City of Philadelphia

City Council
Chief Clerk's Office
402 City Hall
Philadelphia, PA 19107

BILL NO. 090097

Introduced February 12, 2009

Councilmembers Clarke and O'Neill

Re-Referred to the
Committee on Technology and Information Services

AN ORDINANCE

Authorizing the Department of Public Property of the City of Philadelphia to enter into an agreement with The School District of Philadelphia for: School District use of the City's 800 MHz public safety radio communications system; provision of radios and equipment to the School District for use of such system; and assignment and co-licensing by the School District to the City of certain federal licenses for use of the 800 MHz spectrum; all under certain terms and conditions.

WHEREAS, the City and the School District desire to promote interoperability of communications systems between the public safety and other personnel of the City and the School District; and

WHEREAS, the School District has been granted the use of ten channel (frequency) pairs in the 800 MHz band under Federal Communications Commission ("FCC") license WNKV367 (the "SDP Licenses"); and

WHEREAS, the City desires that the School District transfer to the City five of the SDP Licenses, to be incorporated into the City's 800 MHz radio communications system (the "City Radio System"), and the City and the School District plan to co-license and to share control of an additional five SDP licenses, all subject to approval of the FCC; and

WHEREAS, in consideration of the transfer of certain licenses and the co-licensing and shared control of other licenses, the City plans to (i) permit certain SDP personnel to use the City Radio System; (ii) furnish to the School District radios and other equipment necessary for such use; and (iii) make available to the School District certain price discounts for 800 MHz radio equipment and services that are available under City contracts; now, therefore,

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. The Department of Public Property of the City of Philadelphia is hereby authorized to enter into an interagency agreement with The School District of Philadelphia, a body corporate and political subdivision formed and existing under the laws of the Commonwealth of Pennsylvania (the "School District"), pursuant to which the School District shall have the right to use the City of Philadelphia 800 MHz public safety radio communications system, the City will provide to the School District certain radios and equipment for such use, and the School District will agree to assign to the City five federal licenses, and to co-license with the City an additional five federal licenses, for use of the 800 MHz spectrum, subject to Section 2 of this Ordinance.

SECTION 2. The interagency agreement authorized by Section 1 of this Ordinance shall be in substantially the form attached hereto as Exhibit "A", with such changes as the City Solicitor deems necessary or appropriate to protect the interest of the City.

SECTION 3. The Chief Clerk of Council shall keep all exhibits to this Ordinance on file and make them available to the public for inspection and copying during regular office hours.

Exhibit "A"

INTERGOVERNMENTAL AGREEMENT

By and Between

The School District of Philadelphia and the City of Philadelphia

For Radio Communications Service

THIS INTERGOVERNMENTAL AGREEMENT (the "Agreement") is entered into this _____ day of _____, 2009 (the "Effective Date"), by and between The School District of Philadelphia, a body corporate and political subdivision formed and existing under the laws of the Commonwealth of Pennsylvania (the "School District" or "SDP"), located at 440 North Broad Street, Philadelphia, Pennsylvania 19130 and the City of Philadelphia, acting through its Department of Public Property ("City" or "the City", and jointly with SDP, the "Parties"), for the purpose of setting forth the promises and agreements of the parties with respect to the City's provision of radio communications services to the School District and the School District's transfer to the City of five (5) licenses, and agreement of the School District to share with the City control of additional five (5) licenses, for 800 MHz frequencies issued by the Federal Communications Commission ("FCC") to the School District.

RECITALS

WHEREAS, the School District has been granted the use of the following ten channel (frequency) pairs in the 800 MHz band under FCC license WNKV367 (the "SDP Licenses"):

Channel Number	mobile Tx base Rx	mobile Rx base TX
192	810.7875	855.7875
234	811.8375	856.8375
277	812.9125	857.9125
313	813.8125	858.8125
314	813.8375	858.8375
353	814.8125	859.8125
354	814.8375	859.8375
393	815.8125	860.8125
394	815.8375	860.8375
397	815.9125	860.9125

; and

WHEREAS, the City desires that the School District transfer to the City five of the SDP Licenses, as listed immediately below (the "T Licenses"), to be incorporated into the City's 800 MHz radio communications system (the "City Radio System"), and the City and the School District plan to co-license and to share control of the other five SDP licenses, as listed below (the "S Licenses"); and

T Licenses

Channel Number	mobile Tx base Rx	mobile Rx base TX
234	811.8375	856.8375
277	812.9125	857.9125
313	813.8125	858.8125
354	814.8375	859.8375
394	815.8375	860.8375

S Licenses

Channel Number	mobile Tx base Rx	mobile Rx base TX
192	810.7875	855.7875
314	813.8375	858.8375
353	814.8125	859.8125
393	815.8125	860.8125
397	815.9125	860.9125

WHEREAS in consideration of the transfer of the T Licenses and the co-licensing and shared control of the S Licenses, the City will during the term of this agreement and renewals thereof (i) permit certain SDP personnel, as provided in this Agreement, to use the City Radio System; (ii) furnish to the School District radios and other equipment necessary for such use; and (iii) make available to SDP certain price discounts for 800 MHz radio equipment and services that are available under City contracts; and

WHEREAS, SDP desires that such SDP personnel use the City Radio System, and desires to benefit from such price discounts for equipment and services; and

WHEREAS, SDP and the City desire that SDP irrevocably transfer the T Licenses to the City, and that the SDP convert each one of the five S Licenses to a license co-licensed by both SDP and the City, for which both SDP and the City share control, on the terms provided in this Agreement; and

WHEREAS, the transfer of the T Licenses and the co-licensing of the S Licenses is subject to the approval of the FCC;

NOW THEREFORE, the School District and the City, in consideration of the promises and agreements set forth below, together with other good and valuable consideration, the sufficiency of which is acknowledged by both parties, and intending to be legally bound, covenant and agree as follows:

1. RECITALS. The foregoing Recitals are incorporated in and made a part of this Agreement.

2. TERM AND RENEWAL; SURVIVAL.

(a) Term. The term of this Agreement shall be for a period commencing on the Effective Date and continuing for a period ending July 31, 2012, with the option to renew this Agreement for additional one-year renewal periods by each of the City and SDP providing written notice to the other party of its intent to renew at least thirty (30) days prior to the expiration of the then-current term; except that the maintenance obligations with respect to Motorola equipment furnished to SDP under the Agreement will expire coterminously with the City's maintenance agreement with Motorola, Inc. for the period June 1, 2006 to June 30, 2009, pursuant to Bid S7Z5185S ("Motorola Maintenance Agreement"), a copy of which is attached hereto as Appendix C.

(b) If the City exercises its option to renew the Motorola Maintenance Agreement for an additional one year term through June 30, 2010, or enters into a subsequent agreement with Motorola, Inc. or any other entity to provide maintenance services for radios and other equipment for the City Radio System, then the City will seek to make such maintenance services available to SDP for the per-unit prices available to the City for maintenance of City-owned equipment.

(c) The following terms of the Agreement shall survive any termination of the Agreement by failure of the City to renew as provided in subsection 2.(a): Sections 4, 5(b), 7(b), 10, 11, 12, 13, 14, and 15(b),(c),(e), and (h).

3. TERMINATION OF AGREEMENT.

Either the School District or the City may terminate this Agreement in the event the other party fails to perform any material obligation under the Agreement, provided the terminating party provides at least one hundred twenty (120) days written notice to the defaulting party, describing in reasonable detail such failure to perform, and the default remains uncured after the expiration of such one hundred twenty (120) day period (or such different period as the Parties may agree to in writing). The School District further recognizes and agrees that the City is not obligated to the School District, and that nothing in this Agreement permits the School District to obligate the City, for any costs associated with termination under applicable tariffs, contracts or agreements.). The City further recognizes and agrees that the School District is not obligated to the City, and that nothing in this Agreement permits the City to obligate the School District, for any costs associated with termination under applicable tariffs, contracts or agreements.

4. TRANSFER OF 800 MHZ T LICENSES

(a) The School District agrees to transfer to the City, and the City agrees to receive from the School District, all of the five T Licenses, and rights and permissions issued by the Federal Communications Commission to use the T Licenses.

(b) The School District and the City agree to co-license all of the S Licenses with the

FCC pursuant to 47 C.F.R. Section 90.185 ("Multiple licensing of radio transmitting equipment in the mobile radio service"), and the School District and City agree to share control of such S Licenses, and all rights and permissions issued by the Federal Communications Commission to use the S Licenses.

(c) The School District agrees that it will take all actions reasonably requested by the City in order to effect the transfer to the City of the T Licenses, and to effect the co-licensing and shared control of the S Licenses, including without limitation the actions provided in Section 4(d) below; and the City agrees that it will take all actions reasonably requested by the School District in order to effect the transfer to the City of the T Licenses, and to effect the co-licensing and shared control of the S Licenses, including without limitation the actions provided in Section 4(d) below.

(d) At a time to be determined by the City, the School District will execute and file with the FCC, together with the City, a joint SDP/City application ("Application"), in standard FCC form and prepared by the City and subject to the approval of its counsel, to transfer the T Licenses to the City, and to co-license the S Licenses for both the School District and the City as co-licensees, and pursuant to which Application all channels associated with the SDP Licenses will be re-licensed as public safety channels. The School District will provide and where necessary execute all documents and information necessary to support the Application subject to the approval of its counsel, including, without limitation, testimony at hearings and other participation in any proceedings before the FCC or a court of law relating to the transfer; and will provide all other cooperation necessary to effect the transfer of the T Licenses and the co-licensing of the S Licenses.

(e) The School District will, if requested by the City, file an application to the FCC for waiver of any freezes on transfers of licenses or on co-licensing of licenses, which may be in effect, and will execute all documents which may be deemed necessary by the City in order to effect the transfer to the City of the T Licenses and the co-licensing of the S Licenses, or securing for the City other rights to use such frequencies.

(f) If the City so requests, the School District will exercise all commercially reasonable efforts to obtain a concurrence letter or letters from any third-party licensee of any of the SDP Licenses channel frequencies for which a concurrence letter is required, under FCC rules, as a condition of the transfer of the T Licenses to the City, or the co-licensing of the S Licenses. If requested by the City, SDP will provide the documents, information, and other cooperation necessary to support City efforts to obtain a concurrence letter or letters from any third-party licensee of any of the SDP License channel frequencies for which a concurrence letter is required, under FCC rules, as a condition of the City using the channels.

(g) The School District does hereby grant, without cost to the City, and effective upon but only upon City written request, an irrevocable and exclusive option to take possession of any or all of the T Licenses, and will upon City request, surrender any or all such T Licenses and/or cease any use of such licensed frequencies. SDP will not market, nor otherwise seek buyers for, any of the SDP Licenses. The School District also does hereby grant, effective upon, but only

upon, City written request, an irrevocable exclusive and non-transferrable option to negotiate on behalf of the School District with respect to any or all of the T Licenses in the 800 MHz Rebanding Process ordered by the FCC in its Report and Order issued *In the Matter of Improving Public Safety Communications in the 800 MHz Band*, WT Docket 02-55, adopted July 8, 2004 and released August 6, 2004 (the "800 MHz Rebanding Process"), and will upon City request, surrender any or all such T Licenses and transfer such T Licenses as may be agreed by the City as part of the 800 MHz Rebanding Process and/or cease any use of such licensed frequencies.

(h) The School District agrees that immediately upon the Effective Date, the City may have the exclusive use and control of the five T License channel numbers and associated frequency pairs, and the City will have shared use and shared control of the S License channel numbers and associated frequency pairs.

(i) If this Interagency Agreement is terminated, or not renewed, or if after the term of this Interagency Agreement, the School District is not permitted to, or is unable to, continue use of the City Radio System, then the five S License channels will revert to the sole use of the School District for a radio communications system owned and maintained at the full cost of the School District, and that at the option of the School District, the S License channels shall be re-licensed, designating the School District as sole licensee. In such event, the City shall do all things, including, without limitation, the execution and delivery of such documents, filings, agreements and the like, subject to the approval of its counsel, as may be required by the School District to effectuate such re-licensing.

5. SCHOOL DISTRICT ACCESS TO CITY RADIO SYSTEM

(a) The City shall allow the School District to use the City Radio System to the extent and in a manner that the School District's radio communication requirements are satisfied, and shall furnish the School District for its use of the City Radio System the equipment set forth on Appendix B attached, and in accordance with the schedule set forth in Appendix A to this Agreement, at no charge, with good and merchantable title, free and clear of all claims or encumbrances, except that the City retains the right to remove software and coding specifically installed to enable use with the City Radio System from all radios and other equipment before any such radios or equipment may be sold, transferred or assigned. Upon delivery and operation, the School District shall possess all right, title and interest to such equipment. The City shall use its best efforts to ensure that upon provision of the equipment to the School District, all manufacturer's warranties shall vest in the School District.

(b) The School District will take no action that has the intent or effect of providing access to the City Radio System for any user or radio not approved by the City.

6. SCHOOL DISTRICT PURCHASE OF EQUIPMENT AND SERVICES THROUGH CITY CONTRACTS

The School District shall be permitted by the City to purchase certain radio communications equipment and services related to the City Radio System through the City's existing contracts, at SDP cost and to the extent permitted by such contracts, for the duration of such contracts. Nothing herein shall obligate the School District to purchase any equipment or

services under the City's existing or future contracts; provided that, the School District shall keep all radios and other equipment used for communication on the City Radio System in good repair sufficient that such equipment will not have a detrimental impact on the operation of the City Radio System, and in the event that certain equipment does cause a detrimental impact, the City may remove or deny access of such equipment to the City Radio System.

7. OPERATION AND MAINTENANCE OF EXISTING SCHOOL DISTRICT RADIO COMMUNICATIONS SYSTEM

(a) The School District will maintain ownership of all base station and other equipment (including radios assigned to users and spare radios), software, technical manuals, and other goods and materials related to the School District's current radio communications system ("the SDP Radio System"), and be solely responsible for maintenance of the SDP Radio System.

(b) The School District agrees to maintain operations of the SDP Radio System at a level of use required in order to maintain the SDP Licenses, as determined and instructed by the City in accordance with FCC requirements, until such time as the T Licenses are transferred to the City.

(c) The City agrees that the School District may use the S License channel numbers for operation of the SDP Radio System for school bus communications and to maintain all dispatching operations for the SDP transportation system during the term of this Agreement until the School District has migrated all units and operations to the City's system or implemented a different system for the school bus communications and dispatching operations for the SDP transportation system.

8. MAINTENANCE RATES.

The School District shall be responsible for the cost of all maintenance for radios provided to the School District by the City. The City will provide to the School District information on all Motorola rates for maintenance work to be conducted by Motorola, Inc. on equipment used for the City Radio System. The City will provide the School District with notice of any change in rates or contract or agreement, as amended from time to time, within 30 days after the City receives notice of any such change. The School District expressly understands and acknowledges that the term of the City's agreement with Motorola, Inc. for equipment maintenance is currently set to expire on June 30, 2009 (although the City has an option to renew such agreement for an additional year through June 30, 2010), and that the applicable rates, contract or agreement charges may be amended and changed from time to time. The School District expressly consents to abide by any amendments, without recourse against the City. The School District shall pay directly to Motorola, Inc. or any other service or equipment provider all contract or agreement costs, fees and charges related to the School District's access to and use of maintenance services for the equipment provided for use of the City Radio System, at the contracted rates as they may be amended from time to time.

9. UPGRADE.

In the event of any City infrastructure change that makes the City-provided 800 MHz

radios inoperable on an upgraded City Radio System during the term of this Agreement, the City agrees to provide maintenance or adjustment necessary for such radios to be operable on the upgraded City Radio System, or at the City's sole discretion, to provide 375 substitute radios operable on the upgraded City Radio System in substitution for the 375 City radios furnished the School District for Security (Office of Climate and Safety) and School Operations as detailed in Appendix B hereto. To the extent existing accessories listed in Appendix B (including batteries, speaker microphones, carry cases, single unit chargers and gang chargers) are not compatible with such substitute radios, accessories compatible with such substitute radios in the quantities and of the types indicated on Appendix B will also be provided by the City to the School District. Except as provided by the City match of School District effort to purchase mobile radios for use in school buses as described in Item 3 of Appendix A, the SDP agrees to acquire at its own cost and to maintain any additional radios beyond 375 and all accessories not covered by the City.

10. CONFIDENTIALITY.

The City and the School District, during the term of this Agreement or at any time thereafter, shall not, without the express written mutual consent, directly or indirectly divulge or use for its own benefit or for the benefit of any other party, any of each other person's or entity's trade secrets, proprietary data, rates, or any other confidential information communicated to or otherwise learned or acquired in the course of their mutual relationship. However, both the City and the School District may disclose such information to the extent that such disclosure is required in the course of their relationship with each other, or if such disclosure is demanded by a court or other governmental agency of competent jurisdiction or as otherwise required by applicable law.

11. NOTICES.

Any notice which the School District or the City may be required to or may desire to give to the other party shall be in writing and shall be sent via first-class U.S. mail, and shall be addressed as follows:
To the School District:

Chief Business Officer
The School District of Philadelphia
440 North Broad Street 3rd Floor
Philadelphia, PA 19130

with a copy to:

General Counsel
The School District of Philadelphia
440 North Broad Street, 3rd Floor
Philadelphia, PA 19130

To City:

City of Philadelphia Department of Public Property
Communications Division
City Hall, Room 732
Philadelphia, Pennsylvania 19107
Attention: Deputy Commissioner, Communications Division
Department of Public Property

with a copy to:

City Solicitor
City of Philadelphia Law Department
1515 Arch Street, 17th floor
Philadelphia, PA 19102-1595

Attention: Intellectual Property Division

or to such other person(s) or place(s) as may be designated in writing by the School District to the City or by the City to the School District.

12. RISK OF LOSS OR DAMAGES.

(a) The School District hereby assumes all risk of loss, damages or expenses that may be sustained by the City or its officers, employees and agents in connection with its access to the City Radio System, or the use of the City's equipment or services contracts for the City Radio System, occasioned wholly or in part by the School District's negligence or the negligence of the School District's agents, subcontractors, employees or servants in connection with this Agreement, including, but not limited to, those in connection with loss of life, bodily injury, personal injury, damage to property, contamination or adverse effects on the environment, failure to pay such subcontractors and suppliers, any breach of the Agreement, and any infringement or violation of any proprietary right (including, but not limited to, patent, copyright, trademark, service mark and trade secret).

(b) The School District's liability for any loss, damages or expenses described in Paragraph 12(a) above shall be limited to the exact proportion that the School District's or its agents, subcontractors, employees or servants actual negligence was the cause of such loss, damages and expenses. In no event shall the liability of the School District for any such loss, damages or expenses, whether in tort or contract, hereunder exceed an amount in excess of the value of the equipment actually provided to the School District under this Agreement, except with respect to any loss, damage or expense related to loss of life, bodily injury, damage to property, or proprietary rights infringement. Further, in no event shall the liability of the School District for any such loss, damages or expenses, whether in tort or contract, include any loss for revenues or any consequential, special, indirect, incidental, punitive, or exemplary loss, damage, or expense. Notwithstanding any other provision of this Section 12, the City shall be responsible for all risk of loss, damages or expenses arising in connection with the City Radio System to the extent occasioned by the City's negligence or the negligence of the City's agents, subcontractors, employees or servants in connection with this Agreement, including, but not limited to, those in connection with loss of life, bodily injury, personal injury, damage to property, contamination or adverse effects on the environment, failure to pay such subcontractors and suppliers, any breach of the Agreement, and any infringement or violation of any proprietary right (including, but not limited to, patent, copyright, trademark, service mark and trade secret).

(c) In support of its obligations under this Agreement, it is recognized that the School District is self-insured for general liability, including personal injury and property damage. Any other provision of this Contract to the contrary notwithstanding, the City and the School District each retain its statutory immunity as provided pursuant to the laws of the Commonwealth of Pennsylvania, including but not limited to 42 Pa. C.S.A. §§ 8501 and 8541 *et seq.* ("the Political Subdivision Tort Claims Act"). The City and the School District each acknowledge that the other party: (i) is a local agency, as defined in 42 Pa. C.S.A. §§ 8501 *et seq.* and within the meaning of §§ 8541 *et seq.*, and (ii) does not waive, for itself or its officers, employees and agents, the defenses of governmental and official immunity derived from said statutes. Under the Political Subdivision Tort Claims Act, 42 Pa.C.S.A. §§ 8541-8564, the City and the School

District may each be held liable to third parties for personal injury or property damage arising out of its own negligence or the negligence of its employees. Damages are limited under the statute in kind and amount not to exceed $500,000.00 per occurrence as provided in the Political Subdivision Tort Claims Act.

(d) If at the time of commencement of the initial term of the Agreement, the School District self-insures its automobile liability and/or workers compensation and employees liability coverage, the School District may, in lieu of the foregoing, and without waiving any statutory rights or immunities, furnish to the City a current copy of the state certification form for self insurance or a current copy of the letter of approval from the state Insurance Commissioner, whichever is appropriate for the coverage self-insured.

(e) In support of its obligations under this Agreement, the School District shall provide a plan of self-insurance which shall provide for at least thirty (30) days written notice to be given to the City in the event coverage is materially changed, canceled or non-renewed. The City, its officers, employees and agents, shall be named as additional insureds in the plan for self-insurance, and the plan for self-insurance shall provide that the coverage provided to the City and its officers, employees and agents as additional insureds will be primary to any other coverage available to them, and that no act or omission of the City shall invalidate the coverage.

(f) The School District's plan for self-insurance shall be submitted to the Commissioner of the City's Department of Public Property at the address set forth in section 11 above, and to the City's Risk Manager at 1515 Arch Street, 14th Floor, Philadelphia, PA 19102, and must specifically reference the City contract number for which it is being submitted, along with a current copy of the state certification form for self-insurance or a current copy of the letter of approval from the state Insurance Commissioner, whichever is appropriate for the coverage self-insured, and such other evidence of its qualifications to act as self-insurer (e.g. state approval) as may be requested by the Commissioner of the City's Department of Public Property and/or City's Risk Manager.

13. RESALE.

The School District expressly agrees that the services and benefits provided under this Agreement cannot be resold to tenants of the School District or to any other person or entity; provided that once the City provides the School District with the radios described in Appendix B, the School District, as titleholder to such equipment shall enjoy all rights to sell, transfer or otherwise encumber title to such equipment, except that the City retains the right to remove all software and coding specifically installed to enable use with the City Radio System from all radios and other equipment before any such radios or equipment may be sold, transferred or assigned.

14. CITY NOT LIABLE FOR INTERRUPTION OF SERVICE.

The City shall not be liable to the School District for any interruption or interference with the operation of the School District's facilities, or for the failure of the operation of the City Radio System, or for any special, indirect or consequential damages arising in any manner. The

School District agrees to provide the City notice of any interruptions or interference with communications on the City Radio System, to cooperate in any investigation of such interruption or interference conducted by the City or Motorola, and to cooperate in implementation of any corrective action plans developed to prevent further interruption or interference or other operational problems experienced with the City's Radio System. The City agrees to provide at the request of the School District any and all reports which may prepared by the City, or provided to the City by Motorola, analyzing the causes of and recommended resolutions for any such instances of interruption or interference experienced in connection with the City's Radio System.

15. MISCELLANEOUS.

(a) Best Efforts. The City, as a service agent for the School District, shall make its best efforts to furnish the School District with the utmost of professional services. The School District shall abide by the terms and conditions of any other contracts or agreements that the City has with other parties associated with this Agreement, including but not limited to, Motorola, Inc., except that the School District may not be obligated by the City to purchase any products or services under such contracts or agreements; provided that, the School District shall keep radios and other equipment used with the City Radio System in good repair as provided in Section 6 above.

(b) Assignability. This Agreement shall inure to the benefit of and be binding upon the respective parties, and neither party shall assign any of the rights granted pursuant to this Agreement.

(c) Applicable Law. This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

(d) Entire Agreement. This Agreement and any addenda and exhibits which may be attached hereto represent the entire agreement between the parties. There are no collateral or oral agreements or understandings. The School District and its agents have made no representations, agreements, conditions, warranties, understandings or promises, either oral or written, other than as set forth herein, with respect to this Agreement. This Agreement shall not be modified in any manner or terminated before the expiration of the term as set forth in this Agreement except by an instrument in writing executed by the parties. Without limiting the enforceability of Section 15(h) of this Agreement, it is expressly agreed by the City and the School District that the confidentiality provision shall survive expiration or termination of this Agreement. No waiver of any portion of this Agreement shall be valid unless in writing and agreed to by the party against whom it is being enforced.

(e) Severability. The invalidity or unenforceability of any one or more provisions of this Agreement shall not effect the validity or enforceability of the remaining portions of this Agreement, unless the invalidity or unenforceability would substantially deprive a party of the benefits of this Agreement.

(f) Dispute Resolution. The parties agree to use their best efforts to resolve disputes that

may arise in relation to any term, condition, or provision of this Agreement by informal negotiation and cooperation. The City and the School District mutually agree that prior to commencement of any action in any court of competent jurisdiction, the parties will attempt to resolve disputes concerning this Agreement by submission of such disputes to a committee (the "Dispute Resolution Committee") in accordance with the following provisions:

(1) Within thirty (30) days after formal notice of a dispute to either party, each party shall appoint one committee member, and the third committee member shall be appointed by the members appointed by the City and the School District. If the committee members appointed by the City and the School District fail to so agree on the third member within fifteen (15) days after their appointment, then said third member shall be appointed by an independent, neutral third party or entity mutually selected by the parties, upon application of either the City or the School District after reasonable notice to the other party. In the event such third member requires compensation for serving as a member of the Dispute Resolution Committee, the City and the School District shall agree upon reasonable compensation to the mutual satisfaction of the parties. Any party appointing a member hereunder shall give notice of such appointment to the other party within five (5) days of such appointment.

(2) Both parties shall submit their positions with respect to a dispute ("dispute position(s)") to the Dispute Resolution Committee within twenty (20) days from the date of appointment of the third Dispute Resolution Committee member. Copies of each party's dispute position submission shall be served on the other party via first class mail, postage prepaid, or by hand delivery. Responses to each party's dispute position submission shall be made within ten (10) days of the receipt of the other party's dispute position submission.

(3) The Dispute Resolution Committee shall schedule a meeting and provide each party with the opportunity to present and discuss its dispute position with the Dispute Resolution Committee and with each other in the presence of the Committee.

(4) If the Dispute Resolution Committee fails to reach a resolution of the dispute at that meeting, then the Committee shall issue a written, non-binding memorandum of recommendation on resolution of the dispute.

(g) No Joint Venture. The parties do not intend to create, and nothing contained in the Agreement shall be construed as creating, a joint venture arrangement or partnership between the City and the School District.

(h) Survival. Any and all provisions set forth in the Agreement which, by its or their nature, would reasonably be expected to be performed after the termination of the Agreement shall survive and be enforceable after such termination. Any and all liabilities, actual or contingent, which shall have arisen in connection with the Agreement, shall survive any termination of the Agreement. Any express statement of survival contained in any Section of the Agreement shall not be construed to affect the survival of any other Section, which shall be determined pursuant to this Section.

(i) Other Party Interests. Nothing in the Agreement, expressed or implied, is intended or shall be construed to confer upon or give to any person, firm, corporation, or legal entity, other than the parties, any rights, remedies, or other benefits under or by reason of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Intergovernmental Agreement and Memorandum of Understanding-- Telecommunication Service Provider Agreement as of the day and year first above written.

THE CITY OF PHILADELPHIA

Approved as to form:
Shelley R. Smith
City Solicitor

By: _____
Joan Schlotterbeck
Commissioner
Department of Public Property
City of Philadelphia

By:_____
Divisional Deputy City Solicitor

THE SCHOOL DISTRICT OF PHILADELPHIA

Approved as to form:

_____
Attorney
School District of Philadelphia

_____
By: Sandra Dungee Glenn, Chairwoman
School Reform Commission

APPENDIX A

Procedure for transition of School District to Use
of City 800 MHz Radio Communications System

1. In Phase I of the implementation of this Agreement, the City will provide 95 SDP users with access to the City radio system, to be designated by SDP from personnel of its Office of School Climate and Safety, not later than 20 days following the execution of an Intergovernmental Agreement between the City and SDP. For the use of such 95 SDP security personnel, the City will furnish to SDP, at the cost of the City and not SDP, the equipment listed under the heading "Equipment List – Security" on Appendix B to this Agreement, which includes XTS5000 radios for all 95 users designated by SDP and 5 spare XTS5000 radios, and all programming and other services required to make the radios fully operational on the City system, not later than 75 days following the execution of an Intergovernmental Agreement between the City and SDP. At the time such equipment is provided to the School District, the School District will return to the City the 25 City display radios and the 30 City Type 1 radios currently loaned to the School District by the City on a trial basis. Costs of installation and removal of existing equipment will be paid by the City.

2. In Phase II of the implementation of this Agreement, the City will provide access to the City radio system for an additional 275 SDP users, designated by SDP, and will furnish, at the cost of the City and not SDP, 275 XTS5000 radios and other equipment listed under the heading "Equipment List – School Operations" on Appendix B to this Agreement, together with programming and other services required to make the radios fully operational on the system. The City will also provide to SDP eight Base Station/Mobile-in-the-Tray radios for use by school bus dispatchers. The City will furnish the radios and access at a time agreed to by the City and SDP, before May 31, 2009. Costs of installation and removal of existing equipment will be paid by the City.

3. The City will provide to SDP, at the cost of the City and not SDP, the number of City XTL2500 mobile radios on the City Radio System for use on school buses equal to the number of SDP XTL2500 mobile radios on the City Radio System for use in school buses which the School District itself purchases, up to a total of 309. Such City match of School District effort to furnish each school bus with a mobile radio on the City Radio System will continue until the termination of this Interagency Agreement including any renewal term, or until the fifth year anniversary of the Effective Date, or until each school bus is provided with one mobile radio, whichever occurs first. All mobile radios used by the School District or on school buses will be set at a power level of no more than 10 watts or whatever other level is required by the City in order to promote an acceptable balance between the power use of mobile and portable radios and prevent desensing of portable radios within the network. Costs of installation and removal of existing equipment will be paid by the City for all radios purchased by the City. The SDP has purchased and installed (44) XTL2500 mobile units in busses, as recommended by the City. The City will provide to SDP, at the cost of the City and not SDP, 44 XTL2500 mobile radios, and access the City Radio System within 90 days following the execution of this agreement. The City will be notified whenever the SDP issues and RFP for new busses, equipped with new radios or if new

radios alone are being purchased. The City will provide the matching units within 90 days of the notification by the SDP.

4. For the duration of the City's contract with Motorola for maintenance services (which currently continues until June 30, 2009, and for which the City has an option to renew through June 30, 2010), the City will make Motorola maintenance services for radios, consolettes, and other equipment it furnishes to SDP available, at SDP cost, for the maintenance charges Motorola charges to the City, and with the same maintenance service levels (problem response and fix times, escalation procedures, etc.) Motorola provides to the City, as set forth in the City's contract with Motorola.

5. System coverage and performance parameters provided to SDP will be the same as the coverage and performance parameters provided by Motorola under its contract with the City, as set forth in the contract.

6. The City will furnish engineering assistance to SDP for the purposes of assuring proper City Radio Systems operation at the School District headquarters at 440 N. Broad Street, and of resolving City Radio System coverage problems in the following three schools: Martin Luther King Jr. High School, Bartram High School, and Ada H. Lewis Middle School. SDP will be responsible, at its cost, for implementing any resulting solutions. SDP will be responsible for evaluating, and for determining and implementing solutions to any other coverage problems in SDP facilities.

APPENDIX B

Equipment List – Security (Office of Climate and Safety) [for 95 users, with 5 spares]

ITEM	MODEL / DESCRIPTION	#	SPECIAL NOTES
	PORTABLE RADIOS *Radio Pricing does **NOT** include programming		
XTS5000, Model II, Standard Package	**6 LINE/12 CHARACTER DISPLAY**		
H18UCF9PW6 N	ASTRO XTS5000 Type II Portable	100	Required with Basic Radio
Q806	ADD: SOFTWARE ASTRO DIGITAL CAI OPERATION	100	Required with Basic Radio
H38	ADD: SMARTZONE SYSTEM SOFTWARE	100	Required with Basic Radio
H14	ENH: ENHANCED DIGITAL ID DISPLAY	100	Required with Basic Radio
Q393	IMPRES NIMH FM BATTERY OPTION (NNTN4436)	100	Required with Basic Radio
H885	3yr. Depot Service	100	
PRO	Radio Programming at Wireless Electronics	100	
NNTN6034A	IMPRES SMART Li-ION 4000MAH NON-RUGGEDIZED	200	Battery-Special Pricing
Belt Clip & Carry Cases			
NTN8386	CASE W/SWIVEL BELT LOOP T STRAP	100	Carrying Case(s)
NLN7968	CHARGER,RACK MOUNT FOR 6 UNIT	2	Multi Unit Chargers
WPLN4108 R	IMPRES SIX UNIT CHARGER (110V)	12	Multi Unit Chargers
RMN5067A	COMMANDER SPEAKER MIC **(Non Submersible)**	100	Speaker Microphones

ITEM	MODEL / DESCRIPTION	#		SPECIAL NOTES

FIXED CONTROL STATIONS

CONSOLETTE RADIO				
L20URS9PW1N	XTL5000 10-35W 762-870MHZ	3		Required with Basic Radio
G114	ENH: DIGITAL PTT-ID CONSOL	3		Required with Basic Radio
G51	ENH: SMARTZONE/SINGLETONE SYSTEM SO	3		Required with Basic Radio
G806	ENH: ASTRO DIGITAL CAI OPERATION	3		Required with Basic Radio
TDF6441	BASE ANT 800 MHZ	3		Required with Basic Radio
G80	ADD: W7 HW SETUP CONSOLETTE	3		Tone Remote Setup
L146	ADD: TONE REMOTE CONTROL XTL5000	3		Allows for Tone Remote Control as well as digital control from a Gold Series Console.
G78	ENH: TWO (2) YEAR EXTENDED SERVICE	3		
	Radio Programming at Wireless Electronics	3		

Equipment List – School Operations

ITEM	MODEL / DESCRIPTION	QTY	SPECIAL NOTES
	PORTABLE RADIOS *Radio Pricing does **NOT** include programming		
XTS5000, Model II, Standard Package	**6 LINE/12 CHARACTER DISPLAY**		
H18UCF9PW6 N	ASTRO XTS5000 Type II Portable	275	Required with Basic Radio
Q806	ADD: SOFTWARE ASTRO DIGITAL CAI OPERATION	275	Required with Basic Radio
H38	ADD: SMARTZONE SYSTEM SOFTWARE	275	Required with Basic Radio
H14	ENH: ENHANCED DIGITAL ID DISPLAY	275	Required with Basic Radio
Q393	IMPRES NIMH FM BATTERY OPTION (NNTN4436)	275	Required with Basic Radio
H885	3yr. Depot Service	275	Required with Basic Radio
Programming-All Models			
PRO	Radio Programming at Wireless Electronics	275	
XTS5000, Accessories			
Batteries			
NNTN6034A	IMPRES SMART Li-ION 4000MAH NON-RUGGEDIZED	275	Battery-Special Pricing
Belt Clip & Carry Cases			
NTN8266	BELT CLIP KIT	275	Carrying Case(s)
Chargers			
NTN1873	CHARGER, Impress RAPID SINGLE UNIT 110V	275	Single Unit Chargers
Antennas			
NAF5037	ANTENNA, 806-870 MHZ 1/2 WAVELENGTH WHIP	275	Antennas

Equipment List – Transportation

	FIXED CONTROL STATIONS **Can replace the XTL5000 with XTL2500 radio**		
CONSOLETTE RADIO			

L20URS9PW1N	XTL5000 10-35W 762-870MHZ	5		Required with Basic Radio
G114	ENH: DIGITAL PTT-ID CONSOL	5		Required with Basic Radio
G51	ENH: SMARTZONE/SINGLETONE SYSTEM SO	5		Required with Basic Radio
G806	ENH: ASTRO DIGITAL CAI OPERATION	5		Required with Basic Radio
TDF6441	BASE ANT 800 MHZ	5		Required with Basic Radio
G80	ADD: W7 HW SETUP CONSOLETTE	5		Tone Remote Setup
L146	ADD: TONE REMOTE CONTROL XTL5000	5		Allows for Tone Remote Control as well as digital control from a Gold Series Console.
G78	ENH: TWO (2) YEAR EXTENDED SERVICE	5		
	Radio Programming at Wireless Electronics	5		

MOBILE RADIOS

ITEM	MODEL / DESCRIPTION	QTY	SPECIAL NOTES
M21URM9PW1N	**XTL2500 MOBILE**	**309**	**MATCH SDP Purchases**
G806	**CAI**	**309**	
G114	**ID DISPLAY**	**309**	
G51	**SMARTZONE**	**309**	
G444	**CONTROL HEAD SOFTWARE**	**309**	
G442	**XTL2500 CONTROL HEAD**	**309**	
W22	**PALM MICROPHONE**	**309**	
G66	**DASH MOUNT**	**309**	
	PROGRAMMING	**309**	
	STANDARD 800 MHz ANTENNA	**309**	