

AGREEMENT OF SALE

This Agreement of Sale (Agreement) is made by and between the CITY OF BETHLEHEM, doing business at 10 East Church Street, Bethlehem, Pennsylvania, 18018 (hereinafter referred to as "City")

AND

NORTHAMPTON COUNTY, doing business through the Northampton County Emergency Management Services at 100 Gracedale Avenue, Nazareth, Pennsylvania, 18064 (hereinafter referred to as "County") for the acquisition of communications equipment as specified herein.

IN CONSIDERATION OF THE COVENANTS contained in this Agreement of Sale, the parties to this Agreement agree as follows:

1. **Sale of Equipment and Related Components:** The City will sell, transfer, assign and deliver to the County a Motorola ASTRO 7.14 trunked radio system and associated items (hereinafter referred to as "System") specified in Attachment "A" to this Agreement as well as all necessary parts, cables, components, software, etc., whether specified or not, to provide a complete and operating system

To the extent the City's right to sell, transfer, assign and deliver any part of the System (hardware or software) is limited by the reservation of proprietary rights by any third party manufacturer, supplier or vendor, City and County will cooperate to secure necessary permissions and assignments from such third parties to accomplish the purposes of this Agreement. County shall accept terms and conditions of equipment and software manufacturers, suppliers and vendors imposed by them on a buyer, transferee, licensee or assignee as a condition of consenting to the sale, transfer, licensing, assignment and delivery, as the case may be, of System hardware, software and applicable warranties to County.

2. **Purchase Price:** The County will accept the System and pay the City the sum of one million three hundred sixty seven thousand dollars (\$1,367,000) in equal payments of three hundred forty one thousand seven hundred fifty dollars (\$341,750) over a period of four (4) years and upon receipt of an invoice presented by the City. The first payment shall be due following the execution of this Agreement and within thirty (30) days of the County's receipt of the City's first invoice. Thereafter, invoices shall be presented and payment made in like manner on or about the anniversary date of this Agreement in Years 2-4. The County and the City acknowledge the sufficiency of this consideration. The System has been priced as a complete and integrated system.
3. **FCC License Transfer:** This Agreement is contingent on the City transfer of its FCC licenses WNWQ636 and WPFA301 to the County. Failure to transfer the licenses, whether by the City or administrative decision of the FCC, shall make this Agreement null and void.

4. **Delivery of System:** The parties acknowledge the System is installed at various sites in the City and County, and this Agreement is contingent upon the System remaining at those sites at the time of its transfer from the City to the County. Those items that are not fixed or physically installed will be delivered by the City to the County in a mutually-acceptable manner.
5. **Risk of Loss:** The risk of loss from any casualty to the System, regardless of the cause, shall be on the City until the System has been transferred to the County. The County shall provide, at its expense, insurance on the System until payment in full is made to the City.
6. **Warranties:** THE SYSTEM IS SOLD 'AS IS' AND THE CITY EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. The City does not assume, or authorize any other person to assume on behalf of the City, any liability in connection with the sale of the System. The City's above disclaimer of warranties does not, in any way, affect the terms of any applicable warranties from the manufacturer of the System.
7. **System Inspection:** The County will be given the opportunity to inspect the System or to have it inspected prior to the execution of this Agreement, and the County will accept the System in its then-existing condition. Further, the City disclaims any warranty as to the condition of the System.
8. **Title:** Title to the system will remain with the City until the execution of this Agreement by both the City and the County. The City will provide to the County a document of title for the System.
9. **Security Interest:** The City retains a security interest in the System until it is paid in full.
10. **Claims:** The County's failure to give notice of any claim within thirty (30) days of receipt of title to the System will constitute an unqualified acceptance of the System and a waiver by the County of all claims with respect to the System.
11. **Excuse for Delay or Failure to Perform:** The City will be not be liable in any way for any delays due to labor disputes, transportation shortages, delays in receipt of materials, priorities, fires, accidents and other causes beyond the control of the City. If the City, in its sole judgment, will be prevented directly or indirectly, on account of any cause beyond its control, from delivering the System in accordance with this Agreement, the City will have the right to terminate this Agreement by notice in writing to the County, which notices will be accompanied by a full refund of all sums paid by the County pursuant to this Agreement.

12. **Remedies:** The County's exclusive remedy against City and the City's limit of liability to County for any and all losses or damages resulting from defects of the System equipment, related components and software, or from any other cause, shall be the lesser amount of the County's actual payments for the System or the amount of the County's actual loss. City's liability hereunder shall be secondary and supplemental, not joint or concurrent, to County's right to warranty relief against any manufacturer, vendor or supplier. Nothing in this paragraph shall be interpreted or enforceable to modify or reduce the limitations of City's liability effected under paragraphs 6, 7 and 10, above.
13. **Cancellation:** Either the City or the County may exercise an option to cancel this Agreement subsequent to its execution by both parties but before the first payment is made by the County to the City.
14. **Notices:** Any notice to be given or document to be delivered to either the City or the County pursuant to this Agreement will be sufficient if delivered personally or sent by the United States Postal Service or other delivery service, return receipt required, to the addresses specified below. Any written notice or delivery of documents will have been given, made and received on the day of delivery if delivered personally or upon the sender receiving the written return receipt from the delivery service.

City: City of Bethlehem
Director of Emergency Management
10 East Church Street
Bethlehem, PA 18018

County: Northampton County Emergency Management Services
Director of Emergency Management Services
100 Gracedale Avenue
Nazareth, PA 18064

15. **GENERAL PROVISIONS:**

Headings are inserted for convenience only, and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.

All representations and warranties of the City contained in this Agreement will survive the closing of this Agreement.

Either party to this Agreement may assign its rights under this Agreement upon the approval of the other party, which approval shall not be unreasonably withheld, and further subject to permission or agreement required of any third party manufacturer, vendor or supplier. Such assignment will not change the duty of either party, increase the burden or risk involved, or impair the chance of obtaining the performance of the Agreement. Each party has a substantial interest in having the other party perform or control the acts required by this Agreement.

This Agreement cannot be modified in any way except in writing by both parties to this Agreement.

This Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania. The venue of any dispute arising under this Agreement shall lie exclusively within the Court of Common Pleas of Northampton County.

Except where otherwise stated in this Agreement, all terms employed in this Agreement shall have the same definition as set forth in the Uniform Commercial Code in effect in the Commonwealth of Pennsylvania on the date of execution of this Agreement.

If any clause in this Agreement is held unconscionable by any court of competent jurisdiction, arbitration panel or other official finder-of-fact, the clause will be deleted from this Agreement and the balance of this Agreement will remain in full force and effect.

This Agreement will inure to the benefit of and be binding upon the City and County and their respective successors and assigns.

16. **Authority to Execute:** Each party represents it has all the necessary approvals, consents and authorizations required to enter into this Agreement, and the person(s) executing this Agreement on behalf of the parties has the authority to do so.
17. **Entire Agreement:** This Agreement constitutes an agreement of sale between the parties, and the County acknowledges that it has not relied upon any representation of the City as to prospective performance of the System, but has relied upon its own inspection and investigation of the subject matter. Upon execution of this Agreement, the parties will execute a memorandum of understanding for the ongoing use and operation of the System and a lease governing the sites and terms where System equipment shall be located. These three documents are related to and dependent upon each other and will constitute the entire understanding between the parties.
18. **Effective Date:** This Agreement of Sale shall become effective and binding upon the later of the second party to both fully execute and secure its governing body's approval of the Agreement to the extent such approval may be required by the party.

IN WITNESS WHEREOF the parties have executed this Agreement of Sale on the dates indicated with their signatures, below.

NORTHAMPTON COUNTY

ATTEST:

Secretary

By: _____ (Seal)
Lamont McClure
County Executive

CITY OF BETHLEHEM

ATTEST:

George Yasso
City Controller

By: _____ (Seal)
Robert J. Donchez
Mayor

I certify that the within Agreement is needed, necessary and appropriate.

By: _____ Date: _____
City of Bethlehem Department Head
Print Name: _____

ATTACHMENT "A"
Communications System Equipment List

Location	Item	Model	Serial #	Quantity
City Hall	- 7.14 Network Management Client	HP	SFUG000E	1
	- Terminal Server	4000T	147CBY0026	1
	- Core Backhaul Switch 01		CN57DRR06N	1
	- Core Backhaul Switch 02		CN57DRR0V3	1
	- Core CWR Interface 01		147IRL0203	1
	- Core CWR Interface 02		147IRW0018	1
	- Core Router 01	S6000	147CRX0031	1
	- Core Router 02	S6000	147CRX0032	1
	- Gateway GPRS Service Node	S6000	147CRX0039	1
	- Gateway Router 01	S6000	147CRX0040	1
	- Gateway Router 02	S6000	147CRX0041	1
	- Core LAN Switch 01	T7856A	147CRX0042	1
	- Core LAN Switch 02	T7856A	147CRX0043	1
	- 7.14 Network Archive Server			1
	- Digital Archive Server		877CRX0005	1
	- 7.14 VMS Core 01	M3	280CRX0001	1
	- 7.14 VMS Core 02	M3	280CRX0000	1
	- Juniper Firewall	SSG20		1
	- Juniper Firewall	SSG140	185102015600049	1
	- UEM DMZ Switch	ProCurve	CN816ZT0J1	1
	- UEM Border Router	S6000	147CND1911	1
	Trak Time Sync			1
	KVM Switch 01			1
	KVM Switch 02			1
	Site Controller 01	GCP8000		1
	Site Controller 02	GCP8000		1
	Gateway Router 01	ST2500B		1
	Gateway Router 02	ST2500B		1
	Gateway Router 03	ST2500B		1
	Gateway Router 04	ST2500B		1
	Gateway Router 05	ST2500B		1
	Gateway Router 06	ST2500B		1
	LAN Switch 01	2610		1
	LAN Switch 02	2610		1
	MOSCAD SDM ADV 01	F4544A	469SJN000X	1
MOSCAD SDM ADV 02	F4544A	469SJN003R	1	
MOSCAD SDM	SDM3000		1	
Interplexer	Harris		1	

Location	Item	Model	Serial #	Quantity
South Mountain	Radios w/ Power Supplies	GTR8000		6
	Tower-top Amplifier			1
	Antenna Combiner			1
	Antenna, cable, connectors, Polyphaser lightning protection			1
	Trak 9100 Time Sync	FQSTD		1
	Site Controller 01	GCP8000	5808000DC	1
	Site Controller 02	GCP8000	5808000DI	1
	Prime Router 01	GGM8000	CA155Z87C	1
	Prime Router 02	GGM8000	CA155Z6RX	1
	Prime LAN Switch 01	ProCurve	CN816ZT0CU	1
	Prime LAN Switch 02	ProCurve	CN817ZT1IU	1
	Prime Site Router 01	S6000	147YJM0502	1
	Site Access Router 01	S6000	147YJM0496	1
	Site Access Router 02	S6000	147YJM0473	1
	Sub-Site Router 01	ST2500B	147YJP0326	1
	Sub-Site LAN Switch 01	ProCurve	CN817ZT1HL	1
	Comparator	GCM8000	580800DE	1
	Comparator	GCM8000	580800DG	1
	Comparator	GCM8000	580800DL	1
	MOSCAD SDM ADV 01	SDM3000	580800004	1
	MOSCAD SDM ADV 02	SDM3000	580800PT	1
	CWR INTF Panel 01		147YJM0117	1
	Site Router- Spare	S6000	147YJP0589	1
	Site Router- Spare	S6000	147YJP0679	1
Site Router- Spare	S6000	147YJP0587	1	
Site Router- Spare	S6000	147YJM0524	1	
Williams Street	Radios w/ Power Supplies	GTR8000		6
	Tower-top amplifier			1
	Antenna Combiner			1
	Antenna, cable, connectors, Polyphaser lightning protection			1
	Comparator	GCM8000		1
	Comparator	GCM8000		1
	Comparator	GCM8000		1
	Trak 9100 Time Sync	FQSTD		1
	Site Router 01	ST2500B	147YJP0377	1
	Site LAN Switch 01	ProCurve	CN8202T0HX	1
	MOSCAD SDM ADV 01	SDM3000	58080000A	1
	Nfinity UPS		NB1250312600	1

Location	Item	Model	Serial #	Quantity
Electric Shop	Radios w/ Power Supplies	GTR8000		6
	Tower-top amplifier			1
	Antenna Combiner		FC30824A07FF	1
	Antenna, cable, connectors, Polyphaser lightning protection			1
	Trak 9100 Time Sync	FQSTD		1
	Site Router	ST2500B	147YJP0327	1
	Site Router 01	ST2500B	147CND2173	1
	Site Router 02	ST2500B	147CND2174	1
	Site LAN Switch	ProCurve	CN816ZT0CV	1
	LAN Switch 01	ProCurve	CN201ZT004	1
	LAN Switch 02	ProCurve	CN147ZT0N9	1
	Site Controller	GCP8000	5DEY0072	1
	Gateway Router 01	ST2500B	147CND2176	1
	Gateway Router 02	ST2500B	147CND2184	1
	Gateway Router 03	ST2500B	147CND2178	1
	Gateway Router 04	ST2500B	147CND2186	1
	Gateway Router 05	ST2500B	147CND2181	1
	MOSCAD SDM ADV01	SDM3000	58080000E	1
	Back-Up Base Station PD Disp 01	Quantar	255CFZ0146	1
	Back-Up Base Station NCIC 02	Quantar	255CFZ0149	1
	Back-Up Base Station Fire 03	Quantar	255CFZ0151	1
	Back-Up Base Station PubWrks 04	Quantar	255CFZ0150	1
	Back-Up Base Station EMS 05	Quantar	255CFZ0152	1
	Back-Up Base Station	Quantar		1
	Back-Up Base Station	Quantar		1
	Interplexer	Harris	712015	1