



STEVEN M. NEUHAUS

COUNTY EXECUTIVE

October 17, 2019

RECEIVED

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Town of Woodbury
Town Clerk

The Honorable Frank Palermo
Supervisor of Town of Woodbury
615 Route 32
PO Box 1004
Highland Mills, New York 10930

RE: Countywide Public Safety Radio Network

Dear Supervisor Palermo:

This letter is to welcome you to the new Orange CORNET system which will greatly improve interoperable communications among our first responders. The Town of Woodbury can now begin immediately saving on radio costs. I have also provided you with a list of equipment being given to the Town of Woodbury with a total value of \$143,696. I ask that you please sign and return the attached Agreement along with a Board-Certified Resolution authorizing the designated official to execute this Agreement and accept this equipment.

As you know, over the past several years, Orange County has committed over \$30 million and countless personnel hours to the development of a new countywide public safety radio network. This new federally mandated 700/800 digital trunked system is the standard for public safety radio and is the same system that is in use in Rockland County and many other counties throughout the State.

I'm pleased to report that this system is now activated and is ready to be used by all of our emergency service personnel. This is a huge step forward in allowing our first responders to not only have the ability to speak to each other across disciplines, but also to have at their fingertips the best and most reliable radio communication system available.

If you have any questions or concerns, please reach out to Brendan R. Casey, Commissioner of Emergency Services at 615-0565.

Thank you.


Steven M. Neuhaus
County Executive

cc: Kevin Watson, Chief of Police

PUBLIC SAFETY EMERGENCY RADIO COMMUNICATIONS SYSTEM INTEROPERABILITY AGREEMENT

THIS PUBLIC SAFETY EMERGENCY RADIO COMMUNICATIONS SYSTEM INTEROPERABILITY AGREEMENT (“Agreement”) is effective as of September 1, 2019 (“Effective Date”), by and between the **COUNTY OF ORANGE**, by and through its Department of Emergency Services (“DES”), a municipal corporation of the State of New York with offices at 22 Wells Farm Road, Goshen, New York 10924 (“County”) and **TOWN OF WOODBURY**, a municipal corporation of the State of New York with its principal offices located at 615 Route 32, PO Box 1004, Highland Mills, New York 10930 (“Municipality”). The County and Municipality may each be referred to in this Agreement as a “Party” and collectively, as the “Parties.”

RECITALS

WHEREAS, the County, through DES, currently operates a conventional analog public safety emergency radio communications system for its public safety communications within Orange County, New York (“Current Analog Communications System”);

WHEREAS, the Current Analog Communications System’s capabilities are limited by the inability of all public safety personnel within Orange County, New York to communicate directly with each other when necessary thereby causing gaps in communication during public safety incidents resulting in increased risk to life, safety, and property;

WHEREAS, to address these limitations, the County, through DES, is in the process of upgrading the Current Analog Communications System to a countywide Project 25 interoperable digital trunked radio communications system (“Upgraded P25 System”) to improve communication capabilities within Orange County, New York by providing radio interoperability during countywide public safety incidents and during cross-jurisdictional incidents among the various public safety agencies of the cities, towns, villages, and fire districts in Orange County, New York and the emergency medical providers in Orange County, New York (each a “Responder Agency” and collectively, the “Responder Agencies”);

WHEREAS, it would benefit the people of both the County and Municipality to implement and deploy the Upgraded P25 System;

WHEREAS, in order to properly implement and deploy the Upgraded P25 System to promote interoperability amongst the various Responder Agencies, the County deems it is necessary and proper to purchase and pay the full cost of certain of the Upgraded P25 System’s subscriber equipment for Responder Agencies; and

WHEREAS, subscriber equipment includes: (i) portable radios that are small, lightweight, handheld wireless communication units that contain both a transmitter and a receiver, a self-contained microphone and speaker, a detachable rechargeable battery, and an antenna (each a “Portable” and collectively, “Portables”); (ii) mobile radios that are mounted in a fixed location inside a vehicle (police cruiser, fire truck, ambulance) and like Portables contain both a transmitter and receiver, but unlike Portables connect to the vehicle’s power supply and have an external speaker and an external antenna (each a “Mobile” and collectively “Mobiles”); and (iii) control stations that are desktop base station radios mounted in a fixed location (police, fire station or emergency medical service station) containing both a transmitter and a receiver, a self-contained microphone and speaker, and a magnetic mount antenna powered by an external electric power source (110 volt alternating current) (each a “Control Station” and collectively “Control Stations” and together with the Portables and Mobiles, collectively the “P25 Subscriber Equipment”);

WHEREAS, the County negotiated and entered into a contract with Motorola Solutions, Inc. ("Motorola") to purchase P25 Subscriber Equipment for use on the Upgraded P25 System ("Motorola Contract"); and

WHEREAS, Municipality, as a Responder Agency, is entering into this Agreement to set forth the terms and conditions under which it is accepting P25 Subscriber Equipment for use on the Upgraded P25 System and undertaking certain obligations and commitments with respect to that P25 Subscriber Equipment.

NOW THEREFORE, the Parties, in consideration of the covenants, agreements, terms, and conditions contained in this Agreement, do agree as follows:

144. RECITALS INCORPORATED. The Recitals set forth above are true and correct and are incorporated into this Agreement as if set forth at length in this Section 1.

145. EQUIPMENT.

- a. **Provision of Equipment to Municipality.** Subject to the terms and conditions of this Agreement, to properly implement and deploy the Upgraded P25 System to promote interoperability amongst the various Responder Agencies (including Municipality), the County will, free of charge or cost to Municipality, within ninety (90) calendar days of the Effective Date, make available to Municipality, in the following manner, that certain P25 Subscriber Equipment listed on Schedule 2(a) ("Equipment"), which schedule is attached to and made a part of this Agreement:
- i. **Portables.** Those Portables and accessories listed on Schedule 2(a) will be made available for pickup by Municipality at the County's DES' offices located at 22 Wells Farm Road, Goshen, New York. Municipality must coordinate pickup of the Portables listed on Schedule 2(a) via email to: radiogroup@orangecountygov.com. Municipality, upon taking possession of the Portables listed on Schedule 2(a), accepts full ownership of those Portables as its own property subject to the terms and conditions set forth in this Agreement.
 - ii. **Mobiles.** Those Mobiles listed on Schedule 2(a) will be picked-up by Motorola's authorized installer at the County's DES' offices located at 22 Wells Farm Road, Goshen, New York and such installer will install those Mobiles in Municipality's vehicles. Municipality must coordinate installation of the Mobiles listed on Schedule 2(a) via email to: radiogroup@orangecountygov.com. Municipality accepts full ownership of the Mobiles listed on Schedule 2(a) as its own property subject to the terms and conditions set forth in this Agreement at the time of installation of the Mobiles in Municipality's vehicles by Motorola's authorized installer.
 - iii. **Control Stations.**
 - 1. **Standalone Control Stations.** Those Control Stations listed on Schedule 2(a) that do not require installation by Motorola's authorized installer (standalone control stations requiring no interfaces with other dispatching equipment) will be made available for pickup by Municipality at the County's DES' offices located at 22 Wells Farm Road, Goshen, New York at such time that Municipality picks up its Portables in the manner provided for in Section 2(a)(i) of this Agreement. Municipality, upon taking possession of the Control Stations listed on Schedule 2(a), accepts full ownership of those Control Stations as its own property subject to the terms and conditions set forth in this Agreement.

2. *Interfaced Control Stations.* Those Control Stations listed on Schedule 2(a) that require installation by Motorola's authorized installer (control stations requiring interfaces with other dispatching equipment) will be picked-up by Motorola's authorized installer at the County's DES' offices located at 22 Wells Farm Road, Goshen, New York and such installer will install those Control Stations in Municipality's dispatching station(s). Municipality must coordinate installation of the Control Stations listed on Schedule 2(a) that require installation by Motorola's authorized installer via email to: radiogroup@orangecountygov.com. Municipality accepts full ownership of the Control Stations listed on Schedule 2(a) that require installation by Motorola's authorized installer as its own property subject to the terms and conditions set forth in this Agreement at the time of installation of the Control Stations in Municipality's dispatch station(s) by Motorola's authorized installer.
- b. **Equipment Warranty.** The Equipment is covered under *Motorola's Essential Service Warranty*, the cost of which has been prepaid by the County on behalf of Municipality ("Warranty"). The terms and conditions of the Warranty are set forth in Schedule 2(b), which schedule is attached to and made a part of this Agreement. The Warranty period for each of the various types of Equipment is as follows:
- i. **Portables.** Those Portables listed on Schedule 2(a) are covered under the Warranty for a period of sixty (60) months calculated from the date of the County's acceptance of the Upgraded P25 System ("Portables Warranty Period").
 - ii. **Mobiles and Control Stations.** Those Mobiles and Control Stations listed on Schedule 2(a) are covered under the Warranty for a period of twenty-four (24) months calculated from the date of the County's acceptance of the Upgraded P25 System ("Mobiles Warranty Period").
- c. **Value of Equipment; Reimbursement for Early Termination.** Municipality acknowledges and agrees that the aggregate value of the Equipment together with the Warranty is One Hundred Forty-Three Thousand Six Hundred Ninety-Six Dollars and No Cents (\$143,696.00). In the event that Municipality terminates this Agreement without cause before the end of the fifteen (15) year term of this Agreement, in accordance with Section 6(b) of this Agreement, or in the event that the County terminates this Agreement before the end of the fifteen (15) year term of this Agreement for cause in accordance with Section 6(a) of this Agreement, Municipality shall immediately reimburse the County the entire cost of the Equipment less depreciation. In the event Municipality fails to make such reimbursement, the County may pursue any and all remedies available to it in law or in equity to recover the entire cost of the Equipment less depreciation.
- d. **Maintenance and Replacement of Equipment.** Following expiration of the applicable Equipment warranty period (Portables Warranty Period or Mobiles Warranty Period), Municipality shall maintain and replace, at its sole cost and expense, the Equipment and from time to time acquire, at its sole cost and expense, such additional P25 Subscriber Equipment as Municipality may deem necessary.
- e. **Municipality's Option to Purchase Additional P25 Subscriber Equipment Directly from Motorola at the County's Pricing.** The types and quantities of the Equipment allotted to Municipality on Schedule 2(a) is based on Municipality's self-reporting of its subscriber radio equipment needs at the time the County planned the Upgraded P25 System. By execution of this Agreement, Municipality acknowledges that either (a) the Equipment allotted is sufficient for its public safety agencies' operations to achieve the purposes of the countywide Upgraded P25 System; or alternatively, (b) if the quantities or type of the Equipment is no longer sufficient, Municipality may purchase additional P25 Subscriber Equipment for use on the Upgraded P25 System at its sole cost and expense. The County included a provision in the Motorola Contract whereby political subdivisions and fire companies such as Municipality may make additional purchases of

P25 Subscriber Equipment by issuing a purchase order directly to Motorola, provided that Municipality accepts sole responsibility for any payment due Motorola for such purchases by Municipality.

f. **Operation of Equipment.** Municipality agrees as follows:

- i. **Compliance with this Agreement and Laws.** The acceptance of the Equipment and all activity of Municipality relating to the Equipment must be in full compliance with the terms and conditions of this Agreement and all applicable federal, state, and local laws, rules and regulations.
 - ii. **ICS and NIMS Compliance.** Municipality's public safety agencies' personnel are fully trained and knowledgeable in the federal Incident Command System (ICS) and National Incident Management System (NIMS) protocols and utilize these management tools for their exercises and emergency responses; and
 - iii. **Compliance with the County's Plans and Protocols.** Municipality will utilize the Upgraded P25 System in accordance with all applicable County plans and protocols, as may be amended from time to time during the term of this Agreement, including, but not limited to the: (A) Automatic Vehicle Locator (AVL) Project Protocol Guidelines; (B) Orange County Fire Mutual Aid Plan; and (C) Orange County Emergency Medical Services Multiple Casualty Incident (MCI) Plan.
- g. **Transfer of Equipment.** Municipality shall, during the term of this Agreement, alone, and only for its own municipal public safety purposes, be permitted to possess and use the Equipment as provided. Municipality shall not, during the term of this Agreement, transfer ownership of the Equipment without the prior written consent of the County.

146. TRAINING. The County will host training sessions in the use of P25 Subscriber Equipment on the Upgraded P25 System for the Responder Agencies.

147. FINANCIAL RECORDS AND AUDITS. Municipality shall maintain records of all its financial transactions, including all expenses and disbursements, which relate to this Agreement. Such records must be kept in accordance with Generally Accepted Accounting Practices (GAAP) and the applicable New York State Records Retention and Disposition Schedule applicable to Municipality, and each transaction must be documented. Such records must be made available to the County for inspection or audit upon the County's request.

148. TERM. The term of this Agreement commences on the Effective Date and continues in full force and effect for a period of fifteen (15) years thereafter, unless it is terminated earlier in accordance with Section 6 of this Agreement.

149. TERMINATION.

a. **For Cause.**

- i. **Default.** Either Party's failure to cure a breach of any covenant of such Party in this Agreement within thirty (30) calendar days of written notice from the non-breaching Party will constitute a breach of this Agreement; provided, however, such thirty (30) calendar day cure period will be extended upon the breaching Party's request if deemed by the non-breaching Party to be reasonably necessary to permit the breaching Party to complete the cure, and further provided that the breaching Party shall commence any cure within the thirty (30) calendar day period and thereafter continuously and diligently pursue and complete such cure.

- ii. Remedies. In the event of a default or a breach of this Agreement and after the the time allowed the breaching Party to cure such default, the non-breaching Party may, in addition to all other rights or remedies available to the non-breaching Party under this Agreement, at law, or in equity, terminate this Agreement by giving written notice to the breaching Party, stating the date upon which such termination will be effective.
- b. Without Cause. In addition to the Parties' right to terminate this Agreement for cause in accordance with Section 6(a) of this Agreement, either Party may terminate this Agreement, without cause, on sixty (60) calendar days' prior written notice to the other Party.
- c. Effect of Termination. If County terminates this Agreement pursuant to Section 6(a) above for failure of Municipality to comply with any covenant of Municipality in this Agreement or if Municipality terminates this Agreement without cause pursuant to Section 6(b) above, Municipality shall immediately reimburse the County for the entire cost of the Equipment less depreciation in accordance with Section 2(c) of this Agreement. In the event Municipality fails to make such reimbursement, the County may pursue any and all remedies available to it in law or in equity to recover the entire cost of the Equipment less depreciation.

150. INSURANCE. Municipality shall, at its sole cost and expense, procure and maintain, in full force and effect during the term of this Agreement, insurance covering personal injury and property damage, including property damage or destruction of the Equipment. Such policies are to be in the broadest form available on usual commercial terms and must be written by insurers of recognized financial standing satisfactory to the County who have been fully informed as to the nature of this Agreement.

151. INJURY, PROPERTY DAMAGE. Municipality shall be responsible for all damages and/or injury to life or property due to, or resulting from, the activities or omissions of Municipality in connection with the Equipment and its performance of this Agreement. Municipality represents and warrants that it possesses the ability to perform this Agreement.

152. INDEMNIFICATION AND HOLD HARMLESS. To the fullest extent permitted by law, Municipality agrees to protect, indemnify and hold harmless the County and its officials, employees, and agents from and against all claims, actions, damages, liabilities, losses, judgments, penalties, causes of action, suits, costs, or expenses (including reasonable attorneys' fees) (collectively, "Claim"), imposed upon, or incurred by, or asserted against the County and will defend the County and its officials, employees, and agents, at Municipality's sole cost and expense, and at no cost to the County, in any Claim, including appeals, for personal injury to, or death of, any person or loss or damage to property arising out of, or resulting from, the activities or omissions of Municipality or its public safety personnel. These indemnification provisions are for the protection of the County and its respective officials, employees and agents only and do not establish, of itself, any liability to third parties. The provisions of this Section 9 will survive the expiration or the earlier termination of this Agreement and are not limited by any enumeration in this Agreement of required insurance coverage.

153. SEXUAL HARASSMENT CERTIFICATION. Pursuant to the New York State Finance Law §139-l, by execution of this Agreement, Municipality and the individual signing this Agreement on behalf of Municipality certifies, under penalty of perjury, that Municipality has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of Section 201-g of the New York State Labor Law. A model policy and training has been created by the New York State Department of Labor and can be found on its website at:

<https://www.ny.gov/programs/combating-sexual-harassment-workplace>

The County's policy against sexual harassment and other unlawful discrimination and harassment in the workplace can be found on the County's website at:

<https://www.orangecountygov.com/1137/Human-Resources>

154. GENERAL PROVISIONS.

a. **Notices.** Other than communications related to the pickup or initial installation of Equipment as contemplated in Section 2(a) of this Agreement, which are required to be given via email to: radiogroup@orangecountygov.com, all notices, requests, demands, and other communications required or desired to be given under or related to this Agreement must be in writing and given by (i) established express delivery service which maintains delivery records, (ii) hand delivery, or (iii) certified or registered mail, postage prepaid, return receipt requested. Notices are effective upon receipt, or upon attempted delivery if delivery is refused or if delivery is impossible. The notices must be sent to the Parties at the following addresses:

- i. **As to the County:** County of Orange, Department of Emergency Services, 22 Wells Farm Road, Goshen, New York 10924, Attn: Commissioner; and
- ii. **As to Municipality:** Town of Woodbury, 615 Route 32, PO Box 1004, Highland Mills, New York, 10930, Attention: Supervisor.

The County and Municipality may from time to time designate any other address for this purpose by giving written notice to the other Party given in accordance with this Section 11(a).

- b. **Executory Clause.** The County shall have no liability under this Agreement to Municipality or anyone else beyond funds appropriated and available for this Agreement.
- c. **Independent Contractor.** Municipality is an independent contractor, and covenants and agrees that it will neither hold itself out as, nor claim to be an employee, servant or agent of the County, and that it will not make claim, demand, or application to or for any right or privilege applicable to an officer or employee of the County including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.
- d. **No Third-Party Beneficiaries.** This Agreement does not, and is not intended to confer, any rights or remedies upon any person other than the Parties.
- e. **No Assignment.** Municipality shall not assign, sublet, or transfer or otherwise dispose of its interest in this Agreement without the prior written consent of County.
- f. **Headings for Convenience and Reference Only.** Headings of sections and subsections of this Agreement are inserted for convenience and reference purposes only and do not affect in any way the meaning or interpretation of this Agreement.
- g. **Force Majeure.** A Party will not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to causes beyond its reasonable control, including but not

limited to acts of God, war, strikes or labor disputes, embargoes, government orders, or any other force majeure event.

- h. **No Waiver.** No provision of this Agreement will be deemed to have been waived by either Party unless the waiver is in writing and signed by the Party against whom enforcement is attempted.
- i. **Modifications.** No changes, amendments, or modifications of any of the terms or conditions of this Agreement will be valid unless reduced to writing and signed by the Parties.
- j. **Governing Law.** The laws of the State of New York, regardless of conflict of law principles will govern this Agreement.
- k. **No Arbitration; Venue.** Any and all disputes involving this Agreement, including the breach or alleged breach of this Agreement, may not be submitted to arbitration without the prior written consent of the County Executive of the County, but must instead only be heard in the Supreme Court of the State of New York with venue in Orange County, or if appropriate, in federal court in the Southern District of New York, White Plains Division.
- l. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties relating to the subject matter of this Agreement and supersedes all prior communications, negotiations, arrangements, and agreements, whether oral or written, between the Parties with respect to the subject matter of this Agreement.
- m. **Signatures.** A manually signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission will be deemed to have the same legal force and effect as delivery of an original signed copy of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as the Effective Date.

TOWN OF WOODBURY

COUNTY OF ORANGE

Name: _____
Title: _____
Dated: _____

Stefan ("Steven") M. Neuhaus
County Executive
Dated: _____