

Sponsors:	<u>Commissioner Bennett</u>
	<u>Commissioner Powell</u>
Second Reading:	<u>March 28, 2022</u>
Publication Date:	<u>April 7, 2022</u>

ORDINANCE NO. 2022 - 010

**AN ORDINANCE OF THE CITY OF FRANKLIN, KENTUCKY
APPROVING AN INTERLOCAL COOPERATION AGREEMENT FOR THE
PLACEMENT, OPERATION, AND MAINTENANCE OF A RADIO
COMMUNICATION SYSTEM AND TOWER FOR THE
CITY OF FRANKLIN AND SIMPSON COUNTY, KENTUCKY**

WHEREAS, the City of Franklin and County of Simpson have reached an agreement with regard to the placement, operation and maintenance of a radio communications system and tower for the City of Franklin and Simpson County, Kentucky; and,

WHEREAS, the City of Franklin and County of Simpson require the passage of an Ordinance approving said interlocal agreement and authorizing the Mayor for the City of Franklin to execute said interlocal agreement; and,

WHEREAS, it is in the best interest of the citizens of the City of Franklin that the City adopt this Ordinance.

NOW, THEREFORE, be it ordained by the City of Franklin, Kentucky, acting by and through its Board of Commissioners, as follows:

1. The Board of Commissioners of the City of Franklin, Kentucky hereby approves the terms and conditions of the Interlocal Cooperation Agreement for the Placement, Operation, and Maintenance of a Radio Communication System and Tower for the City of Franklin and Simpson County, Kentucky, a copy of which is attached hereto and incorporated herein by reference as Exhibit 1.

2. The Mayor of the City of Franklin is hereby authorized to execute any and all documents necessary and appropriate to effectuate the intent of this Ordinance and the interlocal agreement including, but not limited to the interlocal agreement.

This ordinance shall take effect upon its passage, approval, and publication. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions.

All ordinances or parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

March 14, 2022

FIRST READING

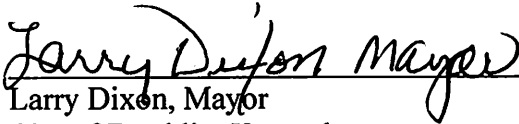
March 28, 2022

SECOND READING

At a meeting of the Board of Commissioners of the City of Franklin, Kentucky, held on March 28, 2022, on motion made by Commissioner Powell and seconded by Commissioner Williams, the foregoing ordinance was adopted, after full discussion, by the following vote:

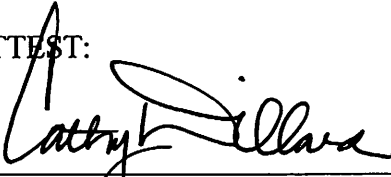
<u>Yes</u>	JAMIE POWELL
<u>Yes</u>	HERBERT WILLIAMS
<u>Yes</u>	BROWNIE BENNETT
<u>Yes</u>	WENDELL STEWART
<u>Yes</u>	MAYOR LARRY DIXON

APPROVED BY:



Larry Dixon, Mayor
City of Franklin, Kentucky

ATTEST:



Cathy Dillard, City Clerk
City of Franklin, Kentucky

**INTERLOCAL COOPERATION AGREEMENT
FOR THE PLACEMENT, OPERATION
AND MAINTENANCE OF A RADIO COMMUNICATION
SYSTEM AND TOWER FOR THE CITY OF FRANKLIN
AND SIMPSON COUNTY, KENTUCKY**

THIS INTERLOCAL COOPERATION AGREEMENT (The “Agreement”) is made and entered into and deemed effective as of the ____ day of _____, 2022, by and between the County of Simpson, Kentucky (hereinafter referred to as “County”), P. O. Box 242, Franklin, Kentucky 42135; and the City of Franklin, Kentucky (hereinafter referred to as “City”), P. O. Box 2805, Franklin, Kentucky 42135 (each referred to herein individually as “Party”, or collectively as “Parties”), each a “public agency” as defined by KRS 65.230.

WHEREAS, under the Interlocal Cooperation Act (the “Act”), Sections 65.210 to 65.300, inclusive, of the Kentucky Revised Statutes (“KRS”), as amended, any power or powers, privileges or authority exercised or capable of exercise by a public agency (including a city, a county, or any other political subdivision of the Commonwealth) may be exercised jointly with another public agency under an agreement (an “interlocal cooperation agreement”) for joint or cooperative action pursuant to the provisions of the Act; and,

WHEREAS, the City and County both realize that the current radio communications system available for use throughout Simpson County does not provide adequate radio coverage for first responders; and,

WHEREAS, public safety and public service agencies operating in Franklin and Simpson County would greatly benefit from the addition of a dedicated tower and a new radio communications system.

NOW, THEREFORE, it is mutually acknowledged and agreed by and between the Parties as follows:

SECTION 1
DEFINITIONS

For purposes of this Agreement, the following terms shall have the meanings set forth herein:

1. **Simpson County** – “County” shall mean Simpson County, Kentucky. Any reference in this Agreement to Simpson County shall include the respective officers, agents, employees and departments of Simpson County.
2. **Franklin-Simpson Radio Communications System (RCS)** – “RCS” shall mean the Franklin and Simpson County digital radio communications system serving all RCS Parties and Associates.
3. **City** – “City” shall mean the City of Franklin, Kentucky. Any reference in this Agreement to “City” shall include the respective officers, agents, employees and departments of the City of Franklin.
4. **Day** – “Day” shall mean a calendar day.
5. **FCC** – The “FCC” shall mean the Federal Communications Commission.
6. **Fiscal Year** – “Fiscal Year” shall mean the fiscal year which begins each July 1 and ends on June 30 of the following year.
7. **IR Site** – The “IR Site” shall mean the “intelligent repeater” site which is a non-simulcast trunked site that utilizes independent frequencies, and which is linked to the Master Site Controller.
8. **Support Vendor** – “Support Vendor” shall mean a vendor properly selected (in accordance with applicable state laws) to provide maintenance, repair, troubleshooting, and/or related services for the RCS.

SECTION 2
PURPOSE AND ADMINISTRATORS FOR THE AGREEMENT

The general purpose of this Agreement is for the City and County to design, construct, operate, and maintain a new communications system and antenna tower site in the City of Franklin, Simpson County, Kentucky and to implement and install a new radio communications system. This Agreement, and the terms, conditions, and obligations contained herein, shall be administered and managed jointly by the County Judge Executive of Simpson County, Kentucky and the City Manager of the City of Franklin, Kentucky pursuant to KRS 65.250(2).

SECTION 3
TERM OF AGREEMENT; AND EFFECTIVE DATE

This Agreement shall be deemed to be effective on the date of the last party's execution. The initial term of this Agreement shall be for seven (7) years, subject to the rights of withdrawal and termination as contained herein. Following the initial seven (7) year term, this Agreement may be renewed for ten (10) additional five-year periods, only upon express written agreement of the Parties, with each such period being subject to the rights of withdrawal and termination as contained herein.

SECTION 4
INSTALLATION OF EQUIPMENT AT THE TOWER SITE

Currently, the location for the tower site has not been designated. If the City and County are required to purchase a tract of land for the tower to be constructed upon, the parties will jointly and equally take title to and pay all costs associated with the acquisition of the property including, but not limited to purchase price of the land, title examination, title insurance, document preparation, and any other associated expenses. Exhibit 1, attached hereto and incorporated herein by reference for all purposes, delineates all equipment to be installed at the tower site. Exhibit 2, attached hereto and incorporated herein by reference for all purposes,

delineates a scope of work from Motorola, the vendor performing the installation work for the City and County. The installation of the site equipment shall be in accordance with the scope of work attached. The City and the County shall be equally financially responsible for the installation of all equipment, and shall additionally be equally financially responsible for permitting and the provision of infrastructure and separate utilities for that equipment's use.

SECTION 5
INITIAL EQUIPMENT PAYMENT BY THE PARTIES, MAINTENANCE COSTS, AND
POTENTIAL INCOME FROM TOWER

5.01 – Payment schedule: The chart below sets forth the tentative payment schedule for the initial purchase of the tower and communications equipment:

Upfront Payment	\$ 1,475,071.00		Fiscal Court's	
		City's portion	portion	Timing
Principal	\$ 1,475,071.00	\$737,535.50	\$737,535.50	
Total	\$ 1,475,071.00	\$737,535.50	\$737,535.50	Pay by April 4, 2022

Unfinanced contract		\$ 1,475,071			
	Estimated timing	Total	City's portion		Notes
25% with contract	2/28/22	\$368,767.75	\$184,383.88	\$184,383.88	Pay in January / February
60% with shipment	Q3/Q4 2022	885,042.60	442,521.30	442,521.30	this \$553k anticipated to be paid in FY23
10% upon installation	2023	147,507.10	73,753.55	73,753.55	
5% with final acceptance	2023	73,753.55	36,876.78	36,876.78	
Total		\$1,475,071.00	\$737,535.50	\$737,535.50	

5.02 – Maintenance of Tower and Radio Equipment: Any and all maintenance costs and expenses incurred for the operation of the tower, equipment, and structures at the tower site shall be paid equally by the parties. In addition, in the event any of the structures or equipment located at the tower site are damaged or become inoperable for any reason, to the extent said damage is not covered by insurance, the costs to repair or replace said inoperable or damaged items shall be borne equally by the parties. With regard to the individual radios and equipment assigned to City or County employees or representatives, each party shall bear its own

costs of repairing or replacing the equipment assigned to that party. The parties have agreed to make the initial purchase of radios and necessary supporting equipment for the Franklin-Simpson Ambulance Service. After the initial purchase and installation of the equipment for the Ambulance Service, the Ambulance Service shall be responsible for any and all required repair or replacement costs for its equipment.

5.03 - Adding Additional Equipment to Tower : After the tower is constructed and operational, it is anticipated that other entities may be allowed to lease space on the tower for the installation of antennas or equipment. Any and all monies received or derived from these leases shall be held in an account to be managed by the County. These monies, less an amount of money required to maintain the required minimum balance in the account, shall be used for the maintenance and operational expenses for the RCS. In the event that the parties decide to distribute any excess money from this account or in the event one party withdraws from this Agreement, the monies in this account shall be distributed equally between the parties.

SECTION 6 **RCS'S OPERATIONS AT THE TOWER SITE**

Subsection 6.01 - Site Access by RCS's personnel and Support Vendors: Although it is anticipated that the equipment building will be constructed such that the parties' personnel or their Support Vendors can access a majority of the equipment that may be needed to resolve any RCS performance issues, it is understood that such technicians may occasionally require access to the equipment housed on the site but outside the equipment building. Before being granted access to the secured areas of the site, all contractors working at the tower site, as well as any of the parties' personnel, third party personnel, and any Support Vendors, shall be required to provide proof establishing compliance with the County's insurance requirements.

Subsection 6.02 - Access to address emergency repair situations: Because the RCS provides public safety radio communications in emergency situations, both Parties understand the need for swift resolutions of issues affecting the radio infrastructure installed at the tower site. In the event that the parties' personnel, Support Vendors, or their agents need immediate access to the site, the City and/or County will provide business-hour and after-hour contacts to facilitate access to this site. To the extent practical, access to the secure area of this facility should be coordinated during regular business hours. As a prerequisite to access to the site, all personnel from the City, County, third party service organizations, and any Support Vendors shall have on file with County current proof of meeting County's insurance requirements.

SECTION 7
INSURANCE & MAINTENANCE

Subsection 7.01 - County Provided Insurance: County provides insurance on its properties and, upon request by City, will make available proof of same on the tower site and improvements relating to the RCS, the subject of this Agreement. The parties agree to equally divide the costs of the insurance on the land, structures and equipment at the tower site. The party that maintains the insurance coverage shall bill the other party, annually, for one-half of the cost of said insurance.

SECTION 8
UTILITY COSTS

Subsection 8.01 - Utilities: City and County equally bear the costs of all utilities necessary and required for the operation of the tower site. County shall bill City, monthly or annually, for one half of the costs of said utilities.

SECTION 9
WITHDRAWAL AND TERMINATION

9.01 - Right to Withdraw: Either Party has the right to withdraw from this Agreement by providing express written notice to the other Party of its decision to withdraw at least one-hundred-eighty (180) days prior to its projected withdrawal date. Upon withdrawal, the parties agree to comply with the provisions of Section 9.02 hereinbelow.

9.02 – Rights and Duties in the Event of a Party Withdrawal: In accordance with Rev. Proc. 87-56, specifically Section 1.3 of the table contained in Section 6 of said Revenue Procedure, the useful life of land improvements including radio and television transmitting towers is twenty (20) years. The parties agree to straight-line depreciation for the useful life as set forth in the revenue procedure above and accepted by the Internal Revenue Service for purposes of calculating a value in the event of the withdrawal of a party prior to the end of the RCS equipment's useful life.

When the tower, structures, and equipment are constructed, all work is completed, and the equipment is operational, the system shall be placed into service. The parties will obtain the final costs of the RCS at the tower site ("total tower site equipment costs") for purposes of this section at that time. The individual radios owned or controlled by the individual parties shall not be included in the total tower site equipment costs. The total tower site equipment costs shall be used as the initial basis for the depreciation calculation set forth in this section. In the event a party gives notice of its intent to withdraw prior to the expiration of twenty (20) years following the date that the RCS at the tower site is constructed and placed into service by the parties, the non-withdrawing party shall determine whether to terminate this agreement and dispose of the assets or continue to use and maintain the RCS at the tower site.

In the event the non-withdrawing party does not wish to continue operating the tower site, the parties shall use the then current legally required methods (surplus, etc.) for disposal of the tower and equipment for the highest and best use and/or price. Any proceeds generated by and through the disposal of the RCS at the tower site (not including each party's individually controlled radio equipment), shall be divided equally between the parties.

In the event the non-withdrawing party desires to continue to utilize the RCS at the tower site, the non-withdrawing party shall pay one-half of the total undepreciated amount of the RCS at the tower site to the withdrawing party at the actual time of the withdrawal (after the period of time after receipt of the notice of withdrawal expires).

For illustration purposes only, assume the total, final costs of installation and construction of the RCS at the tower site is \$2,000,000.00 and the system is placed in service on July 1, 2023. The assets would be fully depreciated (except for any non-depreciable assets such as land) on June 30, 2043. If a party provides notice of its intent to withdraw on January 1, 2033, and actually withdraws on June 30, 2033, one-half of the depreciable useful life will have elapsed. Accordingly, the non-withdrawing party (assuming the non-withdrawing party does not elect to terminate this agreement and dispose of the assets) will be required to pay the withdrawing party Five Hundred Thousand Dollars (\$500,000.00), or one-half of the then depreciated balance on the RCS at the tower site equipment and improvements at the time of withdrawal.

9.03 - Termination upon natural disaster: Should the tower site and improvements located thereon be destroyed by natural or other unforeseen disaster, this Agreement shall terminate, unless the parties agree to reconstruct and/or reinstall the improvements at the site. In the case where the parties decide not to reconstruct or reinstall the improvements at the site, both parties would be released from further obligations under this agreement.

SECTION 10
LIMITATION OF LIABILITY

In no event shall one Party – including its agents, employees, officers, and representatives – be liable for any loss, damage, cost or expense attributable to the acts, omissions, negligence, willful misconduct or misrepresentations by the other Party.

SECTION 11
MISCELLANEOUS PROVISIONS

11.01 - Severability: If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Agreement will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of all Parties shall be construed and enforced in accordance therewith. All Parties acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is the desire and intention of each that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, give effect to the intent of this Agreement and be deemed to be valid and enforceable.

11.02 - Construction: Each Party hereto acknowledges that it and its counsel have reviewed this Agreement, and that there will be no presumption that any ambiguities will be resolved against the drafting party in the interpretation of this Agreement.

11.03 - Incorporation of Exhibits and Attachments: All of the exhibits and attachments referred to in this Agreement are incorporated by reference as if set forth herein verbatim. Attached exhibits are as follows:

- Exhibit 1 RCS System Owned-Enhancement Equipment
- Exhibit 2 Motorola Statement of Work

Exhibit 3 Placement of Building and Equipment

11.04 - No Waiver of Immunities: Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to any Party or their past or present officers, employees, or agents, nor to create any legal rights or claim on behalf of any third party. Each Party does not waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Kentucky and of the United States.

11.05 - Choice of Law; Jurisdiction and Venue: This Agreement shall be performable in Simpson County, Kentucky. This Agreement and all of the rights and obligations of the Parties and all of the terms and conditions shall be construed, interpreted, and applied in accordance with and governed by and enforced under the laws of the State of Kentucky, without reference to its conflicts of law provisions. Simpson County shall be the sole place of jurisdiction and venue for any legal action arising from or related to this Agreement.

11.06 - Assignment: Except as otherwise provided in this Agreement, the rights and duties of the Parties may not be assigned or delegated without the prior written consent of both Parties. Any authorized assignment or delegation of such rights or duties shall be consistent with the terms of any contracts, resolutions, indemnities, and other obligations of this Agreement.

11.07 - Notice: Any notice given hereunder shall be in writing, and shall be delivered by personal delivery, or by registered or certified mail, with return receipt requested, at the address of the respective Parties indicated below:

Simpson County
c/o County Judge Executive
P.O. Box 242
Franklin, Kentucky 42135

City of Franklin
c/o City Manager
P.O. Box 2805
Franklin, Kentucky 42135

The above addresses for notice may be changed at any time by delivering written notice of change to the other Party at the appropriate address.

11.09 - Gender, Number and Headings: Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The headings and section numbers are for convenience only and shall not be considered in interpreting or construing this Agreement.

11.10 - Attorney Fees: In any lawsuit concerning this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees from the non-prevailing party, plus out-of-pocket expenses such as deposition costs, telephone calls, travel expense, expert witness fees, court costs, and other reasonable expenses.

11.11 - Compliance with Applicable Laws: All Parties agree to comply with all applicable federal, state and local ordinances, laws, rules, regulations, and lawful orders of any public authority. Nothing in this Agreement is intended to conflict with any Party's zoning, franchise, or health and safety authority.

11.12 - Entire Agreement: This Agreement constitutes the entire agreement between the Parties, and supersedes all other oral and/or written negotiations, agreements, and understandings of every kind. The Parties understand, agree, and declare that no promise, warranty, statement, or representation of any kind whatsoever which is not expressly stated in this Agreement has been made by any Party, or its respective officers, employees, or other agents to induce execution of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by the duly authorized officers or officials of the Parties hereto, effective as of the date first above written.

COUNTY OF SIMPSON, KENTUCKY

Mason Barnes, County Judge Executive

Attest: _____
Pam Rohrs, Clerk

COMMONWEALTH OF KENTUCKY
COUNTY OF SIMPSON

The foregoing Interlocal Cooperation Agreement was on this _____ day of _____, 2022 acknowledged before me by Mason Barnes, County Judge Executive of Simpson County, Kentucky.

Notary Public

My Commission Expires: _____

CITY OF FRANKLIN, KENTUCKY

Larry Dixon

Larry Dixon, Mayor

Attest: *Cathy Dillard*

Cathy Dillard, City Clerk

COMMONWEALTH OF KENTUCKY

COUNTY OF SIMPSON

The foregoing Interlocal Cooperation Agreement was on this _____ day of _____, 2022 acknowledged before me by Larry Dixon, Mayor of the City of Franklin, Kentucky.

Notary Public

My Commission Expires: _____

APPROVED AS TO FORM AND APPROVED
AS IN COMPLIANCE WITH KRS 65.210 TO
KRS 65.300
Kentucky Department for Local Government
1024 Capital Center Drive, Suite 340
Frankfort, KY 40601

By: _____

Print Name: _____

Title: _____