

AGREEMENT

THIS AGREEMENT, made and entered into on _____, 2013, by and between the Bureau of Alcohol, Tobacco, Firearms and Explosives a law enforcement agency of the Federal government, ("ATF") and the City of Fort Lauderdale, a Florida municipality.

WITNESSETH

WHEREAS, the ATF has purchased radios that provide interoperability between the ATF Agents assigned to work in the Fort Lauderdale area and the City of Fort Lauderdale; and

WHEREAS, the ATF and the City of Fort Lauderdale have determined that the ability to provide interoperable communications is critical to the effective and efficient provision of public safety services; and

WHEREAS, it has been determined to be mutually beneficial to both Parties to execute this Agreement which sets forth the parameters under which the ATF can access specific Talkgroups established on the City of Fort Lauderdale's Trunked Radio System to receive the public safety benefit of interoperability; and

WHEREAS, Section 163.01, Florida Statutes, permits public agencies to enter into Agreements to jointly exercise any power, privilege or authority which such agencies share in common and which each might exercise separately;

NOW THEREFORE, in conjunction with the mutual covenants, promises and representations contained herein, the parties hereto agree as follows:

SECTION 1: PURPOSE AND DEFINITIONS

- 1.01 The purpose of this Agreement is to set forth the parameters under which the City of Fort Lauderdale will provide access to specific Talkgroups established on the City of Fort Lauderdale Radio System to provide interoperable communications among public safety entities capable of accessing this feature of the City of Fort Lauderdale Radio System.
- 1.02 Definitions
 - 1.021 Common Talkgroups: Talkgroups established on the City of Fort Lauderdale's communications system that are made available to City of Fort Lauderdale agencies to facilitate interoperable communications between agencies for the purpose of providing mutual assistance and planning and execution of on-scene operations.
 - 1.022 Operational Talkgroups: Talkgroups established on the City of Fort Lauderdale's communication system that are made available for intra-departmental communications. These Talkgroups are reserved for particular

departments/agencies and only available to outside users by specific agreements.

- 1.023 Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Equipment: Also known as “agency radios,” are ATF owned 800 MHz handheld and mobile radios and control stations that have the ability to be programmed and used on the City of Fort Lauderdale’s 800 MHz Trunked Radio System.
- 1.024 Radio Alias: The unique name assigned to an operator’s radio that displays on the dispatchers console when a radio transmits.
- 1.025 System: The 800 MHz Trunked Radio System funded, purchased, installed, maintained and owned by the City of Fort Lauderdale.
- 1.026 System Manager: An employee within the City of Fort Lauderdale’s Communications Section of the Information Technology Services Department responsible for day-to-day administration and management of the City’s radio systems and the City of Fort Lauderdale’s designated contact person pursuant to various sections of this agreement.

SECTION 2: ADMINISTRATION OF THE CITY OF FORT LAUDERDALE’S 800 MHz SYSTEM AND USAGE PROCEDURES

- 2.01 The City of Fort Lauderdale Information Technology Services Radio Communications Services Division’s 800 MHz Radio System Manager will be the City of Fort Lauderdale’s day-to-day contact and can be reached at 954 828-5762. The Communications Section is staffed from 8:00 am to 4:30 pm, Monday through Friday, excluding City of Fort Lauderdale holidays. After hours emergency contact will be made through the City of Fort Lauderdale’s Police Dispatch Center at 954 828-5700.
- 2.02 The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) shall follow all City of Fort Lauderdale policies and standard operating procedures in place at the time of this Agreement as well as those developed in the future and issued to the ATF by the System Manager. The ATF agrees to comply with any enforcement actions required by these policies and procedures for misuse or abuse of the City of Fort Lauderdale System.

SECTION 3: CITY OF FORT LAUDERDALE EQUIPMENT & RESPONSIBILITIES

- 3.01 The City of Fort Lauderdale 800 MHz System consists of 26 channels, three (3) transmit and receive sites with co-located microwave equipment, and one (1) microwave/receive only site that provides network connectivity.
- 3.02 The City of Fort Lauderdale System provides seamless city-wide portable and mobile radio coverage for the Common Talkgroups. The radio coverage for the Common Talkgroups is identical to that of most other City of Fort Lauderdale Talkgroups that resides on the City of Fort Lauderdale 800 MHz Trunked Radio

System. Certain of the Talkgroups are capable of roaming onto the Broward County portion of the SmartZone network. Subscriber radios authorized to access these talkgroups shall be programmed to utilize the SmartZone roaming capabilities the same as a Fort Lauderdale radio.

- 3.03 The City of Fort Lauderdale shall be responsible for the maintenance and operation of the City of Fort Lauderdale Radio System, including all costs associated with permitting and licensing.
- 3.04 The City of Fort Lauderdale shall maintain the coverage within the City of Fort Lauderdale municipal boundaries as described throughout the term of this Agreement except for times of scheduled preventive maintenance, where it will be required to disable portions of the network for a pre-determined length of time or during times of system failures.
- 3.05 The City of Fort Lauderdale shall be responsible for talk group and fleet mapping management. However, the ATF reserves the right to program the approved Fort Lauderdale talkgroups in any position in ATF- owned radios.

SECTION 4: BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES (ATF) EQUIPMENT AND RESPONSIBILITIES

- 4.01 The ATF equipment will be multi-band VHF, 700/800 MHz mobile, portable, and control station equipment programmed to be used on the City of Fort Lauderdale's 800 MHz Trunked Radio System. The equipment used will be compatible with Motorola 800 MHz SmartNet and SmartZone communication systems as well as APCO Standards P25 trunking systems. The ATF will be required to keep its equipment in proper operating condition and the ATF is responsible for maintenance of its owned or operated radio equipment.
- 4.02 The ATF will only program the Talkgroups specifically listed in ATTACHMENT A and the individual unit ID numbers assigned by the System Administrator as part of this Agreement. The ATF will not program into its radios the City of Fort Lauderdale operational Talkgroups without a letter of authorization from the City of Fort Lauderdale Radio Systems Manager.
- 4.03 The ATF shall provide the City of Fort Lauderdale with a list of persons/positions, which are authorized to request activating/deactivating existing units or new units. No programming will be undertaken by the ATF or its service provider until requested and approved in writing by the System Manager.
- 4.04 The ATF shall receive certain access codes (System Key software or Advanced System Key) and Talk Group ID codes to the City of Fort Lauderdale's System to enable the authorized Talkgroups to be programmed into their equipment. These codes and system key software are exempt and/or confidential from the Florida public records law pursuant to Section 119.071 (2)(d) and Section 815.045, Florida Statutes (2013), and are to be treated as such. The ATF is responsible to safeguard the code information from release to unauthorized parties. Provided it is exempt from the Florida public records law, all written and oral information not in the public domain or not previously known and all information and data

obtained, developed, or supplied by the City of Fort Lauderdale will be kept confidential by the ATF and will not be disclosed to any other party, directly or indirectly, without the City of Fort Lauderdale's prior written consent, unless required by law or lawful order. All system parameters shall be and remain the City of Fort Lauderdale's property and may only be reproduced or distributed with the written permission of the City of Fort Lauderdale. The ATF agrees that the City of Fort Lauderdale has sole and exclusive ownership of all right, title and interest to the confidential information that is exempt from the Florida public records law and that such information may be recalled at any time.

- 4.05 Access and programming software and codes will only be released to: 1) service staff employed by the ATF, 2) approved commercial service providers under contract with the ATF.
- 4.06 The City of Fort Lauderdale will approve all commercial service providers upon review of whether the contract terms between the ATF and the commercial service provider are adequate to protect the City of Fort Lauderdale's Radio System from misuse, harm or release of access and programming codes to unauthorized persons.
- 4.07 The ATF will be responsible for ensuring that the ATF contracted commercial service provider adheres to the terms of this agreement pertaining to the proper use of access/programming codes and radio use. Commercial service providers are not permitted to program any radios other than ATF owned and operated radios.
- 4.08 The ATF is solely responsible for the performance and the operation of the ATF equipment and any damages or liability resulting from the ATF' use thereof. Should the City of Fort Lauderdale identify malfunctioning ATF-owned or operated equipment, the City of Fort Lauderdale will request that the ATF discontinue use of the specific device until repairs are completed. The City of Fort Lauderdale may, in its discretion, disable the equipment from the System after properly notifying the ATF in writing if the device is causing interference to the System. If the device is causing interference that jeopardizes the integrity of the System, or creates an Officer Safety issue, the device may be disabled first with notification to follow.
- 4.09 In the case of lost or stolen equipment, the ATF will notify the Radio System Manager via e-mail or fax and request the disablement of said equipment. The request shall include the City of Fort Lauderdale issued individual unit ID number and the serial number of the radio(s). The Radio System Manager will then advise via e-mail when the lost or stolen equipment has been disabled. A request by the ATF to re-activate a disabled unit will be required via an in-person visit with the disabled radio to the System Manager.

SECTION 5: SUBSCRIBER UNIT INFORMATION TO BE PROVIDED BY BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES (ATF)

5.01 The ATF will be required to provide to the City of Fort Lauderdale an initial inventory of the radios that are proposed to be programmed for use of the authorized Talkgroups. The ATF will provide the following information to the City of Fort Lauderdale:

1. Radio manufacturer and model numbers
2. Radio serial numbers
3. Requested aliases to be programmed

The Radio System Manager will then compile this information and transmit back to the ATF a matrix of the City of Fort Lauderdale Talkgroups, aliases, and radio ID numbers prior to the ATF's radios being activated on the City of Fort Lauderdale's 800 MHz system. The ATF is responsible for adhering to the Talk-Group and Radio ID allocations established by the City of Fort Lauderdale.

SECTION 6: UTILIZATION AND MONITORING OF COMMON TALKGROUPS

6.01 The Common Talkgroups were implemented specifically for inter-agency communication among multiple agencies, regardless of their specific discipline or affiliation. They were also created to allow communications between agencies without requiring cross-programming of operational Talkgroups in each agency's radios. Usage of the Common Talkgroups is authorized to coordinate multi-jurisdictional fire/law enforcement/disaster recovery operations such as fires requiring multi-agency responses, police pursuit through multiple jurisdictions and coordination and response to local emergencies and disasters. Other authorized uses include undercover operations, investigations, perimeter communications, fire ground coordination, scene security and landing zone communications requiring participation of multiple agencies and disciplines.

In addition, the Common Talkgroups can be used by any agency experiencing catastrophic failures of their own communication system for a limited and pre-determined amount of time. A request to utilize the Common Talkgroups for this situation requires permission of the Radio System Manager. Once approved by the Radio System Manager, the Common Talkgroups can be temporarily utilized until repair of the agency's communication system is complete.

6.02 The Common Talkgroups shall not be used for every-day routine communications or as an extra talk group for agencies that have cross programming agreements and duplicated Talkgroups programmed into their radios. Other prohibited uses include communications for special events and operations, use as an additional dispatch, administrative use or as a car-to-car talk group for a single agency.

SECTION 7: INDEMNIFICATION AND LIABILITY

The City of Fort Lauderdale makes no representations about the design or coverage capabilities of the City of Fort Lauderdale System. The Bureau of Alcohol, Tobacco, Firearms and Explosives has decided to enter into this Agreement and use the City of Fort Lauderdale's System on the basis of having

interoperability with the City of Fort Lauderdale and/or other municipalities during times of mutual aid and/or joint operations. The System is designed to assist qualified law enforcement, fire, and other emergency service professionals. It is not intended to be a substitute for the exercise of judgment or supervision of these professionals. Both parties acknowledge that the responsibility for providing law enforcement, fire, or other emergency services within the geographic bounds of the City of Fort Lauderdale rests with the City of Fort Lauderdale, which is providing such service, and not with the other party to the Interoperability Agreement.

Each party shall be liable for its own actions and negligence and, to the extent permitted by law, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) shall indemnify, defend and hold harmless the City of Fort Lauderdale against any actions, claims or damages arising out of the ATF's negligence in connection with this Agreement, and the City of Fort Lauderdale shall indemnify, defend and hold harmless the ATF against any actions, claims, or damages arising out of the City of Fort Lauderdale's negligence in connection with this Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes (2006), as amended or revised, nor shall the same be construed to constitute agreement by either party to indemnify the other for such other party's negligent, willful or intentional acts or omissions.

The terms and conditions of this Interoperability Agreement incorporate all the rights, responsibilities, and obligations of the parties to each other. The remedies provided herein are exclusive. The City of Fort Lauderdale and the ATF waive all other remedies with respect to each other, including, but not limited to, consequential and incidental damages. The City of Fort Lauderdale agrees to use its best reasonable efforts to provide the ATF with full use of the Common Talkgroups but makes no guarantee as to the continual, uninterrupted use of the radio communication system, or its fitness for the communication needs of the ATF.

SECTION 8: OWNERSHIP OF ASSETS

All assets maintained under this Agreement will remain assets of the respective party.

SECTION 9: TERM OF AGREEMENT

The initial term of this Agreement is for five (5) years and shall commence immediately upon full execution of this Agreement. The Agreement may be renewed for three (3) five-year terms thereafter. At least six months prior to the expiration of this Agreement's term, the ATF shall provide the City of Fort Lauderdale with a request to renew this Agreement. Such Renewal Amendment will require approval of both parties.

SECTION 10: AMENDMENTS TO THIS AGREEMENT

This Agreement may be amended from time to time by written amendment as agreed to by all parties.

SECTION 11: TERMINATION

This Agreement may be terminated by either party with or without cause upon ten (10) days' written notice to the other party. Upon request of termination by the ATF, the System Manager will proceed to disable the ATF's radios from the City of Fort Lauderdale's System. It will be the responsibility of the ATF to reprogram the ATF's radios removing the City of Fort Lauderdale's System information from the radios. The ATF will complete reprogramming the ATF's radios within sixty (60) days of the date of termination unless the ATF has greater than one hundred (100) radios, in which case the ATF shall have ninety (90) days to re-program its radios.

SECTION 12: NOTICES

Any notice given pursuant to the terms of this Agreement shall be in writing and be delivered by Certified Mail, Return Receipt Requested. The effective date of such notice shall be the date of receipt, as evidenced by the Return Receipt. All notices shall be addressed to the following:

As to the Bureau of Alcohol, Tobacco, Firearms and Explosives:

Bureau of Alcohol, Tobacco, Firearms and Explosives
Hugo Barrera, Special Agent In Charge
Miami Field Division
11410 NW 20 Street, Suite 201
Miami, FL 33172

As to the City of Fort Lauderdale:

City Manager
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, FL 33301

City Telecommunications Manager
City of Fort Lauderdale Communications Shop
100 North Andrews Avenue
Fort Lauderdale, FL 33301

With a copy to:

Assistant Telecommunications Manager/

Radio Systems Manager
City of Fort Lauderdale Communications Shop
100 North Andrews Avenue
Fort Lauderdale, FL 33301

SECTION 13: APPLICABLE LAW

This agreement shall be construed in accordance with and governed by the laws of the State of Florida.

SECTION 14: ENTIRE AGREEMENT

This Agreement and any Attachments attached hereto and forming a part thereof as if fully set forth herein, constitute all agreements, conditions and understandings between the City of Fort Lauderdale and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) concerning access to the Talkgroups on the Fort Lauderdale Radio System. All representations, either oral or written, shall be deemed to be merged into this Agreement, except as herein otherwise provided. No subsequent alteration, waiver, change or addition to this Agreement shall be binding upon the City of Fort Lauderdale or the ATF unless reduced to writing and signed by them.

SECTION 15: DELEGATION OF DUTY

Nothing contained herein shall be deemed to authorize the delegation of the constitutional or statutory duties of the City of Fort Lauderdale or the ATF agents.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first above written.

ATTEST:

Bureau of Alcohol, Tobacco, Firearms and Explosives

By _____
Hugo J. Barrera,
Special Agent in Charge

CITY OF FORT LAUDERDALE

By _____
John P. "Jack" Seiler, Mayor

By _____
Lee R. Feldman, City Manager

(CORPORATE SEAL)

ATTEST:

Jonda K. Joseph, City Clerk

APPROVED AS TO FORM:

City Attorney