunwoody, GA 30346
678-382-6700

All notices sent to the addresses listed above shall be binding unless said address is changed in writing. Future changes in address shall be effective upon written notice being given by the City Manager to the County's Executive Assistant or by the County's Executive Assistant to the City Manager via certified first class U.S. mail, return receipt requested.

ARTICLE 16

TRANSFERS AND ASSIGNMENTS

User is absolutely prohibited from selling, assigning or otherwise transferring its license to use the County System, in whole or in part, to any other person or entity. The County may assign or transfer its obligations under this Agreement to another governmental provider (city, county, or governmental authority) of such services upon at least six (6) months notice to the City.

ARTICLE 17

RENEWAL

This Agreement may be renewed by mutual agreement approved by both governing bodies. The parties will meet on or before _____ 1, 20__ to review service under this Agreement and consider proposed modifications of the term. Any such proposed change or renewal is subject to consideration and approval of the County Governing Authority and the City Council.

ARTICLE 18

ENTIRE AGREEMENT

The parties acknowledge, one to the other, that the terms of this Agreement constitute the entire understanding and Agreement of the parties regarding the subject matter of the Agreement. This Agreement constitutes the entire understanding and agreement between the Parties concerning the subject matter of this Agreement, and supersedes all prior oral or written agreements or understandings. No representation oral or written not incorporated in this Agreement shall be binding upon the City or the County. All parties must sign any subsequent changes in the Agreement.

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ARTICLE 19

SEVERABILITY, VENUE AND ENFORCEABILITY

If a court of competent jurisdiction renders any provision of this Agreement (or portion of a provision) to be invalid or otherwise unenforceable, that provision or portion of the provision will be severed and the remainder of this Agreement will continue in full force and effect as if the invalid provision or portion of the provision were not part of this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia and should any party institute suit concerning this Agreement, venue shall be in the Superior Court of DeKalb County, Georgia. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of all parties have participated in the preparation hereof.

ARTICLE 20 EMPLOYEE STATUS

All County employees providing services pursuant to this Agreement are and will continue to remain County employees. County employees shall not be entitled to any City employee benefits including, but not limited to social security, insurance, paid annual leave, sick leave, worker's compensation, free parking or retirement benefits. All City employees providing services pursuant to this Agreement are and will continue to remain City employees. City employees shall not be entitled to any County employee benefits including, but not limited to social security, insurance, paid annual leave, sick leave, worker's compensation, free parking or retirement benefits.

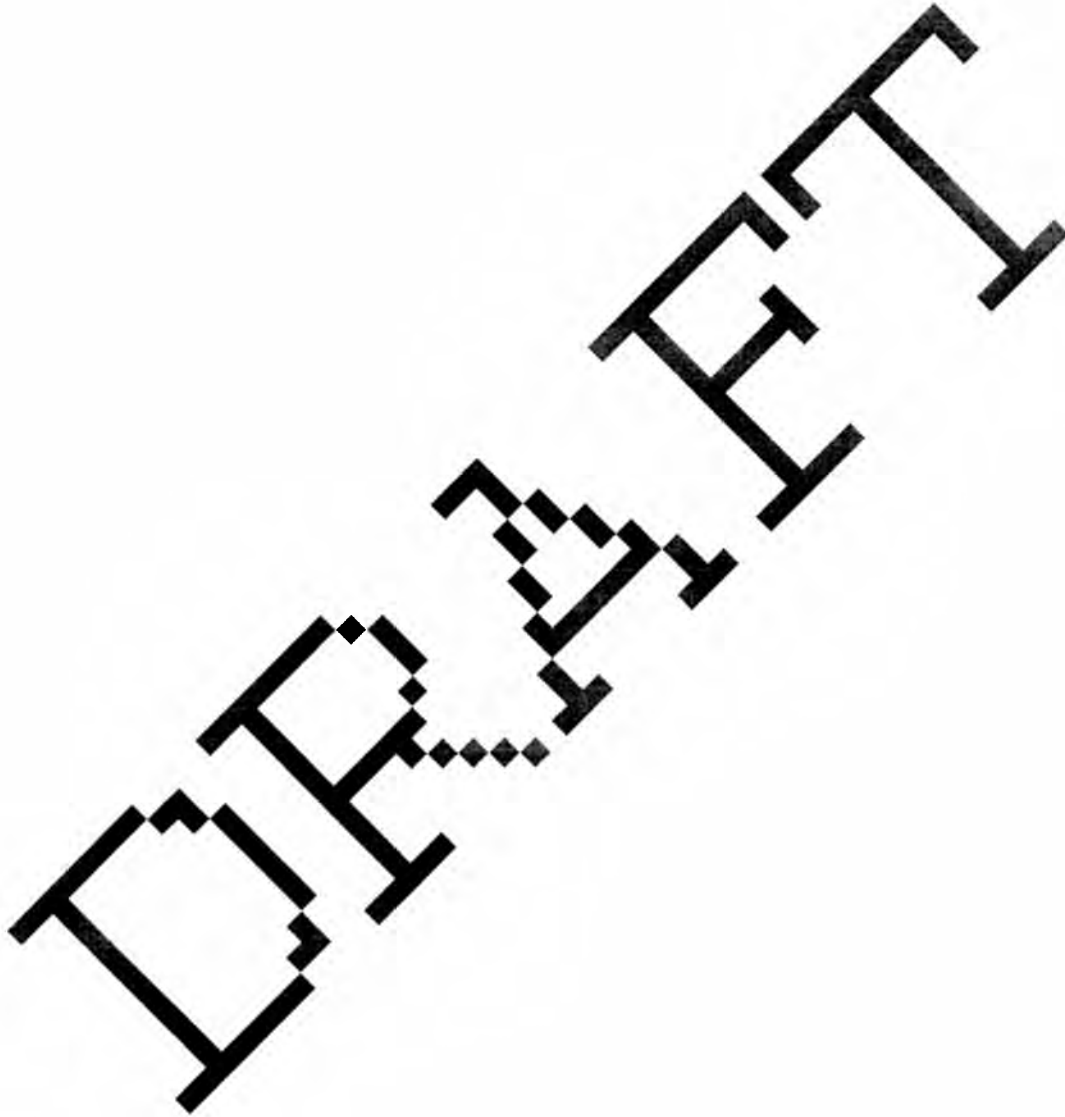
ARTICLE 21 COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

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IN WITNESS WHEREOF, the County and User have executed this Agreement through their duly authorized officers.

SIGNATURES APPEAR ON THE FOLLOWING PAGE



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DEKALB COUNTY, GEORGIA

W. Burrell Ellis, Jr.
Chief Executive Officer

Barbara Sanders, CCC
Clerk of the DeKalb County, Georgia
Board of Commissioners of DeKalb
County, Georgia

(SEAL)

APPROVED AS TO FORM:

APPROVED AS TO SUBSTANCE:

Viviane H. Ernstes
Chief Assistant County Attorney

Richard Stogner
Executive Assistant

CITY OF DUNWOODY, GEORGIA

Ken Wright
Mayor

Sharon Lowery
City Clerk (SEAL)

APPROVED AS TO FORM:

Brian Anderson
City Attorney