

INTERLOCAL AGREEMENT BY AND BETWEEN HAMILTON COUNTY AND THE TOWN OF FISHERS CONCERNING THE INSTALLATION AND OPERATION OF A PUBLIC SAFETY COMMUNICATION TOWER WITHIN FISHERS

WITNESS THAT:

WHEREAS, Hamilton County, Indiana, (“County”) owns a four (4)-tower radio communication system (“Communication System”) used by all public safety and public services agencies within the County, including the Town of Fishers (“Fishers”) Police, Fire & Emergency Services, Parks & Recreation and Public Works Departments;

WHEREAS, the Communication System was originally installed in the early 1990’s as two (2) separate systems, and, since that time, the Communication System has undergone several upgrades, enhancements and expansions;

WHEREAS, the Communication System is approaching the end of its useful life;

WHEREAS, the County and Fishers desire to continue providing excellent emergency response services and a modern, effective communication systems is imperative to continuing to provide such services;

WHEREAS, during the last several months local officials, including public safety officials, have been investigating and reviewing potential options for upgrading the County’s Communication System;

WHEREAS, the officials have determined that increasing the number of public safety radio communication towers from four (4) to eight (8) is the most effective way to upgrade and extend the useful like of the Communication System;

WHEREAS, to provide for consistent emergency radio communication capability throughout Hamilton County, the County and Fishers have determined that a public safety radio communication tower (“Tower”) should be installed according to and consistent with a site plan adopted and approved by the County, Fishers and the Communications Operation Board that is attached hereto and incorporated herein as Exhibit A;

WHEREAS, the Tower shall be installed and maintained on property generally located at 10701 Cumberland Road, Fishers, Indiana 46037 and more specifically depicted and described in Exhibit B attached hereto and incorporated herein (“Site”);

WHEREAS, at its September 16, 2013, regularly schedule meeting, the Fishers Town Council approved installing the Tower on the Site upon Fishers entering into an interlocal agreement with the County concerning the Tower and use of the Site; and

WHEREAS, Fishers and the County now desire to enter into this Interlocal Agreement concerning constructing and operating a Tower on the Site, and pursuant to this Interlocal

Agreement, Fishers desires to provide the County the easement attached hereto and incorporated herein as Exhibit C for the installation and maintenance of the Tower on the Site (“Easement”).

IT IS HEREBY AGREED by the County and Fishers as follows:

ARTICLE I. RECITALS

The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Article 1.

ARTICLE II. MUTUAL ASSISTANCE

The County and Fishers agree, subject to further proceedings required by law, to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications, as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent.

ARTICLE III. DEFINITIONS

The following terms shall be defined as follows:

A. Communication Operations Board means the Hamilton County Sheriff and the six (6) designees each appointed by Hamilton County, Carmel, Fishers, Noblesville, Westfield and the Small Towns who are responsible for, among other items, approving the Communication Department Budget.

B. Communication Department means the Hamilton County Communication Department established by the Board of Commissioners of Hamilton County pursuant to Ordinance 9-12- 11-A, which Department is responsible for operating the County Communication Center and any manned Secondary Communication Center.

C. Communication Department Budget means the annual budget for all expenses of the County Communication Center and any manned Secondary Communication Center (hereinafter referred to within this definition section collectively as the “Communications Department”), which budget shall include, but is not limited to, the following:

1. Payment of all County employees of the Communications Department, including those benefits paid to County Employees pursuant to the County Personnel Policy.

2. Payment of the costs of maintaining and replacing the equipment of the Communication Department, subject to any exclusion within this Agreement.

3. A reasonable annual deposit into a sinking account to be used to fund future anticipated repairs and replacement of equipment of the Communication Department, subject to any exclusion within this Agreement.

4. Lease payments for long term leases on existing and replacement equipment of the Communication Department, subject to any exclusion within this Agreement.

5. The purchase, maintenance and replacement of the consoles, furniture, monitors, computers, and dispatch hardware, within the offices, break room, and all other parts of the building or buildings which contain the employees and equipment of the Communication Department, subject to any exclusion within this Agreement.

6. The proportional part of the utilities and maintenance costs of the part of the County Sheriff Offices and Jail Complex used for the County Communication Department.

7. The costs of the maintenance and replacement of all software necessary and desirable for the Integrated System, including all licensing fees.

8. The costs of the maintenance and/or replacement of all towers and relocated equipment which are used as part of the Hamilton County Integrated Communication system, other than replacement of the tower located within downtown Carmel, which costs are to be fully paid by Carmel in the event Carmel elects to remove or relocate that tower.

D. Contracting Agency or Contracting Agencies means Hamilton County, Carmel, Fishers, Noblesville and Westfield.

E. Interlocal Agreements means those agreement entered into between the County and the Contracting Agencies for E-911 Services.

F. Shared Expenses means the portion of the annual Communication Department Budget which is not funded by E-911 Fees and is divided among the Contracting Agencies pursuant to the Interlocal Agreements.

G. Fire Station No. 94 means Fishers Fire Station No. 94 generally located at 10701 Cumberland Road, Fishers, Indiana 46037.

ARTICLE IV. EASEMENT

In consideration for the County installing and maintaining the Tower and other obligations set forth herein, Fishers hereby provides the County the easement attached as Exhibit C. Consistent with the Easement, the County shall have the right to construct, reconstruct, maintain, repair, test and operate the Tower and all equipment associated with the Tower located on the Site, including but not limited to the shelter, diesel generator(s), HVAC system and other accessory items used in operation or maintenance of the Tower (individually or collectively, "Accessory Equipment").

ARTICLE V. INSTALLATION, OPERATION AND MAINTENANCE

5.1 Installation of Tower. By or before December 31, 2015, the County shall, consistent with and pursuant to the specifications for the Tower which are attached hereto and incorporated herein as Exhibit D (“Specifications”) and the Site Plan attached hereto as Exhibit A, cause the installation of the Tower on the Site. For purposes of this Article V, “Installation” shall mean grading and developing the Site consistent with Exhibits A and D and causing the Tower to be fully integrated with the Communication System and operational.

Further, as part of developing the Site for the installation of the Tower, the County agrees to relocate the storage shed currently located on the Site to the location specified on the Site Plan.

Notwithstanding the foregoing or any other provision contained herein, the County shall not cause the Installation of the Tower on the Site unless and until all required approvals of the Federal Aviation Authority (“FAA”) have been obtained by the County and all requirements of state and federal law satisfied.

5.2 Installation Costs. The County shall own the Tower and all Accessory Equipment and shall be independently responsible for the cost of Installation of the Tower and the purchase or acquisition of Accessory Equipment needed for operation of the Tower.

5.3 Maintenance. The County, through its Communication Operation Department, shall be additionally responsible for the operation, testing and maintenance of the Tower and all Accessory Equipment, including but not limited to inspections, on-site technical and maintenance support, preventative maintenance, software upgrades and parts (collectively, “Operation and Maintenance”).

5.4 Operation and Maintenance Costs. Beginning in 2015, the annual cost for Operation and Maintenance shall be included in the Communication Department Budget as a Shared Expense of all Contracting Agencies.

5.5 Utilities. Utilities used in the operation of the Tower shall be separately metered from utilities used by Fire Station No. 94. The Communication Department shall pay for all heat, light, water, power, and other services or utilities used in the operation of the Tower, and costs associated with such utilities shall be a Shared Expense of the Contracting Agencies.

ARTICLE VI. CO-LOCATORS

Fishers and the County acknowledge and agree that the sole purpose of the Tower is to ensure that public safety and service agencies within the County, including Fishers, have the requisite radio communication capability to safely and effectively serve the citizens of Hamilton County and that the Tower is not being erected for commercial or additional purposes. Accordingly, Hamilton County and Fishers expressly acknowledge and agree that no co-locators (wireless, cellular, PCS, etc.) shall be allowed to locate on the Tower.

ARTICLE VII. FLOODPLAIN

Fishers and the County expressly acknowledge that areas to immediate northwest of the Site are classified as regulated floodplain, and as such the regulated floodplain shall not be modified or encroached upon, and Accessory Equipment shall not be located in or about the floodplain.

ARTICLE VIII. ABANDONMENT

If the County or the Communications Department fails to use the Tower for period of twelve (12) consecutive months without the prior written approval of Fishers, which approval shall not be unreasonably withheld, the County shall cause the removal of the Tower and all Accessory Equipment, and the Site shall be substantially returned to its condition immediately prior to installation of the Tower, grading work excepted (“Restoration”). The cost of Restoration shall become a Shared Expense of the Contracting Agencies.

ARTICLE IX. TERM

This Agreement is effective upon execution by Fishers, the County, and the Communication Operations Board (the “Commencement Date”) and shall continue in effect for for fifty (50) years (the “Term”). This Agreement may be continued for additional terms or terminated upon mutual agreement of the parties.

ARTICLE X. INSURANCE AND INDEMNIFICATION

10.1 Insurance Maintained by Fishers. Fisher shall maintain in force from the Commencement Date of this Agreement, general liability insurance insuring against loss, cost and expense by reason of injury to or the death of persons or damage to or the destruction of property arising out of or in connection with the occupancy or use of Fishers Fire Station No. 94 and the outside areas immediately adjoining the Site as more specifically described in Exhibit A.

10.2 Insurance Maintained by the County. The County shall maintain in force from the Commencement Date of this Agreement, general liability insurance insuring against loss, cost and expense by reason of injury to or the death of persons or damage to or the destruction of property arising out of or in connection with the occupancy or use of Site and the outside areas immediately adjoining Fire Station No. 94.

10.3. Indemnification. Both Fishers and the County shall INDEMNIFY AND SAVE HARMLESS the other unit, from any loss, liability, cost or expense (including attorneys’ fees and court costs incurred in the defense thereof) for any acts of either units’ employees arising out of, or in connection with, the use of the Site or Tower, including any injuries to persons or damages to property, unless such claim arises out of the acts or omissions of the other unit. However, such indemnification shall not apply to either unit if the other unit is effectively insured for the loss, damage, or claim. Both Fishers and the County shall cause the other unit to be named as additional named insureds on the policy of the unit.

ARTICLE XI. FORCE MAJEURE

In the event that the Tower is destroyed by fire, casualty, or any Acts of God, the County, in its sole discretion, shall have the option to rebuild or repair the Tower. However, if the County desires for the cost to repair or rebuild the Tower to be a Shared Expense, the Contracting Agencies and the County shall negotiate and enter into an agreement to rebuild or repair the Tower. If the Contracting Agencies and the County cannot agree to terms for rebuilding or repairing the Tower, this Agreement shall terminate, and the Site shall be restored to its original condition prior to Installation of the Tower.

ARTICLE XII. DEFAULT AND TERMINATION

Fishers and the County shall cure any material default in performance under this Agreement within thirty (30) days of written notice provided to the defaulting party. Either party may terminate this Agreement upon one (1) year’s written notice

ARTICLE XIII. GENERAL TERMS

13.1. Waivers. No waiver of any condition or covenant in this Agreement by either party shall be deemed to imply or constitute a further waiver of the same or any other condition or covenant of this Agreement.

13.2 Notices and Certificates. Any notice under this Agreement shall be in writing and shall be effective when actually delivered in person or three days after being deposited in the U.S. mail, registered or certified, postage prepaid and addressed to the party at the following addresses or such other address as either party may designate by written notice to the other:

If to Fishers:

If to the Communication Operation Board and the County:

Town of Fishers
Attn: Fishers Town Manager
1 Municipal Drive
Fishers, IN 46038

c/o Board of Commissioners and
Hamilton County Auditor
Hamilton County Courthouse
33 N. 9th Street, Suite L-21
Noblesville, IN 46060

13.3. Law of Indiana. This Agreement has been executed under and shall be governed by the laws of the State of Indiana.

13.4. Complete Agreement. This Agreement contains a complete expression of the agreement between the parties and there are no promises, representations or inducements except such as are herein provided.

13.5. Partial Invalidity. If any Agreement provision is invalid or unenforceable to any extent, then that provision shall be deemed modified to the extent necessary to render that

provision enforceable and the remainder of the Agreement shall continue in effect and be enforceable to the fullest extent permitted by law.

13.6. Voluntary Agreement. The individuals executing this Agreement on behalf of Fishers and the Communication Operations Board acknowledge and agree that they have read and understand the terms, conditions and provisions of this Agreement.

13.7. Modifications. This Agreement may not be changed or modified unless mutually agreed upon in a writing signed by an authorized representative of each party. The term “Agreement” shall mean and encompass all extensions, renewals and modifications.

13.8. Mediation/Arbitration. In the event that there are any disputes concerning this Agreement, the parties may, by agreement, submit the issue to mediation/arbitration to be conducted pursuant to the Indiana Rules of Alternative Dispute Resolution prior to initiating litigation.

IN WITNESS WHEREOF, the duly elected and/or appointed officials of the parties to this Agreement have signed this Interlocal Agreement on the dates set out herein.

ALL OF WHICH IS ORDAINED by the Town Council of the Town of Fishers, Indiana, this ___ day of _____, 2014.

TOWN COUNCIL OF THE TOWN OF FISHERS,
HAMILTON COUNTY, INDIANA

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NAY

	John W. Weingardt, President	
	C. Pete Peterson, Vice President	
	Scott A. Faultless, Member	
	Stuart F. Easley, Member	
	David C. George, Member	
	Michael L. Colby, Member	
	Renee L. Cox, Member	

ATTEST: _____ DATE: _____
Linda Gaye Cordell, Clerk-Treasurer
Town of Fishers, Indiana

Approved by: Jennifer C. Messer, Town Attorney, Church, Church, Hittle and Antrim

**BOARD OF COMMISSIONERS
OF HAMILTON COUNTY**

Dated: _____

Steven C. Dillinger

Christine Altman

Mark E. Heirbrandt

ATTEST:

Dawn Coverdale, Auditor