

RESOLUTION NO. 2004-255

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
AUTHORIZING AN EMERGENCY SERVICES WIRELESS COMMUNICATIONS
SYSTEM AGREEMENT WITH THE ELK GROVE UNIFIED SCHOOL DISTRICT AND
PURCHASE NECESSARY EQUIPMENT**

WHEREAS, the City of Elk Grove Public Works staff is in need of a wireless communications system in emergency situations; and

WHEREAS, the Elk Grove Unified School District has a wireless communications system that will accommodate Public Works' needs and have agreed to add the City as a talk group on their system; and

WHEREAS, equipment is needed to utilize the service and better serve the City in an emergency situation.

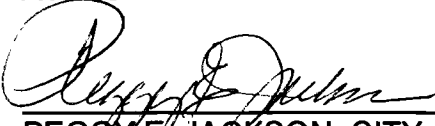
NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Elk Grove hereby authorizes the City Manager or his designee to enter into an Emergency Services Wireless Communications System Agreement with the Elk Grove Unified School District and to purchase wireless equipment.

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 20th day of October 2004.



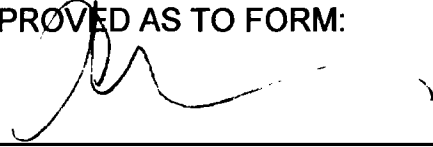
SOPHIA SCHERMAN, MAYOR of the
CITY OF ELK GROVE

ATTEST:



PEGGY E. JACKSON, CITY CLERK

APPROVED AS TO FORM:



ANTHONY B. MANZANETTI,
CITY ATTORNEY

**Agreement
For
Hosting Emergency Services Wireless Communications**

This agreement is made as of _____ between the City of Elk Grove, hereinafter referred to as "City", and the Elk Grove Unified School District, hereinafter referred to as "District".

Terms and Conditions

1. Purpose.

The purpose of this agreement is to allow the City to utilize the District's existing 800 MHz radio system as an additional "talk group". In the event of an emergency, utilization of the 800 MHz radio system would be available 24 hours a day, 7 days a week with immediate notice of use to the District.

2. Equipment.

The City will be responsible for purchasing equipment (radios) that is compatible with the District's system. The District shall have the option to inspect/review any City radio equipment prior to connection to the District system or use of frequencies.

3. Licensing.

The City will be responsible for complying with all FCC licensing requirements.

4. Maintenance.

The City will maintain all of the City-purchased radio equipment either directly or through contract, at City expense.

5. Access by the City.

The City will have normal access hours to the physical facility housing the equipment for the 800 MHz radio system, Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding District holidays. The City will give the District one-week notice for routine programming of the radios. For emergency programming, one-week notice will not be required and the District will reasonably accommodate the City's emergency access needs.

6. Liability.

The City shall be solely responsible for any damage of District equipment caused by City use/misuse of radio frequencies. The District shall not be liable for damage to the City's equipment if caused by circumstances beyond the District's control.

7. Insurance.

City shall maintain policies of public liability in an amount of not less than One Million Dollars (\$1,000,000) for injury or death to any one person and not less than One

Million Dollars (\$1,000,000) for injury or death resulting from any single occurrence arising directly or indirectly out of any activity, performance, or operation under the Contract. The hereinabove mentioned policies shall include District, Inspector, Architect, and their officers, employees and agents as additional insured and coverage of said policies shall be expressly made primary insurance with respect to any other similar coverage carried by the District. Copies of such policies or certificates of public liability insurance shall contain a contractual liability endorsement recognizing the contractual obligation of City to District. City shall maintain automobile liability insurance covering owned, hired, and non-owned automobiles with minimum liability, per occurrence, of One Million Dollars (\$1,000,000) combined single limit. All policies shall contain a provision requiring thirty (30) days written notice to be given to District prior to cancellation, modification, or reduction of limits.

8. Interference.

The District will notify the City of any interference or inter-modularity problems caused to its systems by the City system. The City will take immediate steps to resolve the interference problem, or will immediately discontinue operation of the base station.

9. Termination.

The term of the agreement shall continue from year to year; however, either party may terminate this agreement with a sixty-day (60) written notice.

10. Governing Law.

This agreement shall be construed under and be governed by the laws of the State of California under the jurisdiction of the Superior Court of California, County of Sacramento.

11. Term.

A. Initial Term: The initial term of this agreement shall be for a period of approximately three years commencing on the effective date of this agreement and ending on June 30, 2007.

B. Renewal: Upon expiration of the initial term, City and District will have the right to renew the Agreement for additional years with a review of fee schedule, terms and conditions.

12. Indemnification.

District shall defend, indemnify and hold harmless City, its Board, officers, directors, agents, employees and volunteers from and against all demands, claims, actions, liabilities, losses, damages, and costs, including payment of reasonable attorneys' fees, arising out of or resulting from the performance of the agreement, caused in whole or in part by the negligent or intentional acts or omissions of District's officers, directors, agents, employees, or subcontractors.

City shall defend, indemnify and hold harmless District, its officers, directors, agents, employees and subcontractors from and against all demands, claims, actions, liabilities, losses, damages, and costs, including payment of reasonable attorneys' fees, arising out of or resulting from the performance of the agreement, caused in whole or in part by the negligent or intentional acts or omissions of City's Board, officers, directors, agents, employees, volunteers, or subcontractors.

It is the intention of City and District that the provisions of this paragraph be interpreted to impose on each party responsibility to the other for acts and omissions of their respective officers, directors, agents, employees, volunteers, City's Board, and District's subcontractors. It is also the intention of City and District that, where comparative fault is determined to have been contributory, principles of comparative fault will be followed and each party shall bear the proportionate cost of any damage attributable to the fault of that party, its officers, directors, agents, employees, volunteers, City's Board and District's subcontractors.

13. Fees to be paid by City.

A two hundred fifty dollar (\$250.00) set up fee will provide the start up programming process. The City is responsible for obtaining the necessary computer software and required components. A fee of thirty dollars (\$30.00) will be charged per radio per occurrence of programming.

An annual administrative fee will be paid annually, in advance, beginning on the commencement date and on each anniversary of it. The annual administrative fee will be \$720.00 per year. This annual administrative fee is in addition to the programming fees outlined above.

14. Warranty of Authority.

A. District Warranty: The District represents and warrants that the District is organized and validly existing under the laws of the State of California and that the person executing this agreement for the District has all requisite power and authority to act for the District.

B. City Warranty: The City represents and warrants that the City is organized and validly existing under the laws of the State of California and that the person executing this agreement for the City has all requisite power and authority to act for the City.

15. No Third Party Beneficiaries.

There are no third party beneficiaries of any right or obligation assumed by either party.

16. Entire Agreement.

This agreement contains the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This agreement may only be modified by a writing signed by both parties.

17. Cooperation, Further Acts.

The parties shall fully cooperate with one another, and shall take any additional acts of sign any additional documents, as may be necessary, appropriate or convenient to attain the purpose of this agreement.

18. Time Of Essence.

Time is of the essence for each and every provision of this agreement.

19. Successors of Assigns.

This agreement shall be binding on the successors and assigns of the parties.

20. Assignments or Transfer.

City shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the written consent of the District. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

21. Attorney's Fees.

If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

22. Invalidity; Severability.

If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

23. Drug, Alcohol, and Tobacco-Free Facility.

District facilities are Drug, Alcohol, and tobacco free. Drug, Alcohol, and tobacco use (smoked or smokeless) is prohibited at all times on all areas of District property.

24. Waiver.

No Waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntary given or performed by a third party shall give the other party any contractual rights by custom, estoppels, or otherwise.

25. Counterparts.

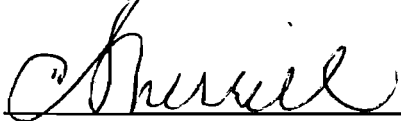
This Agreement may be signed in counterparts, each of which shall constitute an original.

IN WITNESS WHEREOF, the parties have executed this agreement on the date and year written above,

CITY OF ELK GROVE

ELK GROVE UNIFIED SCHOOL DISTRICT

By: _____
City Manager
City of Elk Grove

By:  _____
Director of Transportation
Elk Grove Unified School District

APPROVED AS TO FORM

By:  _____
City Attorney
City of Elk Grove

**CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2004-255**

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) **ss**
CITY OF ELK GROVE)

I, Peggy E. Jackson, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on the 20th day of October 2004 by the following vote:


AYES 4: COUNCILMEMBERS: Scherman, Soares, Briggs, Leary

NOES 0: COUNCILMEMBERS:

ABSTAIN 0: COUNCILMEMBERS:

ABSENT 1: COUNCILMEMBERS: Cooper




**Peggy E. Jackson, City Clerk
City of Elk Grove, California**