

RESOLUTION NO. 14-_____

WHEREAS, the City of Huntsville, Alabama, the City of Huntsville d/b/a Huntsville Utilities and the Madison County Communications District, wish to enter into a Memorandum of Understanding concerning shared facilities for the installation of communications hardware, software, cables, wiring and other miscellaneous equipment which will provide mutual benefit to all parties; and

WHEREAS, there is now presented to the City Council of the City of Huntsville, Alabama, a Memorandum of Understanding setting out the terms of the understanding, with the representation that the said Agreement has been approved by the Huntsville Electric Utility Board.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that it does approve the aforesaid Memorandum of Understanding, and Tommy Battle, as Mayor of the City of Huntsville, Alabama, be, and he is authorized to execute said Memorandum of Understanding for and on behalf of the City of Huntsville, Alabama, and the Clerk-Treasurer be and he is hereby authorized to attest the same and to affix thereto the seal of the City of Huntsville, Alabama, all in as many counterparts as may be necessary.

BE IT FURTHER RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into a Memorandum of Understanding by and between the City of Huntsville, Alabama, the City of Huntsville d/b/a Huntsville Utilities and the Madison County Communications District, which said Memorandum of Understanding is substantially in words and figures similar to that certain document attached hereto and identified as "Memorandum of Understanding Between City of Huntsville, Alabama, the City of Huntsville d/b/a Huntsville Utilities and the Madison County 911 Center," consisting of 6 pages and the date of _____, 2014, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the _____ day of _____, 2014.

President of the City Council of
The City of Huntsville, Alabama

APPROVED this the _____ day of _____, 2014.

Mayor of the City of Huntsville,
Alabama

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF HUNTSVILLE,
THE CITY OF HUNTSVILLE d/b/a HUNTSVILLE UTILITIES
AND THE MADISON COUNTY 911 CENTER**

This Memorandum of Understanding (hereinafter referred to as "Agreement") is made and entered into as of the date specified herein by and among The City of Huntsville (hereinafter the "City"), The City of Huntsville Utilities d/b/a Huntsville Utilities (hereinafter "Huntsville Utilities") and The Madison County Communications District (hereinafter "the District"), collectively referred to hereinafter as "Participants"

WITNESSETH:

WHEREAS, the Participants believe that shared facilities for the installation of communications hardware, software, cables, wiring and other miscellaneous equipment will provide mutual benefit to all Participants as outlined and enumerated herein.

NOW, THEREFORE, the parties in consideration of the premises and other good and valuable consideration hereby contract and agree one with the other as follows:

1. The Participants agree that the District is the owner of communication towers designed and used for P-25 countywide radio system, and that the District will allow for the attachment of additional antennas, wiring or other equipment to these towers where in the judgment of the District such use will not interfere with its own service requirements or that of other participants, including considerations of economy and safety. It is also agreed that the District will maintain an emergency generator to serve as a back up source of power for these communication towers.
2. The District agrees that Huntsville Utilities will be allowed to attach, at a minimum, antennas for their AMI and SCADA networks. These antennas will be at differing installation heights and Huntsville Utilities shall be the only entity allowed at those mounting heights on any side of the tower. Huntsville Utilities shall have priority of mounting location over any leasing agency. Huntsville Utilities will install said antennas according to the District's directive.
3. The District agrees to share bandwidth, as available, with Huntsville Utilities on its microwave communication systems between its communications towers and facilities, so long as such sharing and use will not interfere with its own service requirements or that of other users in place. Huntsville Utilities agrees to provide any required hardware, software, wiring and other miscellaneous equipment as may be required to facilitate this planned use.
4. Huntsville Utilities agrees to provide fiber optic communication cables to interconnect the communication towers noted in this agreement. Huntsville Utilities

may use other entities' fiber to fulfill this obligation. This fiber shall only be used for the agreed upon purpose and no outside party shall be allowed by the District to use any portion of the fiber. This fiber shall not be used by Participants for any financial gain. Fiber strands may be combined at certain facilities in order to reduce fiber count, the equipment needed to do this will be provided by the District. Also, poles or other facilities may need to be installed at the Participants' various sites and buildings in order to facilitate the fiber install.

5. The cost for materials and installation of future fiber optic communications cables shall be shared by Participants as determined and agreed upon by the Participants. The preceding sentence applies to sites not expressly covered in this agreement. All fiber optic strand counts shall be shared by Huntsville Utilities and the Participants which shared in the installation costs, as per existing or future agreements. In addition to this agreement the District and Huntsville Utilities agree to cooperate in order to keep both parties systems operating as proficiently as possible as technologies evolve.
6. Huntsville Utilities agrees to install electric power to the District communication towers at *Burritt Mountain, Rainbow Mountain, Drake Mountain, Keel Mountain and Lewis Mountain* without charges to the 911 Center.
7. The District agrees to waive the monthly subscriber unit fees for the P-25 countywide radio system installed and managed by the District and to negotiate with respect to any future LTE network installed and managed by the District, provided no regulatory issues prohibit such action. Additionally, fiber optic communication cables that may be needed to provide redundant backhaul capabilities will be installed at these locations, where feasible, at a shared cost price to be negotiated.
8. Huntsville Utilities agrees to waive pole attachment fees for any connection of this fiber to a Huntsville Utilities structure.
9. The District agrees to waive any one time or periodic fees associated with Huntsville Utilities' equipment being attached to the District's communication structures.
10. Since the fiber optic communication cables shall be installed on Huntsville Utilities' poles and structures, and within Huntsville Utilities' conduit, in all cases the fiber optic communication cables shall be owned and maintained by Huntsville Utilities, unless otherwise agreed upon by separate agreements which shall supersede this provision.
11. Huntsville Utilities agrees to share bandwidth, fiber optic strands in multi-fiber cables, and connection or termination points at communication towers or other facilities as may be beneficial to all participants. Each Participant agrees to provide equipment as necessary for making terminations and connections to fiber optic communication cables at any location where such use is contemplated.

12. The Participants agree that Huntsville Utilities shall be the owner of communications facilities that may be designed and installed on Huntsville Utilities Facilities at locations determined to be beneficial for the installation of metering and/or communication networks for Huntsville Utilities projects, and that Huntsville Utilities may allow for the attachment of additional antennas, wiring or other equipment to these towers where in the judgment of Huntsville Utilities such use will not interfere with its own service requirements or other users in place, including considerations of economy and safety.
13. The Participants agree that the sharing of buildings or enclosures for the installation and maintenance of hardware or software, along with power supplies, backup systems and other associated wiring or equipment would be beneficial to all Participants, and therefore agree to allow for the sharing of rack space, connections, power facilities and other associated items. The participants further agree that the buildings, structures or enclosures shall be maintained in all respects by the Participant who owns and constructed such.
14. The Participants agree that no recurring rental charges will be assessed to any of the Participants for the shared use of communication towers, buildings, enclosures or other facilities as described above since the mutual benefits derived from all Participants from this Agreement shall be considered as compensation unless herein agreed and described, or unless separate agreements are made which should supersede this provision. Likewise, no recurring rental or maintenance charges shall be assessed to any of the Participants for the ongoing maintenance of fiber optic communication cables.
15. The Participants agree that any fiber, hardware, software or other equipment installed by any of the Participants under this agreement shall belong wholly to the individual Participant which installed the equipment.
16. Except for claims arising out of or relating to intentional torts, in no event shall either party be liable to the other for any indirect, incidental, consequential, or punitive damages, including loss of profit or goodwill, for any matter arising out of or relating to this agreement, whether such liability is asserted on the basis of contract, tort or otherwise, even if the party has been advised of the possibility of such damages.
17. To the extent permitted by law, each party does hereby agree to indemnify, defend and save harmless the other party from and against all liability, damage, loss or expense (including reasonable attorney's fees) arising out of or related to third party claims for bodily injury, death or property damage caused by the negligence or intentional misconduct of the indemnifying party, its employees, agents or contractors; provided however, that the foregoing indemnity shall only apply to the extent the indemnified party is not protected by statutory immunity or statutory limits of liability.
18. The parties hereto do hereby acknowledge that neither party is the agent, servant or employee of the other party.

19. Neither party shall be liable for any failure to perform as required by this agreement to the extent such failure to perform is due to circumstances reasonably beyond such party's control, including, without limitation, labor disturbances or labor disputes of any kind, accident, failure of any governmental approval required for full performance, civil disorders or commotions, acts of aggression, acts of God, energy or other conservation measures imposed by law or regulation, explosions, mechanical breakdowns, material shortages, disease, or other such occurrence.

The terms and provisions of this Agreement constitute the entire agreement of the undersigned parties and by their lawfully authorized representative.

This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama and venue shall lie exclusively in Madison County, AL. In performing its obligations hereunder, each party shall operate and perform in accordance with all applicable State and federal law.

In the event that one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability of the Agreement shall be construed as if such invalid, illegal or unenforceable provision has never been contained herein, but shall not affect the remaining provisions of this Agreement, which shall remain in force and effect.

This Agreement may be executed in counterparts by the execution of a separate signature page by each Participant, indicating the date of actual execution by each Participant, and, after full execution hereof in such manner, the same shall be deemed to be one and the same instrument. The undersigned officers are properly authorized to execute this Agreement on behalf of the parties, and each party certifies to the others that any necessary resolutions extending such authority have been fully passed and are now in full force and effect.

IN WITNESS WHEREOF, the undersigned governmental units have caused this Agreement to be signed and delivered on its behalf on the dates of their respective signatures.

CITY OF HUNTSVILLE

By: _____

Date: _____

Attest: _____

APPROVED AS TO FORM:
Attorney

BY _____

CITY OF HUNTSVILLE d/b/a
HUNTSVILLE UTILITIES

By: William C. Lynn

Date: 1-30-2014

Attest: Garth W. D'Amico

APPROVED AS TO FORM:
Attorney

BY E. Luther Huggins

MADISON COUNTY 911 CENTER

By: J. C. [Signature]

Date: 1/31/2014

Attest: Charles H. Young

APPROVED AS TO FORM:
Attorney

BY Charles H. Young