

Meeting Date: January 13, 2015

Agenda Item 4

REQUESTED COMMISSION ACTION:

Consent Ordinance Resolution Consideration Workshop

SHORT TITLE OR MOTION: A resolution to execute an interlocal agreement between Broward County and the City of City of Pompano Beach as to FCC license sharing.

Summary of Purpose and Why:

The County desires to receive the assignment of UHF licenses that are currently owned, but not used by the City of Pompano Beach. In return for these licenses the City of Pompano Beach will have the right to use the County's UHF radio system, up to 280 radios. The County will waive any user fees for the use of their UHF radio system. The City is responsible for acquiring and maintaining their own UHF radios, if they wish to do so in the future.

QUESTIONS TO BE ANSWERED BY ORIGINATING DEPARTMENT:

- (1) Origin of request for this action: staff
- (2) Primary staff contact: Gene Zamoski, Information Technologies Director Ext. 4537
- (3) Expiration of contract, if applicable: _____
- (4) Fiscal impact and source of funding: None

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE OR ATTACHED MEMO NUMBER
City Attorney	<u>12/18/14</u>	—	<u>[Signature]</u>
IT Department	<u>12/17/2014</u>	Approved	<u>[Signature]</u>
Finance	<u>12/19/2014</u>	APPROVE	<u>A. Jeyaraj</u>

[Signature]
 City Manager

[Signature]

ACTION TAKEN BY COMMISSION:

Ordinance	Resolution	Consideration	Workshop
1st Reading	1st Reading	Results:	Results:
2nd Reading			

RESOLUTION NO. 2015-_____

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE AN INTERLOCAL AGREEMENT BETWEEN BROWARD COUNTY AND THE CITY OF POMPANO BEACH AS TO FCC LICENSE SHARING; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That an Interlocal Agreement between Broward County and the City of Pompano Beach as to FCC License Sharing, a copy of which Agreement is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute said Agreement between Broward County and the City of Pompano Beach.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2015.

LAMAR FISHER, MAYOR

ATTEST:

MARY L. CHAMBERS, CITY CLERK

**INTERLOCAL AGREEMENT BETWEEN BROWARD COUNTY AND
THE CITY OF POMPANO BEACH AS TO FCC LICENSE SHARING**

This Interlocal Agreement ("Agreement") is entered into between Broward County, a political subdivision of the State of Florida (the "County") and the City of Pompano Beach, a municipality (the "City").

A. The City is the owner of certain Federal Communications Commission ("FCC") licenses that it desires to transfer to the County in exchange for certain rights and uses pursuant to the terms of this Agreement.

B. The County desires to receive the assignment of the licenses at issue in order to utilize the licenses for the benefit of the public safety system for Broward County.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1. DEFINITIONS

1.1 Effective Date. The date of signature by the last signing party such that on such date this Agreement will have been executed by authorized representatives of both parties.

1.2 FCC Licenses. The following FCC licenses, which are owned by the City as of the Effective Date and which will be transferred to the County pursuant to the terms of this Agreement: WIF254, KDB221, KV7451, KY0866, WBE873, WBE874.

1.3 Radio System. The County's 400 MHz UHF Trunked Digital Radio System for Local Government.

ARTICLE 2. TERMS AND CONDITIONS

2.1 Term. This Agreement shall be effective for a period of ten (10) years from the Effective Date ("Initial Term"), unless otherwise terminated pursuant to the terms of this Agreement. The Agreement may be renewed for one (1) additional ten (10) year renewal term, provided the parties agree in writing to exercise the renewal prior to the expiration of the Initial Term. The expiration or termination of this Agreement is subject to the terms of Section 3.2, which shall survive expiration or termination of the Agreement until the conclusion of the Transition Period as defined therein.

2.2 Transfer of FCC Licenses. The City will transfer the FCC Licenses to the County within sixty (60) days of the Effective Date, or as otherwise agreed by the parties in writing. Such transfer must be in accordance with all applicable FCC rules and regulations governing the FCC Licenses, including without limitation 47 C.F.R. § 90.179. The parties shall reasonably cooperate in completing any necessary FCC-related documents or taking other administrative actions as may be necessary to effect the transfer of the FCC Licenses.

2.3 Radio System Operation. The FCC Licenses shall be incorporated by the County into the County's Radio System. The Radio System, inclusive of the FCC Licenses upon transfer of same, is under the sole control of County, as required by FCC regulations, for the duration of this Agreement inclusive of the Transition Period as defined by Section 3.2.

a. The City may use the Radio System in accordance with the terms of this Agreement and any applicable operating procedures or protocols. The County will permit the City's usage of the County's licensed frequencies, talk groups, and those components of its Radio System required for inter-operable communication, subject to reasonable limitations on the foregoing as may be imposed by the County.

b. Each Party will provide any equipment necessary to use the Radio System and shall be responsible for its own costs in obtaining and maintaining such equipment, unless otherwise agreed by the parties in writing. Each party agrees and stipulates that only certified Motorola repair facilities or employees authorized by County are permitted to program or repair any radio that receives or transmits on the Radio System.

c. Any radio that is determined by County to be (i) in violation of FCC regulations; (ii) operating in violation of the terms and conditions of this Agreement or of any operating procedures or protocols established by County; (iii) causing interference; or (iv) found to have duplicate identification numbers, shall be immediately inhibited and removed from use and access to the Radio System. If requested by the County, the City shall take all steps necessary to effect the requested inhibition or removal of the radio. Upon inhibiting any radio, the Party taking the action must notify the Radio Coordinator of other Party as soon as possible, but in any event within twenty-four (24) hours of the inhibition of the radio.

d. If any radio programmed to operate on the Radio System is lost, stolen, or destroyed ("Lost Radio"), the identification number of the Lost Radio will be removed from the Radio System. The Party responsible for the Lost Radio shall notify the other Party within twenty-four (24) hours, and, if lost or stolen, file a police report on same. Identification numbers removed from the Radio System in this manner will stay inactive for a period of at least one (1) year unless the Lost Radio is accounted for and destroyed or the Lost Radio is located and returned to service, in which event the Party returning the Lost Radio to service shall provide written notice to the other Party of the circumstances of the return of the Lost Radio and the identification number of same.

e. Each Party shall ensure that all of its employees, agents, vendors, and consultants using the Radio System comply with all applicable laws and regulations, including FCC regulations, any applicable operating procedures or protocols established by the County, and the terms of this Agreement.

2.4 Use Protocols. Prior to the first transmission by the City on the Radio System, the County shall establish written protocols which shall govern the end user operation on the Radio System, including the issuance of identification numbers and the assignment of talk groups or other radio resources. Protocols will include common standards of operation to simplify communication when using shared talk groups, including methods of self-identification, and the use of "plain language" rather than "lingo" or codes. Upon provision and notice to City of the County's protocols for use of the Radio System, such protocols shall be incorporated into this Agreement as if fully set forth herein.

2.5 Radio Coordinators. Within sixty (60) days of the Effective Date, each Party will appoint a Radio Coordinator and provide the name and 24-hour contact information of the appointed Radio Coordinator to the other Party.

2.6 User Fees. The County will waive any otherwise applicable user fees for the City's use of the Radio System for up to 280 users. Any users in addition to the base 280 users will be subject to the regularly-applicable user fees. Any and all use of the Radio System by the City shall be subject to the then-current terms of use and any applicable protocols for the County's Radio System.

2.7 Excluded Services. This Agreement does not in any way address or affect dispatch services or the provision of same.

ARTICLE 3. MISCELLANEOUS

3.1 Time is of the Essence. The Agreement shall become effective on the date it is fully executed by the parties. Time is of the essence for all performance required under this Agreement.

3.2 Termination and Expiration. This Agreement may be terminated by either party with or without cause upon ninety (90) days' prior written notice, subject to the terms of Section.

a. Within two (2) years of the expiration or termination of this Agreement, County shall complete the return transfer of the FCC Licenses from County to the City in accordance with all applicable FCC rules and regulations governing the FCC Licenses, including without limitation 47 C.F.R. § 90.179. The parties shall reasonably cooperate in completing any necessary FCC-related documents or taking other administrative actions as may be necessary to effect the transfer.

b. For the period of two (2) years from the expiration or termination of this Agreement or until the FCC Licenses are transferred back from County to the City, whichever is shorter ("Transition Period"), County will retain exclusive control and right to operate the FCC Licenses in accordance with Sections 2.3 and 2.4.

c. The rights and obligations of this Section 3.2 shall survive expiration or termination of this Agreement and shall continue to be binding on the Parties until the end of the Transition Period.

3.3 Third Party Beneficiaries. The parties acknowledge that there are no third party beneficiaries under this Agreement.

3.4 Notices. In order for a notice to a party to be effective under this Agreement, notice must be sent via U.S. first-class mail with a contemporaneous copy via e-mail to the addresses listed below and shall be effective upon mailing. The addresses for notice shall remain as set forth herein unless and until changed by providing notice of such change.

NOTICE TO COUNTY:

Director, Office of Regional Communications and Technology
Attn: Rick Carpani
115 S. Andrews Ave., Suite 325
Ft. Lauderdale, Florida 33301
Email address: rcarpani@broward.org

NOTICE TO CITY:

City of Pompano Beach IT Department
100 W. Atlantic Blvd.
Pompano Beach, FL 33060
Email address: ITSupport@copbfl.com

3.5 Joint Preparation. This Agreement has been jointly prepared by the parties hereto, and shall not be construed more strictly against either party.

3.6 Headings And Interpretation. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter," refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires.

3.7 Governing Law, Venue And Waiver Of Jury Trial. This Agreement shall be interpreted and construed in accordance with, and governed by, the laws of the state of Florida. The parties agree that the exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. **BY ENTERING INTO THIS AGREEMENT, THE COUNTY AND THE CITY HEREBY EXPRESSLY WAIVE ANY AND ALL RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CAUSE OF ACTION OR CLAIM ARISING FROM, RELATED TO, OR IN CONNECTION WITH THIS AGREEMENT.**

3.8 Amendments. No modification or amendment to this Agreement shall be effective unless it is in writing and executed by authorized representatives of each party.

3.9 Prior Agreements. This Agreement represents the final and complete understanding of the parties regarding the subject matter hereof and supersedes all prior and contemporaneous negotiations and discussions regarding that subject matter. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document.

3.10 Sovereign Immunity. Nothing in this Agreement is intended to serve as a waiver of sovereign immunity by the County or the City to the extent sovereign immunity may be applicable.

3.11 Incorporation By Reference. Any and all Recital clauses stated above are true and correct and are incorporated herein by reference.

3.12 Counterparts. This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the ____ day of _____, 2014, and CITY OF POMPANO BEACH, signing by and through its Mayor or Vice-Mayor, duly authorized to execute same.

COUNTY

WITNESS:

BROWARD COUNTY, by and through
its County Administrator

(Signature)

By _____
County Administrator

(Print Name of Witness)

____ day of _____, 20__

(Signature)

Approved as to form by
Joni Armstrong Coffey
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

(Print Name of Witness)

By _____
René D. Harrod (Date)
Assistant County Attorney

RDH
2014-12-15 Pompano Interlocal re Radio System
12/15/14

CITY OF POMPANO BEACH

ATTEST:

CITY OF POMPANO BEACH

CITY CLERK

By: _____
CITY MAYOR

Print Name

_____ day of _____, 20____

I HEREBY CERTIFY that I have approved
this AGREEMENT as to form and legal
sufficiency subject to execution by the parties:

City Attorney

"CITY":

Witnesses:

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER
MAYOR

By: _____
DENNIS W. BEACH
CITY MANAGER

Attest:

(SEAL)

MARY L. CHAMBERS
CITY CLERK

Approved As To Form:

GORDON B. LINN
CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2015 by **LAMAR FISHER**, as Mayor, **DENNIS W. BEACH** as City Manager and **MARY L. CHAMBERS**, as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number