

**STATE OF NORTH CAROLINA
COUNTY OF DURHAM**

**AGREEMENT
REGARDING USE OF THE DURHAM 800 MHz RADIO SYSTEM**

THIS AGREEMENT REGARDING THE DURHAM 800 MHz RADIO SYSTEM is entered into on _____, 2014 by and between the CITY OF DURHAM, a North Carolina municipal corporation ("Durham") and the CITY OF FAYETTEVILLE, a North Carolina municipal corporation, ("Fayetteville").

WHEREAS, in 2013 Durham upgraded the Radio System at a cost of \$13.1 million to migrate radio communications to the APCO P25 digital system standards;

WHEREAS, the Radio System consists of a Motorola Astro 25 800 MHz trunked radio system with a core controller capable of managing multiple zones (the "Radio System");

WHEREAS, since the date of purchase Durham and Durham County ("County"), have utilized the Radio System cooperatively to support public safety needs and provide services to various City and County departments and other local government entities;

WHEREAS, Durham and Durham County have funded capital expenditures to build the Radio System, and have funded the cost of operations and the physical management of the system;

WHEREAS, Durham holds the FCC licenses for the system, and has previously assumed responsibility for system administration and user management;

WHEREAS, no previous agreement has been executed or implemented to govern the respective rights and obligations of Durham and Fayetteville regarding the sharing of Radio System resources;

WHEREAS, in 2013 Fayetteville indicated a desire to connect a radio system and dispatch consoles to the Durham radio system controller for an indefinite period and to use the controller to operate their primary public safety radio system;

WHEREAS, Fayetteville and Durham recognize the need to ensure efficient and effective public safety communications in and around the respective communities;

WHEREAS, Fayetteville and Durham now desire to enter into an agreement to address fees to be paid by Fayetteville for the use of the Radio System resources;

NOW THEREFORE, for and in consideration of mutual promises to each as herein after set forth, the parties hereto do mutually agree as follows:

1. **Purpose.** The purpose of this Agreement is to set forth the rights and obligations regarding the use of the Radio System by Fayetteville, and operation, funding and management of the Radio System.
2. **Definitions.** For purposes of this Agreement, the following terms shall have the meanings set forth below:
 - 2.1 **Agency.** An organization or division of an organization that utilizes the Radio System. A list of the Agencies that utilize the Radio System as of the date of this Agreement is attached hereto as Exhibit D.
 - 2.2 **Asset Value of the Radio System.** The Durham City and Durham County Investment in the Radio System.
 - 2.3 **Reserved**
 - 2.4 **Effective Date.** The date first written above, _____, 2014.
 - 2.5 **Emergency Expenses.** Expenses incurred by the Operator that are over and above anticipated operating costs and in excess of the amount of revenue generated from Maintenance Fees and Agency Access Fees, if any.
 - 2.6 **FCC Licenses.** The authorizations issued by the Federal Communications Commission (“FCC”) pursuant to which the Radio System is operated, as identified on **Attachment A**, attached hereto.
 - 2.7 **New Investment.** New Investment in the Radio System shall equal the cost of upgrades and enhancements to the current Radio System paid by Durham and Durham County as set forth in section 8.1.
 - 2.8 **Operator.** The party that is responsible for the operation, maintenance, licensing and upgrade of the Radio System. Durham shall serve as the Operator, unless otherwise agreed to by Durham City and Durham County.
 - 2.9 **Other Agency.** An Agency that is neither a City Agency nor a County Agency. A list of the Other Agencies is included in Exhibit D. An “Other Agency” has no ownership, investment, or Operator interest in the radio system.
 - 2.10 **Public Safety Agencies.** Agencies whose primary function is law enforcement, fire fighting or emergency medical care. The parties agree that each Agency listed on **Exhibit D** with two asterisks in parenthesis by its name is a Public Safety Agency, and that no other Agencies listed on **Exhibit D** are Public Safety Agencies.

- 2.11 911 Advisory Board.** The Advisory Board established by Durham City and Durham County to review and comment on the activities and policies concerning emergency communications services and the operation of the Durham City/County Department of Emergency Communications. Should provisions of 911 services cease being provided as a joint City/County function and the 911 Advisory Board cease to exist in its current form, a separate radio advisory board shall be constituted.
- 2.12 Radio System Manager.** The individual appointed from time to time by Durham to perform the Radio System Manager functions described in this Agreement.
- 2.13 Radio System.** The (a) 800 MHz trunked radio system currently operated by Durham (currently consisting of four primary Simulcast tower sites, radio dispatch console equipment, limited use Mutual Aid repeaters, two mobile data stations and related operations); (b) Volunteer Fire and Medic Paging Systems; (c) all other assets that Durham's Radio System Manager and Durham County's designated representative agree in writing to make part of the Radio System; (d) all hardware and software encompassed in each of the foregoing; (e) all Upgrades and enhancements to each of the foregoing; and (f) the FCC Licenses. The Radio System does not include User Radios. Each party and Agencies shall have the right to purchase radio technology assets for that party's own use that do not become part of the Radio System, as long as such assets:(i) do not impede performance of the Radio System, and (ii) are first approved for use by the Radio System Manager.
- 2.14 Radio System Assets.** The term "Radio System Assets" shall mean equipment and software existing and acquired for the benefit of the Radio System, exclusive of: (a) FCC Licenses and (b) User Radios.
- 2.15 Upgrade.** An enhancement or updating of the equipment or software that is the 800 MHz Radio System.
- 2.16 User.** The term "User" shall mean the party that is not serving as Operator.
- 2.17 User Radios.** Base Stations, Handheld and Mobile radios utilized by Users of the Radio System.

3. Reserved.

4. Reserved.

5. FCC Licenses.

5.1 Throughout the term of Agreement, Durham will provide or continue to provide users the use of radio frequencies licensed to Durham pursuant to the FCC Licenses as set

forth on Attachment A (the “Durham FCC License”). Use of the frequencies shall comport with the rules and policies of the FCC, any other applicable federal and state law, and the specific authorizations of Durham. Durham shall remain responsible for ensuring that the frequencies are properly used and users shall provide access to facilities and equipment necessary to ensure compliance. Durham shall perform the necessary administrative responsibilities with regard to the FCC Licenses, which shall include the timely renewal of all licenses and responding to all FCC inquiries.

5.2 Fayetteville will provide or continue to provide users the use of radio frequencies licensed to Fayetteville pursuant to the FCC Licenses as set forth on Attachment A (the “Fayetteville FCC License”). Use of the frequencies shall comport with the rules and policies of the FCC, any other applicable federal and state law, and the specific authorizations of Fayetteville. Fayetteville shall remain responsible for ensuring that the frequencies are properly used and users shall provide access to facilities and equipment necessary to ensure compliance.

During the term of this Agreement, neither party shall take any action, or fail to take any action, in respect to the FCC Licenses the result of which would be to inhibit or prevent operation of the Radio System or otherwise frustrate the intent of this Agreement.

6. Reserved.

7. Reserved.

8. Funding.

8.1 Reserved

8.2 Maintenance Fee. As a condition to using the Radio System resources, Fayetteville shall pay an annual maintenance fee to fund the operation, equipment replacement, and maintenance of the Radio System infrastructure (the “Maintenance Fee”). The initial Maintenance Fee for Fayetteville shall be calculated in accordance with Exhibit C (the “Fee Model”). The initial Maintenance Fee shall be due on July 1, 2015. Each subsequent annual Maintenance Fee shall be due on July 1 each year thereafter. The Maintenance Fee shall be set and adjusted in accordance with the Fee Model shown in Exhibit C. Notification of changes to the Maintenance Fee shall be provided to Fayetteville no later than January 31st each year.

8.2.1 Durham and Fayetteville have approved the Fee Model attached as **Exhibit C**. The Fee Model may be revised only with the mutual written consent of Durham and Fayetteville.

8.2.2 Notwithstanding the above, the Operator shall not increase the amount of the Maintenance Fee unless and except to the extent that such increase becomes necessary as a result of an increase in the actual cost of

operation, maintenance and repair of the Radio System.

9. Radio System Management. Durham, through the Radio System Manager, with input from the County and 911 Advisory Board and Radio System Representative, as set forth in this Agreement, will be responsible for all functions relating to the operation, management, maintenance, licensing, and upgrade of the Radio System. These functions include, but are not limited to:

9.1 Radio System Operation and Management.

- 9.1.1 Assignment of radio identification numbers for subscriber radios.
- 9.1.2 Management of the Radio System. This includes the assignment and deletion of subscriber IDs, the assignment and control of features such as private call, and Talk Group assignment.
- 9.1.3 Negotiation, implementation, and monitoring of all contracts and leases required for the operation of the Radio System (within the bounds of the Operating Budget).
- 9.1.4 Providing necessary reports and updates to Fayetteville and 911 Advisory Board related to the Radio System operation and upgrade projects.
- 9.1.5 Serving as the single point of contact for all matters relating to the Radio System.
- 9.1.6 Ensuring that training for the City's technical personnel is current and adequate to support the operation and maintenance of the Radio System.
- 9.1.7 Evaluation of all requests for new or additional equipment, including the potential for adverse loading effects. The request and evaluation may be presented to the 911 Advisory Board for consideration and comments.
- 9.1.8 Managing Radio System performance and addressing loading and performance issues.

9.2 Fixed Site Management.

- 9.2.1. Maintaining all fixed site equipment associated with the Radio System.
- 9.2.2 Using best efforts to ensure that all Radio System equipment failures and/or problems will receive top priority service.
- 9.2.3 Submitting status reports and updates on Radio System construction projects to Durham's Fleet Management Director, the County, and the 911 Advisory Board.
- 9.2.4 Documentation and maintenance of all equipment records associated with the fixed site equipment utilized in the Radio System.

9.3 Strategic Planning.

- 9.3.1 System design and support associated with sufficient signal strength coverage for public safety services.
- 9.3.2 Identifying and evaluating new technology and/or Radio System enhancements and upgrades.

9.4 Insurance. Durham shall maintain reasonably appropriate insurance for the

Radio System.

10. Personnel. Durham shall have the sole responsibility and authority to appoint, delegate or otherwise employ the personnel necessary to act as Operator. Fayetteville shall designate a Radio System Representative person responsible for representing Fayetteville in issues related to this Agreement.

11. Fayetteville Self-Management.

11.1 Fayetteville has Radio System access via a partitioned System Manager Terminal to maintain and update its assigned talk groups, subscribers and channels. Fayetteville shall be permitted to maintain the same number of talk groups currently used and described in Exhibit E. It is anticipated that the Durham core has the capacity to permit Fayetteville to add more talk groups in the event of future growth. Fayetteville shall be permitted to add talk groups with the review and consent of the Durham Radio System Manager. Fayetteville has sole responsibility of subscriber template building and programming.

11.2 Durham shall provide Fayetteville a block of contiguous talkgroup IDs and a block of contiguous radio IDs sufficient for Fayetteville's needs. The block of radio IDs shall be those shown in the statewide radio ID plan approved by NCSUN.

12. Reserved.

13. Reserved.

14. 911 Advisory Board. The parties recognize that the Radio System serves numerous divisions within the City and County of Durham, as well as other Agencies that operate within Durham County. The parties further recognize that these Agencies have a vested interest in the operation, maintenance, and management of this Radio System. Therefore, the parties agree to consult with the 911 Advisory Board and recognize the role the Agencies have in the operation, maintenance, and management of the Radio System.

15. Additions to the Radio System.

15.1 Additional Agencies. The City and County of Durham shall each be entitled to add additional Agencies to the Radio System by notifying the Radio System Manager and ensuring that the appropriate Maintenance Fee, pro-rated for the year of entry, is paid to Durham. The Maintenance Fee for such additional Agencies shall be established in accordance with the methodology in Exhibit C.

An organization or division outside the City and County of Durham that is not now an Agency (an "Agency Applicant") may begin utilizing the Radio System only if the following three conditions are met: (a) both the Radio System Manager and the 911 Advisory Board approve of the Agency Applicant joining the System; (b) the Agency Applicant enters into a radio service agreement with Durham and tenders payment for the appropriate Maintenance Fee, pro-rated for the year of entry, as referenced in Section 8.2 of this Agreement; and (c) if the Radio System will be the Applicant Agency's primary radio communication system, the Applicant Agency must agree to pay an "Agency Access Fee" for use of the

Radio System. The Agency Access Fee is a one-time fee in an amount that the Radio System Manager determines, based on the actual cost of the Upgrade, to be necessary to cover the cost of any Radio System upgrade(s) or modifications that will be needed to handle the increased loading likely to be caused by adding the Applicant Agency. The Agency Access Fee will be used to cover the actual cost of such upgrade(s). The parties acknowledge that the Agencies listed in Exhibit D will not be charged an initial Agency Access Fee, but may be charged an Agency Access Fee in accordance with Section 15.2 in the event they increase the number of radios accessing the Radio System, or establish direct console connections which increase may require an additional upgrade of the Radio System to handle the increased loading. In lieu of an Agency Access Fee, Fayetteville shall be charged an annual Investment Recovery Fee as set out in Exhibit C.

- 15.2 Additional Radios for Existing Agencies.** User Agencies, including Durham Agencies, shall be entitled to add additional radios to the Radio System by notifying the Radio System Manager, provided that doing so will not negatively impact the Radio System performance. An Agency may increase the number of radios that it can use to access the Radio System only if one of the following conditions are satisfied: (a) the Radio System Manager determines that adding such radios will not negatively impact the Radio System; or (b) the Agency pays an additional Agency Access Fee sufficient to cover the actual cost of any upgrades to the Radio System that are necessary to handle the increased loading without negative impact to the Radio System. The amount of the additional Agency Access Fee will be established by the Radio System Manager as the amount necessary to cover the cost of any Radio System upgrade(s) necessary to handle the increased loading that will likely be caused by adding the requested radios.
- 15.3 Priorities and Restriction of Access.** While consideration will be given to any reasonable request for use of the Radio System, the Radio System Manager will make access decisions with the goal of ensuring that Agencies already utilizing the Radio System will not be negatively impacted by the addition of the new Agency or additional radios. It is also understood that Public Safety Agency access and utilization of the Radio System is first priority and that the access of other Agencies, whether currently on the Radio System or requesting service in the future, may be restricted to avoid negatively impacting the Public Safety Agencies' use of the Radio System. The Radio System Manager may seek to avoid restricting Agency access by reducing or terminating non-essential features such as private call.
- 15.4 Emergency Access by Agencies outside the Radio System.** The Radio System Manager is authorized to provide temporary emergency radio access to the Durham system, being for no longer period than 30 days, to public safety agencies that are not on the Durham Radio System. Access to the Fayetteville system shall be permitted only as authorized by Fayetteville.

16. **Term.** The term of this Agreement shall commence on its Effective Date and shall continue until terminated in accordance with the termination provisions set forth in Section 17 and 18, and to that extent, it shall be perpetual as defined by law.

17. **Termination and Material Breach.** This Agreement may be terminated as follows:

17.1 **Mutual Consent.** The parties may terminate this Agreement upon Mutual Consent.

17.2 **Unilateral Decision.** After having taken into consideration the effect of termination on the Other Agencies, either party may unilaterally terminate the Agreement upon one (1) months prior notice in writing to the non-terminating party, but the earliest effective date of termination may be no earlier than the one (1) year after the Effective Date. Unless the parties agree otherwise, the withdrawal of the interface connection used on the Radio System by Fayetteville shall constitute a unilateral termination for purposes of this Agreement, provided that the connection withdrawn due to (1) an Agency ceasing to exist or (2) an Agency no longer having the communication need served by the Radio System, shall not count for purposes of this section. Excess Maintenance Fees or Investment Recovery Fees paid in advance for an unused balance of a fiscal year shall be returned to Fayetteville on a pro rata basis. In the event of a termination by Unilateral Decision:

17.2.1 If the terminating party is Fayetteville:

Written notice shall be delivered to the Durham Radio System Manager who will terminate services at the appropriate time.

17.2.2 If the terminating party is Durham:

Written notice will be provided to Fayetteville, and Durham Radio System Manager will terminate services at the appropriate time.

17.2.3 **Reserved**

17.2.4 **Option in the Event of Material Breach.** In the event of a material breach, the non-breaching party may choose to do one of the following, in addition to any other remedies it may have under this Agreement and at law:

a) **Reserved**

b) Seek injunctive relief for enforcement of this Agreement; or

c) If any Agency fails to timely pay applicable Maintenance Fees or Investment Recovery Fees required under this Agreement, their use of the Radio System may be terminated 30 days after written notice of the Operator's intention to terminate their use. However, if payment is made

within the 30 days, use shall not be terminated.

A party shall not be found to be in material breach if such breach is the result of Force Majeure.

- 18. Termination Due to Force Majeure.** If the Radio System becomes substantially inoperable because of Force Majeure, and it is not reasonably anticipated that funds will be available to make it operable within 60 days, then either party may terminate this Agreement upon 10 days' prior written notice to the other party.
- 19. Division of Frequencies.** Upon termination of this Agreement for any reason, the frequencies associated with Durham's FCC Licenses shall remain with Durham, and those associated with Fayetteville shall remain with Fayetteville.
- 20. Miscellaneous.**
- 20.1 Notices.** Any notice, consent or other communication required or contemplated by this Agreement shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by telefax to the intended recipient at the address set forth below:

For The City
Radio System Manager
Communications Maintenance
CITY OF DURHAM
101 City Hall Plaza
Durham, NC 27701
Phone: 919-560-4175
FAX: 919-560-4400

For Fayetteville
City Manager
City of Fayetteville
433 Hay Street
Fayetteville, NC 28301
Phone: 910-433-1990
FAX: 910-433-1948

Notice shall be effective upon the date of receipt by the intended recipient; provided that any notice that is sent by telefax or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service, personal delivery or by overnight courier. Each party may change its address for notification purposes by giving the other party written notice of the new address and the date upon which it shall become effective.

- 20.2 Amendment.** No amendment to this Agreement shall be valid unless in writing and approved by the Durham City Council and Fayetteville City Council.
- 20.3 Force Majeure.** Neither party shall be liable for any failure or delay in the performance of its obligations pursuant to this Agreement and such failure or delay shall not be deemed a default of this Agreement or grounds for termination hereunder if such failure or delay is caused, directly or indirectly, by fire, flood, earthquake, hurricane, tornado, lightning strikes, elements of nature or other acts of God, or by acts of war, terrorism, riots, civil disorders, rebellions or

revolutions, strikes, lockouts, court order not attributable to the negligence, misfeasance or malfeasance of the Operator or other acts or circumstances outside the Operator's reasonable control. Each of the foregoing shall be deemed a "Force Majeure Event" for purposes of this Agreement.

Upon the occurrence of a Force Majeure Event, Durham shall have the option to do one of the following: (a) fund the cost of the Emergency Expenses to the extent that Durham's governing board has appropriated funds that can be used for this purpose, and obtain reimbursement of such payments from future Maintenance Fees or Investment Recovery Fees; (b) fund the cost of the Emergency Expenses through a plan approved by Durham County and Fayetteville; or (c) elect to cease operating the Radio System and terminate this Agreement pursuant to section 17.

- 20.4 Right to Audit.** Either party shall have the right to audit, at its own expense, any of the other party's records associated with the Radio System, including financial records, maintenance logs, incident reports, and any other records, during the term of this Agreement and for a period of three years after its termination. Each party will make all such records available for copying and inspection upon reasonable notice during regular business hours.
- 20.5 Waiver.** A waiver or any breach of any provision of the Agreement shall not constitute or operate as a waiver of any other provision, nor shall failure to enforce any provision hereof operate as a waiver of the enforcement of such provision or any other provision.
- 20.6 Severability.** The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Agreement shall not affect the validity of the remaining portion of this Agreement so long as the material purposes of this Agreement can be determined and effectuated. If any provision of this Agreement is held to be invalid or unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it valid and enforceable while preserving its intent.
- 20.7 Entirety of Agreement.** This Agreement constitutes the entire agreement between the parties with respect to its subject matter, and there are no other representations, understandings, or agreements between the parties with respect to such subject matter. This Agreement supersedes all prior agreements, negotiations, representations and proposals, written or oral.
- 20.8 Disputes.** Disputes between the parties shall be settled by negotiation between the parties' staffs. If the staffs are unable to reach resolution of the dispute, the City

Manager and Fayetteville Manager shall negotiate the dispute. If within 90 days after a letter from one Manager to the other concerning the dispute it remains unresolved, then the parties may seek any redress available to them at law.

20.9 E-Verify Compliance. Each of the parties covenants that if it enters into any subcontracts in order to perform any of its obligations under this contract, it shall require that the contractors and their subcontractors comply with the requirements of NC Gen. Stat. Article 2 of Chapter 64. In this E-Verify Compliance section, the words contractors, subcontractors, and comply shall have the meanings intended by N.C. Gen. Stat. 160A-20.1.

21. Exhibits and Attachments. Each of the following exhibits and attachments are attached to and incorporated into this Agreement by reference:

Exhibit A: Durham Radio System FCC Licenses

Exhibit B: Fayetteville Radio System FCC Licenses

Exhibit C: Model for Annual Infrastructure Maintenance Fees

Exhibit D: List of Agencies Utilizing the Radio System as of July 1, 2005

The parties have caused this Agreement to be executed as of the date first stated in the beginning of this Agreement by authority duly granted by the Durham City Council and North Carolina Central University.

CITY OF DURHAM

CITY OF FAYETTEVILLE

City Manager

City Manager

(SEAL)

(SEAL)

City Clerk

City Clerk

**This instrument has been preaudited
in the manner required by the Local
Government Budget and Fiscal Control
Act.**

**This instrument has been preaudited
in the manner required by the Local
Government Budget and Fiscal Control
Act.**

**Finance Officer
CITY OF DURHAM**

**Finance Officer
CITY OF FAYETTEVILLE**

**EXHIBIT A
TO THE AGREEMENT REGARDING THE
DURHAM 800 MHz RADIO SYSTEM**

Durham Radio System FCC Licenses

This exhibit is incorporated into and made a part of the Agreement for Funding of Radio System between the CITY OF DURHAM (“City”) and the CITY OF FAYETTEVILLE (“Fayetteville”), and consists of the FCC Licenses that are attached.

(See FCC Licenses Attached)

**EXHIBIT B
TO THE AGREEMENT REGARDING THE
DURHAM 800 MHz RADIO SYSTEM**

Fayetteville Radio System FCC Licenses

This exhibit is incorporated into and made a part of the Agreement for Funding of Radio System between the CITY OF DURHAM (“Durham”) and the CITY OF FAYETTEVILLE (“Fayetteville”), and consists of the FCC Licenses that are attached.

(See FCC Licenses Attached)

EXHIBIT C
TO THE AGREEMENT REGARDING USE OF THE DURHAM 800 MHz RADIO
SYSTEM
MODEL FOR ANNUAL INFRASTRUCTURE MAINTENANCE FEES

This exhibit is incorporated into and made a part of the **AGREEMENT REGARDING USE OF THE DURHAM 800 MHz RADIO SYSTEM** (“Agreement”) between the CITY OF DURHAM (the “Operator”) and the CITY of FAYETTEVILLE (“User”). Unless otherwise defined herein, capitalized terms in this Exhibit shall have the same meanings as are assigned to such terms in the main body of the Agreement.

All System Subscribers (defined as those agencies utilizing the Radio System, excluding Durham City Agencies and Durham County Agencies, as set forth on Exhibit D, and other agencies that may be added in the future) will pay the same fee per radio. The annual Maintenance Fee per System Subscriber shall be calculated in January of each year for the purposes of budgeting for the forthcoming fiscal year. Maintenance Fees shall be recalculated and adjusted annually, subject to adjustments allowed for in the Agreement, subject to section 8.2.

The Maintenance Fee shall be utilized to recover the estimated operating budget for the support and maintenance of the Radio System infrastructure, and the Investment Recovery Fee shall be utilized to recover a portion of the City of Durham and County of Durham’s investment in the radio system. The Maintenance Fee shall be ongoing, while the Investment Recovery Fee shall be limited to 10 years. Should additional Upgrades be necessary to provide core functions to the Radio System that are essential to Fayetteville’s use of the Radio System, then Fayetteville may be required to pay additional or new Investment Recovery Fees subject to Fayetteville’s review and approval through amendments to this Agreement.

The following calculation is used to determine the annual Maintenance Fee and Investment Recovery Fee on the Upgraded Radio System (examples shown):

Calculations for Fayetteville Interlocal Agreement for Radio System Sharing					
	Radio Count				
		Durham		3689	60%
		Fayetteville	A	2500	40%
		Total	B	6189	100%
		2012 Maintenance Expense		\$561,572.31	
		Per Radio Fee		\$90.74	C
		Fayetteville% of resources Shared		22%	D
		Annual Fayetteville Radio System Maintenance Fee share		\$49,905.44	A*C*D
		System Investment		\$15,000,000.00	
		Life in Years		10	
		Annualized Investment		\$1,500,000.00	E
		Annualized Investment Per Radio		\$242.37	F
					E/B
		Annual Fayetteville Investment Recovery Fee		\$133,303.50	A*D*F
		Total Estimated Annual Fees for Fayetteville		\$183,208.94	

In actual billing the example numbers above will be replaced by actual numbers in effect at the time of billing calculation.

In the first billing Durham will include a onetime fee of \$2,000 for reimbursement of services provided for the installation of the connection as described below.

An annual System Subscriber inventory conducted by the Operator at end of previous fiscal year will determine the number of radios in operation for any and all Agencies as of June 30 and will be the basis upon which upcoming fiscal year Maintenance Fees are calculated. The calculation shall be based on actual audited expenses from the previous fiscal year. The system subscriber inventory and the Maintenance Fees for the upcoming Fiscal Year shall both be submitted to the Fayetteville Radio System representative no later than January 31.

The City of Durham Communications Maintenance Division will NOT be responsible for the maintenance of the Fayetteville consoles, radios, or system sites or any interconnecting network services; however, Durham will use its good offices and best reasonable efforts when actions by Durham are necessary to resolve operational and connectivity issues concerning the connection of Fayetteville’s P25 Simulcast Radio System and MCC 7500 Console Dispatch System with Durham’s P25 Master Site Core.

All console equipment, software and installation materials and labor and any equipment required for connecting the consoles, such as microwave or network equipment, and card cages or circuit cards required at the radio system tower site are the full responsibility of Fayetteville. The Radio System Manager will work with Motorola and Fayetteville to determine the equipment required at the radio system tower site to connect the Fayetteville consoles and system, without reducing any resources currently available for use by Durham. The cost of the required equipment will be the responsibility of Fayetteville.

Any costs for installing and maintaining microwave equipment, antennas, and cable will be the full responsibility of Fayetteville and will be coordinated with Durham using only contractors approved by Durham. Any work required to install or maintain Fayetteville equipment on a Durham tower will be approved in advance by Durham, with Fayetteville being solely responsible for the costs.

Durham will work with Motorola and its subcontractors to facilitate the installation of the connection from the Fayetteville facility and their integration into the radio system.

Once installed, maintenance will be provided by the City of Durham Communications Maintenance Division. Maintenance will be performed during regular hours of 7:30 a.m. to 4:00 pm, Monday through Friday, except that a problem causing loss of communications at all Fayetteville consoles will be responded to during other hours. It is noted that basic dispatch operations may continue via a radio during a console outage.

**EXHIBIT D
TO THE AGREEMENT FOR REGARDING THE
DURHAM 800 MHz RADIO SYSTEM UPGRADE**

**LIST OF AGENCIES
UTILIZING THE RADIO SYSTEM AS OF July 1, 2005**

Durham City Agencies:

General Services*(**)
Water Management (**)
Durham Area Transit Authority (DATA)
Police* (**)
Public Works Department (**)
Durham Fire Department* (**)
Solid Waste Services (**)
Emergency Communications * (**)
Housing
Parks and Recreation
Access

Durham County Agencies:

Durham County Animal Control
Fire Marshal* (includes County Volunteer Fire & North Carolina Forestry) (**)
Emergency Management* (**)
Sheriff (**)
Emergency Medical Services* (**)
ABC Police (**)

Other Agencies:

Duke University Life Flight
North Carolina Highway Patrol (**)
North Carolina Central University Police (**)
NCDOT Motorist Assistance Patrol (MAP)
County School System (Building Maintenance Division)
County School System (Administration Division)
County School System (Transportation Division)

* These Agencies currently participate as members of the 911 Advisory Board.

(**) These Agencies are designated “Public Safety Agencies”