

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Shared Public Service Radio Communications Facilities Interlocal Agreement

DEPARTMENT: Information Technologies **DIVISION:** Telecommunications

AUTHORIZED BY: Chris Grasso **CONTACT:** Greg Holcomb **EXT.** 1010
Director

Agenda Date <u>08/26/03</u>	Regular <input type="checkbox"/>	Consent <input checked="" type="checkbox"/>	Work Session <input type="checkbox"/>	Briefing <input type="checkbox"/>
	Public Hearing – 1:30 <input type="checkbox"/>		Public Hearing – 7:00 <input type="checkbox"/>	

MOTION/RECOMMENDATION:

Request the Board approve the Shared Public Service Radio Communications Facilities Interlocal Agreement. The purpose of the agreement is to set forth terms and conditions associated with provisions for the shared use of the existing tower and City of Oviedo property for enhanced public safety and emergency radio services.

BACKGROUND:

This agreement is authorized under the provisions of Chapter 163, Florida Statutes. Both parties desire to enter into an agreement to enhance communication services of the 800MHz radio system. The shared use will enhance the ability of Seminole County and the City of Oviedo to serve the residents through improved utilization of local government resources.

The County Attorney's office has reviewed and found the attached Agreement acceptable.

Reviewed by: <u>[Signature]</u>
Co Atty: <u>[Signature]</u>
DFS: _____
Other: _____
DCM: <u>[Signature]</u>
CM: <u>[Signature]</u>
File No. <u>CIT01</u>

**AGREEMENT BETWEEN THE CITY OF OVIEDO AND SEMINOLE COUNTY
FOR SHARED PUBLIC SERVICE RADIO COMMUNICATIONS FACILITIES**

THIS AGREEMENT ("the Agreement") is made and entered into this _____ day of _____, 2003, between the **CITY OF OVIEDO**, a municipality incorporated under the laws of the State of Florida, whose address is 400 Alexandria Boulevard, Oviedo, Florida 32765, hereinafter referred to as the "CITY" and **SEMINOLE COUNTY**, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter referred to as "COUNTY".

W I T N E S S E T H:

WHEREAS, COUNTY has heretofore contracted for digital upgrade and enhancement of its 800 MHz public safety, two way, trunked radio communications system which enhances the ability for shared usage of such emergency communications system by multiple local governments within Seminole County; and

WHEREAS, CITY has an exclusive use agreement with American Telephone and Telegraph Corporation ("AT&T") wherein CITY is reserved space on a tower owned and maintained by AT&T and located on CITY real property at 460 Alexandria Way, Oviedo, Florida 32765, which agreement allows CITY to position its public and emergency radio communications systems antennae and related cables (the "Reserved Tower Space"); and

WHEREAS, COUNTY and CITY have heretofore cooperated in the shared usage of the COUNTY'S enhanced 800 MHz public safety and emergency to way radio communications system (the "Shared Communications System") as evidenced by the previously enacted Automated Aid/First Response Interlocal Agreement and the Seminole County Law Enforcement Agencies Interlocal Communications Agreement between the parties (the "Previous Agreements"); and

WHEREAS, the CITY and the COUNTY have mutually determined that continued participation in the enhanced Shared Communications System is necessary and desirable for the public safety and general well being of the citizenry of both parties; and

WHEREAS, the parties have found and determined that it is in their own best interest to memorialize the terms, mutual obligations and responsibilities for such continued cooperation in the form of this Agreement; and

WHEREAS, this interlocal Agreement regarding shared usage of the 800 MHz radio frequency band and communications facilities is necessary to supplement the Previous Agreements; and

WHEREAS, this interlocal Agreement is authorized by Chapters 125, 163 and 166, Florida Statutes and other applicable law;

NOW, THEREFORE, in consideration of the mutual understandings and agreements contained herein, the CITY and the COUNTY agree as follows:

SECTION 1. RECITALS. The foregoing recitations are true, correct, mutually understood, agreed upon and form an integral part of this Agreement.

SECTION 2. CONTINUED USAGE OF TOWERS AND SITES IN SUPPORT OF INTERGOVERNMENTAL WIRELESS COMMUNICATIONS.

(a) CITY shall allow COUNTY to utilize the Reserved Tower Space, equipment building(s) and real property site located at 460 Alexandria Boulevard, Oviedo, Florida 32765 for installation of COUNTY'S public safety and public works radio communication antennae, related cables, generation and other support equipment in connection with the Shared Communications System. CITY represents to COUNTY that it has the right to allow COUNTY'S use of the Reserved Tower Space under the terms of the agreement between CITY and AT&T.

(b) CITY hereby grants to COUNTY a nonexclusive license to construct, install and operate COUNTY'S antennae, related cables and support equipment on the Reserved Tower Space and immediately surrounding premises located on 460 Alexandria Boulevard and further grants to COUNTY a nonexclusive easement for ingress, egress, and utilities over the portion of said real property and building(s) as necessary for the operation of the Shared Communications System.

(c) If necessary for technological reasons, COUNTY and CITY may move the location of their respective antennae and related equipment on the tower to space other than that specified subject to the agreement between CITY and AT&T; provided, however, that both parties and AT&T agree in writing prior to the relocation and subject to the technological feasibility so as not to cause interference with the other party's signal transmission or reception quality.

SECTION 3. CONSTRUCTION, RE-CONSTRUCTION AND ALTERATIONS TO TOWERS AND PREMISES, NOTICE TO COUNTY AND RIGHTS OF PLAN REVIEWS.

(a) The parties each reserve the right to construct, reconstruct or make such alterations to their own equipment, buildings and sites as they deem necessary or desirable for continued operation or enhancement of their respective wireless communications operations. In the event of reconstruction or alteration of the tower by AT&T, or to equipment or premises by a party, the other party shall have the right to review the proposed plans for same in advance of the work being performed to evaluate whether the reconstructed or altered facilities will be compatible with its wireless, intergovernmental communications. In the event it is determined that the proposed alterations are incompatible by the reviewing party, the other party shall modify the plans to accommodate the technological requirements for compatible use. In the alternative, the COUNTY or the CITY shall have the option

to terminate this Agreement or to abandon the site and to relocate its antennae and related equipment to an alternative location without incurring liability for damages to the other party.

(b) The CITY shall be responsible for all costs relative to construction, reconstruction, alteration, maintenance and operation of its own premises, antennae and supporting equipment. The COUNTY shall be responsible for all costs related to the installation, removal, relocation, maintenance, upgrades or alterations to its own antennae and support equipment. All such work done by either party shall be constructed and installed in a good and workmanlike manner and completed in compliance with all applicable laws, rules, ordinances, regulations, and all local, State, and national code standards including, but not limited to, height and wind loading requirements.

(c) CITY represents to COUNTY that, to its knowledge, but without any structural tests being accomplished, the tower is constructed and maintained to safely and effectively accommodate, at minimum, both parties' antennae and support equipment as well as antennae and support cables for other users of the tower, all in a technologically compatible manner. Each party shall be responsible to the other for the costs of damages or destruction of the other's antennae, equipment, real property or facilities caused by any such construction, reconstruction, removal, relocation, maintenance, upgrade or operations of its own antennae, real property, support buildings and related equipment. If the parties cannot agree on the amount of damages, then the party's shall use their best efforts to resolve the matter without litigation in accordance with the provisions of Section 14 of this Agreement.

(d) Unless previously accomplished, within thirty (30) days after execution of this Agreement each party shall provide the other

with drawings, equipment lists and essential technical data of the tower (to the extent that it may exist), radio antennae and related support equipment to include the actual location of same, consistent with the agreed upon site plans and technical, operating compatibility requirements.

(e) Any consent or approval which either party is required to obtain from the other pursuant to this Agreement shall not be unreasonably withheld, delayed or conditioned. Any request by a party for any consent or approval which is not denied by the other party within thirty (30) days of receipt shall be deemed given.

SECTION 4. RIGHTS AND RESPONSIBILITIES REGARDING ENCUMBRANCES OF TOWERS, PREMISES AND THE PARTIES ANTENNAE AND EQUIPMENT. During the term of this Agreement and any extension or renewal thereof, the tower and site on which it is located shall be the property of the party in whose name title is vested at the date of execution of this Agreement unless otherwise mutually agreed to in writing by amendment to this Agreement. Except as expressly authorized elsewhere in this Agreement, at no time during the term of this Agreement or extensions thereof shall the parties pledge, mortgage or hypothecate any interest in their respective properties which is the subject of this Agreement which would create an encumbrance, lien or security interest in the property of the other party without the express written consent of that party.

SECTION 5. MAINTENANCE.

(a) Each party shall have sole and exclusive responsibility for the maintenance, repair, and security of its own buildings, premises and related personal property and equipment, and shall keep the same in good order, repair and condition during the term of this Agreement; provided, however, that each party shall be responsible for the

damages caused to the other party's property.

(b) Both parties shall keep the tower site free of debris and any hazardous, dangerous, noxious, or offensive matter which would create a hazard or undue vibration, heat, noise, or any form of signal interference in connection with the use of the subject facilities.

(c) CITY shall be responsible for encouraging AT&T to properly maintain and repair the tower so as to ensure its structural integrity and reliability for accommodating the Shared Communications System components located thereon; provided, however, that the CITY shall not incur any liability for AT&T's failure to do so. The COUNTY shall advise the CITY of any concerns that it may have in relation to the conditions of the facilities.

(d) In order to minimize disruption to the surrounding area, the construction, installation, normal maintenance and repair of the towers or antennae facilities, shall be restricted to the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday, excluding legal holidays. Emergency maintenance and repairs to the towers or antennae facilities and support equipment may be conducted anytime as necessary, however, the party needing to effect such emergency off hours access and repairs shall attempt to give notice to the other party and AT&T as soon as reasonably practicable regarding same.

SECTION 6. UTILITIES. The parties may, at their discretion, provide for either separately metered or jointly metered charges for the consumption of electricity and any and all other utilities associated with their portion of the Shared Communications System and shall timely pay all costs associated therewith. Such arrangements may be initially established or revised from time to time by a letter of understanding signed by both parties without the need for formal amendment to this Agreement.

SECTION 7. COMPLIANCE WITH LAWS.

(a) The parties shall comply with all present and future Federal, State, and local laws, ordinances, rules, and regulations (including, but not limited to, laws, rules, and regulations issued by the Federal Communication Commission (FCC)), including, particularly, those for site standards in connection with the installation, use, operation, repair, and maintenance of the tower and all other components of the Shared Communications System. The payment of any penalties or fines arising out of or in any way connected with the violation of, or non-compliance with, the foregoing shall be sole and exclusive responsibility of the party in violation.

(b) The shared use of the tower by each Party is contingent upon its obtaining any and all certificates, permits, zoning, and other approvals that may be required presently or in the future by any Federal, State, or local authority. Shared use is further contingent upon acquiescence of the Tower's owner, AT&T, as memorialized in the agreement between AT&T and the CITY, as the same may be amended or supplemented from time to time. In the event such approval or acquiescence is withheld or subsequently withdrawn, this Agreement may be terminated and the parties shall proceed in accordance with Section 8, below.

SECTION 8. TERM. The initial term of this Agreement begins upon execution hereof by the parties and shall remain in effect until terminated by either party after first giving a one (1) year written notice to the other party. In the event of termination, COUNTY shall vacate the tower, site and buildings and relocate its facilities and equipment within that ensuing year provided; however, that COUNTY shall have the right to extend the departure date if relocation to another compatible site cannot be accomplished for reasons beyond the

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control of the COUNTY. In the event of such impossibility of relocation, the parties shall act in good faith to accommodate the need for such extensions of time so as to best protect the public interest, public safety needs and in the spirit of cooperation envisioned by this Agreement and the Previous Agreements. Anything to the contrary herein notwithstanding, termination of this Agreement by either party shall be subject to the rights and obligations of the parties under the Previous Agreements.

SECTION 9. REPLACEMENT FACILITY. Neither party is under any obligation to provide a replacement location, tower, Reserved Tower Space or facility to the other party under any circumstances including, but not limited to, condemnation, substantial damage to the tower or related site or improvements thereon attributable to act of God, explosion, fire, flood, wind, hurricane, tornado, sinkhole, substrate failure or any other form of natural or man made disaster. Notwithstanding the above, in the event a party exercises its option to repair, replace or reconstruct the damaged site or facilities, the parties shall have the right to continue under the terms of this Agreement as before or to terminate at their sole option, without being liable for damages to the other party.

SECTION 10. CONDEMNATION. In the event the tower and/or the related real property and improvements are taken by eminent domain, this Agreement automatically terminates as to the sharing of the condemned facilities as of the date title to the tower and/or other property vests in the condemning authority. In the event a portion of the subject property is taken by eminent domain so as to materially hinder effective use of the tower, Reserved Tower Space, related property and equipment by either or both of the parties, either party shall have the right to terminate this Agreement, effective as of said

date of title transfer, by giving the requisite notice to the other Party as provided elsewhere in this Agreement. In the event of any taking under the power of eminent domain, the parties shall be entitled to any portion of the award paid for the taking relative to their respective ownership of the condemned property or improvements or any component of the Shared Communications System.

SECTION 11. INDEMNIFICATION. Each party is responsible for all personal injury and property damages attributable to the negligent acts or omissions of that party and the officers, employees and agents thereof and as otherwise provided in this Agreement. The parties further agree that nothing contained herein shall be construed or interpreted as denying to either party any remedy or defense available to such party under the laws of the State of Florida; the consent of the State of Florida or its agents and agencies to be sued; or a waiver of sovereign immunity of the State of Florida beyond the waiver provided in Section 768.28, Florida Statutes.

SECTION 12. INSURANCE. Both parties shall be responsible for maintaining adequate insurance coverage against claims by third persons arising from the use, misuse and/or reliability of the Shared Communications System or to otherwise maintain a self insurance program.

SECTION 13. NOTICE TO PARTIES.

(a) The parties shall direct all correspondence and notices to the attention of the public official identified below. That designated official shall be responsible for all material actions, oversight and coordination in the performance of this Agreement.

For CITY:

V. Eugene Williford, City Manager
City of Oviedo
400 Alexandria Blvd.
Oviedo, FL 32765
Telephone Number:

For COUNTY:

Telecommunications Manager
Seminole County Government
1101 East First Street
Sanford, FL 32771
Telephone Number: 407-665-1005

(b) Each party reserves the right to designate another official to be the point of contact without formal amendment to this Agreement by written, certified, return receipt U.S. Mail

(c) Facsimile transmissions or e-mail notices shall not be acceptable.

SECTION 14. ALTERNATIVE DISPUTE RESOLUTION. Disputes shall be resolved in accordance with any dispute resolution agreements pertaining to the parties and the provisions of Chapter 164, Florida Statutes.

SECTION 15. EQUAL OPPORTUNITY EMPLOYMENT. The parties shall assure that no person shall be excluded, on the grounds of race, color, creed, national origin, handicap, age, or sex, from participation in, denied the benefits of, or be otherwise subjected to discrimination or sexual harassment in any activity pursuant to this Agreement.

SECTION 16. GOVERNING LAW. This Agreement shall be governed by and interpreted according to the laws of the State of Florida. The parties and their employees, agents, vendors and assigns shall comply with all applicable Federal, State, and local laws, codes and regulations relating to the performance of this Agreement.

SECTION 17. INTERPRETATIONS. In the event any provision of this Agreement conflicts with, or appears to conflict with, the other terms of this Agreement, it shall be interpreted as a whole to resolve any inconsistency. The parties agree to engage in positive and constructive communication to ensure that the positive collaboration of the parties occurs.

SECTION 18. FORCE MAJEURE. Notwithstanding any provisions of this Agreement to the contrary, the parties shall not be held liable if failure or delay in the performance of this Agreement arises from fires, floods, strikes, embargoes, acts of the public enemy, unusually severe weather, outbreak of war, restraint of government, riots, civil commotion, force majeure, act of God, or for any other cause of the same character which is unavoidable through the exercise of due care and beyond the control of the parties.

SECTION 19. MODIFICATIONS, AMENDMENTS OR ALTERATIONS. Except as expressly provided in Sections 6 and 13 of this Agreement, no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

SECTION 20. ASSIGNMENT/THIRD PARTY BENEFICIARIES.

(a) Neither COUNTY nor CITY shall assign, delegate, or otherwise transfer its rights and obligations hereunder to any other party without the prior written consent of the other Party.

(b) There are no third party beneficiaries to this Agreement.

SECTION 21. BINDING EFFECT. Subject to the provisions of Section 20, this Agreement shall be binding upon and inure to the benefit of the parties hereto and the successors in interest, transferees and assigns of the parties; provided, however, this Agreement shall not be deemed to pledge the full faith and credit of any party.

SECTION 22. PUBLIC RECORDS. The parties shall allow public access to all documents, papers, letters or other materials which have been made or received in conjunction with this Agreement, subject to exceptions to public records laws as set forth in the Florida Statutes, which records shall be maintained in accordance with records retention requirements of State law. The parties shall maintain in their place of

business any and all books, documents, papers and other evidence pertaining to work performed pursuant to this Agreement. Such records shall be available at the regular place of business for each party at all reasonable times during the term of this Agreement and for so long as such records are maintained.

SECTION 23. CONFLICTS OF INTEREST. The parties agree that they will not engage in any action that would create a conflict of interest in the performance of its obligations pursuant to this Agreement with the other party or which would violate or cause others to violate the provisions or Part III, Chapter 112, Florida Statutes, relating to ethics in government.

SECTION 24. INDEPENDENT CONTRACTORS. The parties are independent contractors and are not employees or agents of each other. Nothing in this Agreement shall be interpreted to establish any relationship other than that of an independent contractor between the parties, their employees, agents, subcontractors, or assigns, during or after the performance of this Agreement.

SECTION 25. SEVERABILITY. Should any term of this Agreement be held, to any extent, invalid or unenforceable, as against any person, entity or circumstance during the term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provisions, or impair the enforcement rights of the parties, their successors and assigns.

SECTION 26. HEADINGS. All sections and descriptive headings in this Agreement are inserted for convenience only, and shall not affect the construction of interpretation hereof.

SECTION 27. ENTIRE AGREEMENT. This Agreement states the entire understanding between the parties and supersedes any written or oral representations, statements, negotiations, or agreements to the con-

trary.


SECTION 28. EXHIBITS. Exhibits to this Agreement, if any, shall be deemed to be incorporated into this Agreement as if fully set forth verbatim into the body of this Agreement.

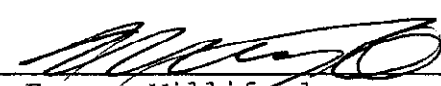
SECTION 29. COUNTERPARTS. This Agreement may be executed in any number of counterparts each of which, when executed and delivered, shall be an original, but all counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the CITY and the COUNTY hereto have executed this instrument for the purpose herein expressed.

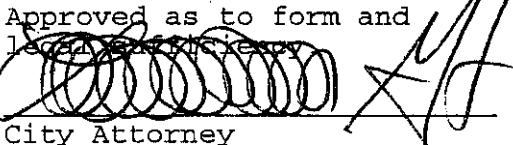
ATTEST:

CITY OF OVIEDO, FLORIDA


Barbara Barbour
City Clerk

By: 
V. Eugene Williford
City Manager

Date: 

Approved as to form and
legal sufficiency

City Attorney

ATTEST:

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

MARYANNE MORSE
Clerk to the Board of
County Commissioners of
Seminole County, Florida.

By: _____
DARYL G. MCLAIN, Chairman

Date: _____

For the use and reliance
of Seminole County only.

As authorized for execution
by the Board of County Commissioners
at their _____, 20____
regular meeting.

Approved as to form and
legal sufficiency.

County Attorney
7/3/03 draft
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