

Legal Counsel Approval *B.M.*
RL 22-295

Introductory No. R22-98
Permanent No. 222-98



**THE COUNCIL OF THE CITY OF BINGHAMTON
STATE OF NEW YORK**

Date: December 7, 2022

Sponsored by Council Members: Scaringi, Resciniti, Riley, Friedman, Burns, Scanlon, Strawn

Introduced by Committee: MPA

RESOLUTION

entitled

A RESOLUTION AUTHORIZING THE MAYOR
TO ENTER INTO THE BROOME COUNTY
INTEROPERABLE AGREEMENT FOR THE
CITY OF BINGHAMTON FIRE, POLICE AND
PUBLIC WORKS DEPARTMENTS

WHEREAS, the Mayor of the City of Binghamton wishes to enter into the Broome County Interoperable Agreement for the City of Binghamton Fire, Police and Public Works departments.

NOW, THEREFORE, the Council of the City of Binghamton, duly convened in regular session does hereby:

RESOLVE that the Council of the City of Binghamton hereby approves the above-subject Project; and be it further

RESOLVED that the Mayor of the City of Binghamton, or his designee, is hereby authorized to enter into the Broome County Interoperable Agreement, approved as to form and content by the Office of Corporation Counsel, for the City of Binghamton Fire, Police and Public Works departments as shown in the attached agreement.

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Sponsored by City Council Members:
Scaringi, Resciniti, Riley, Friedman, Burns, Scanlon,
Strawn

A RESOLUTION AUTHORIZING THE MAYOR TO
ENTER INTO THE BROOME COUNTY
INTEROPERABLE AGREEMENT FOR THE CITY
OF BINGHAMTON FIRE, POLICE AND PUBLIC
WORKS DEPARTMENTS

The within Resolution was adopted by the Council of
the City of Binghamton.

Date 12/17/22

City Clerk Christina G. Rogers

Date Presented to Mayor:

12/8/22

Date Approved

Mayor [Signature]

	Ayes	Nays	Abstain	Absent
Councilman Scaringi	✓			
Councilwoman Resciniti	✓			
Councilwoman Riley	✓			
Councilwoman Friedman				✓
Councilman Burns	✓			
Councilman Scanlon	✓			
Councilman Strawn	✓			
Total	6	0	0	1

Code of the City of Binghamton

Adopted Defeated

6 Ayes 0 Nays 0 Abstain 1 Absent

I hereby certify the above to be a true copy of the legislation adopted by the Council of the City of Binghamton at a meeting held on 12/17/22. Approved by the Mayor on 12/18/22 [Signature]

Broome County Interoperable Communications System Memorandum of Understanding

The parties to this Agreement shall be the County of Broome, a municipal corporation of the State of New York, (hereinafter "**County**") with its principal offices located at 60 Hawley Street, PO Box 1766, Binghamton New York, 13902, and City of Binghamton Fire Department (hereinafter "**User**"), with its principal offices located at 38 Hawley Street, Binghamton, NY 13901.

Witnesseth:

WHEREAS, Broome County operates the Office of Emergency Services, which among other things, is responsible for administering the operation of a county-wide Public Safety Answering Point; and

WHEREAS the Broome County Interoperable Communications System (hereinafter BCICS) is an integrated system of equipment and facilities necessary for the provision of county-wide radio communication services; and

WHEREAS, to provide for the safety and protection of the public and public safety responders, and to maintain the integrity of the BCICS, it is necessary to establish procedures for the use of the BCICS;

NOW, THEREFORE, in consideration of the benefits conferred and obligations incurred herein, the parties do mutually agree as follows:

1. **PURPOSE:** The BCICS is a system for providing emergency communication services, coordinated and operated by the County, which system includes, but is not limited to, communication towers, base stations, antennas, system controllers, equipment shelters, system frequencies, and subscriber radio equipment. The County hereby grants User access to the BCICS for the purpose of providing emergency communication services, subject to the terms of this Agreement.
2. **TERM:** This Agreement shall take effect on _____, 20____ and shall be for a term of ten years. Thereafter, this Agreement may be renewed by the parties for two additional five-year terms upon authorization from the governing boards of each party. Either party may terminate this Agreement by providing written notice, as provided for herein, at least sixty (60) days prior to the end of the term. Either party may terminate this Agreement for cause at any time, provided, however, that the party seeking to terminate shall provide written notice stating the cause and shall provide the other party thirty days to cure. Upon termination of the agreement User shall return all County owned and provided equipment. Additionally, unless otherwise authorized by the County, User agrees that any BCICS talk groups and frequencies will be removed from User owned equipment, at User's expense.
3. **OBLIGATIONS OF THE PARTIES:**
 - 3.1. **OWNERSHIP AND USE OF RADIO EQUIPMENT** – The County shall own the radio equipment listed on Exhibit A (hereinafter "County-assigned equipment"), attached hereto and made a part hereof, and hereby grants the User the right to use and operate said equipment. The User's obligation to return the equipment provided hereunder shall survive the expiration or termination of this agreement. User agrees not to sell, transfer or pledge this equipment without the prior written approval of the County. User agrees to repair and replace the County-assigned equipment under the terms provided for in §3.5 of this Agreement. If for any reason the User

fails to use such equipment, the User shall return such equipment to the County in working order within 30 days of written request of the County.

- 3.2. **PAYMENT** – The County has bonded and leased debt costs associated with the lease/purchase of the County-assigned equipment and contractual obligations. As such, the County agrees to provide the County-assigned equipment listed on Exhibit A to the User without charge. There will be no user or equipment fees associated with the use of the land mobile radio system.

3.3. EQUIPMENT INSTALLATION AND REMOVAL

3.3.1. Installation, removal and/or relocation of County-assigned equipment must be pre-approved by the County and completed by a County approved vendor at the Users expense, other than as defined in §3.3.2 of this agreement. The pre-approval required in this Section shall not be unreasonably withheld.

3.3.2. **Initial Installation for System “Go-Live”**

The County shall be responsible for the initial installation of mobile radios and control stations at locations to be mutually agreed upon by the County and User. Initial installation includes bringing a user onto the new radio system to make them functional at the time the system goes into service. Transfer/installation of equipment into other vehicles/buildings after initial “go-live” will be the responsibility of the User.

3.3.3. **Reduction of buildings, in-fleet vehicles or members**

In the event User reduces the number of members, vehicles or buildings with County-assigned equipment, said equipment shall be removed (at User expense) and returned to the County within 30 days.

3.4. USE OF ADDITIONAL EQUIPMENT AND ACCESSORIES

3.4.1. The County shall maintain a list of approved subscriber equipment, required options and feature sets, and related peripheral accessories, and User agrees to use only approved equipment while accessing the BCICS. User shall not assign new subscriber equipment to the network or add an accessory to a BCICS radio unless the make, model, options, and feature sets of the equipment/accessory have been tested and approved by the County. User may request that a particular radio or accessory be added to the list of approved equipment/accessories by providing the make and model number of the item as well as sufficient technical details to allow the County to determine if the equipment is compatible with the BCICS network and its critical operating features. User is advised that some BCICS feature sets (e.g. Advanced Digital Privacy encryption) may be proprietary to a particular vendor and may not properly interface with the BCICS.

3.4.2. It may be necessary for the User to provide a sample of said equipment for testing on the system to verify it will not cause adverse effects to the system. User shall provide a sample of any equipment for the purpose of testing if requested to do so by the County. As the County is participating in a multi-jurisdictional/multi-County radio Consortium, equipment is subject to the approval of the Consortium before use. System users are also subject to the Consortium’s rules and regulations.

3.4.3. The County shall approve or reject any and all requests or actions listed in this section, in writing. Rejected equipment will not be allowed access to the system. User is further advised that the use of unapproved equipment or accessories may adversely affect the BCICS system.

3.5. EQUIPMENT MAINTENANCE AND REPAIR-

3.5.1. County-Assigned Equipment -

It is the County's intent to provide maintenance and repair services on County-assigned equipment. User is responsible for the operational integrity of all County-assigned equipment. The User will be liable for costs associated with repairing any damages outside the scope of "normal wear and tear". "Normal wear and tear" is defined as the normal deterioration of the equipment caused by ordinary, reasonable and proper use of said equipment. Damage which is not "normal wear and tear" includes but is not limited to: Damage due to breakage by improper use, misuse, abuse, lack of basic external cleaning, dirtying of equipment by any other material. The User is responsible for reporting all damage in accordance with the procedure established by the County (Exhibit B).

3.5.2. User-Owned Equipment -

The County has no obligation to allow User-owner equipment onto the BCICS. The County has no obligation to install, repair, remove or maintain any User-owned subscriber equipment that interfaces with the BCICS. User shall, at its own cost and expense, maintain all User-owned equipment in proper working order in accordance with factory and/or BCICS specifications. The User will make all replacements, hardware or software upgrades or modifications. Repairs to any such equipment that interfaces with the BCICS are to be made in a timely manner to ensure system integrity.

3.6. EQUIPMENT PROGRAMMING

3.6.1. The programming or reprogramming of any radio equipment, including County-assigned and User-owned equipment that interfaces with the BCICS, must occur through the use of designated authorized programming vendors and/or technicians. The County must approve in writing any programming or reprogramming to include the addition of non-BCICS licensed frequencies on such equipment, and such programming or reprogramming must be done by a County-approved vendor or technician.

3.6.1.1. The County may, at its discretion, make system keys available to User for purposes of accessing and changing radio programming settings. System keys shall remain the property of the County, and User shall return any system keys upon the request of the County. User shall not copy or transfer system keys to any entity without the prior written authorization of the County.

3.6.2. User may request the County to make changes to feature sets, talk groups and frequencies. The County will consider whether there is a demonstrated need for such change together with the potential impact of such on the network as a whole and for the other system subscribers.

3.6.2.1. If it is determined that there is a demonstrated need for the use of Non-County maintained frequencies to be used in any radio equipment on the BCICS, the User agrees that it will obtain and maintain at its own expense all FCC licenses or permits necessary for the operation of its radio equipment prior to the commencement of its use of the BCICS.

3.7. **SYSTEM USE** - User agrees to use the BCICS and maintain its County-assigned or User-owned radio equipment in accordance with Federal Communications Commission (FCC) rules and regulations and in accordance with BCICS policies and procedures. User agrees to use only those frequencies authorized by the County and further agrees to use the BCICS in a professional

manner for official business purposes only. User shall attempt no modifications to county equipment unless authorized and shall not attempt to program or re-program equipment from the county or any source without the prior authorization of the County.

- 3.8. **FAILURE TO COMPLY** – If, after all attempts to resolve non-compliance issues and after given reasonable time to comply, the County may, at their sole discretion, terminate User’s use of the system and remove the User-owned subscriber equipment from the BCICS for failure to comply with the terms of this Agreement; and reactivate User-owned subscriber equipment upon demonstration of compliance. Any failure to comply will be reported to the Director of Emergency Services or his/her designee.
- 3.9. **DISSOLUTION/CONSOLIDATION OF SERVICES:** Should the User dissolve under the provisions of state law and cease to exist as a municipal corporation, non-profit corporation or business corporation providing EMS or other services, any equipment provided by the County shall revert to the ownership of the County of Broome and User agrees to return same to the County within thirty (30) days of dissolution. Should User’s agency/department be consolidated, the User agrees to return any requested equipment to the County within thirty (30) days of consolidation.
4. **LIABILITY:** In no event shall the County be liable to User or to any third party who acts in reliance on User for any damages resulting from this Agreement, including indirect, incidental, special or consequential, except for such damages caused by County’s negligence. This limitation includes damages attributed to any malfunction of the BCICS system, regardless of the cause of action, arising out of or connection with a party’s performance.
5. **INDEPENDENT CONTRACTOR:** All users, including all its officers and agents, agree that its relationship to the County and any of its Departments is that of an independent contractor and said user covenants and agrees that it will not conduct itself as, nor hold itself out, nor claim to be an officer or employee or agent of the County.
6. **SYSTEM GOVERNANCE:** At all times, User shall ensure that its officers, employees, volunteers and agents comply with FCC regulations applicable to the system. Consistent therewith the County shall establish policies and procedures for access to BCICS and for the operation of the BCICS, which policies and procedures shall be adopted by the County. The County agrees to make such policies and procedures available to User by mailing a written copy thereof and/or by posting them on its website. Users may request changes to the BCICS policies and procedures by submitting such request to the County. Final approval of such changes remains with the County.
7. **ASSIGNMENT:** Pursuant to General Municipal Law §109, User shall not assign any of its rights, interests or obligations under this Agreement.
8. **STATUTORY COMPLIANCE:** In acceptance of this Agreement, User agrees to comply in all respects with all Federal, State, and County laws and regulations which pertain to the services provided herein.
9. **APPROPRIATIONS:** It is understood by and between the parties that this Agreement shall be deemed executory only to the extent of the monies appropriated and available for the purpose of this Agreement. No liability on account thereof shall be incurred by the County, City, Towns, Villages or Contractors beyond funds appropriated and available for the purpose of this Agreement.
10. **RETENTION OF RECORDS:** User agrees to retain all books, records and other documents relevant to this Agreement for Six (6) years after the termination of this Agreement, or the length of

time the state or federal government required retention period, whichever later occurs. County, or any State and/or Federal auditors, and any other persons duly authorized by the County, shall have full access and the right to examine any of said materials during said period.

11. **ACCEPTANCE OF SUBSTITUTED SERVICE:** The User hereby consents and agrees to accept to substituted service of process via first class mail to the above referenced address of any summons, process or pleading pertaining to or arising from litigation concerning this agreement in lieu of any other methods authorized by the New York Civil Practice Law and Rules. Service of process shall be deemed to be complete upon mailing same. This provision shall survive the termination of this agreement and shall not be construed requiring substituted service, should the County elect to commence litigation by other means provided for by law. The County or any other municipality subject to this agreement does not waive personal service herein and will require service of process in conformity with CPLR§311(4).
12. **SET-OFF RIGHTS:** The County of Broome shall have all of its common law, equitable and statutory rights of set-off hereunder. These rights shall survive the expiration or termination of this agreement, to the extent same are applicable and shall include, but are not limited to, the County's right to withhold for the purposes of set-off any monies otherwise due to User (i) under this Agreement, (ii) under any other agreement or contract with the County, including any agreement or contract for a term commencing prior to or after the term of this Agreement, or (iii) from the County by operation of law. The County also has the right to withhold any monies otherwise due under this Agreement for the purposes of set-off as to any amounts due and owing to the County for any reason whatsoever including, without limitation, snow and ice payments, contractual payments, real property tax delinquencies, hotel/motel tax delinquencies, sales tax delinquencies, fee delinquencies or monetary penalties and/or interest relative thereto.
13. **PERSONAL USE PROHIBITED:** The User understands and agrees that the equipment provided hereunder, and the frequencies owned by the county are for Fire, EMS, Police, Public Service and/or municipal use only. Inconsistent uses may constitute a breach of this agreement and may constitute a crime.
14. **NO ARBITRATION:** Any and all disputes involving this Agreement, including the breach or alleged breach thereof must instead only be heard in the Supreme Court of the State of New York, with venue in Broome County or, if appropriate, in the Federal District Court with venue in the Northern District of New York, Syracuse division.
15. **GOVERNING LAW:** This Agreement shall be governed by the laws of the State of New York. User shall abide by all applicable federal, state and local laws, rules and regulations pertaining to the User's obligations hereunder for the duration of this agreement.
16. **CONTRACT MODIFICATIONS:** This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, whether written or oral. This Agreement may be amended only by written instrument signed by both parties, except as otherwise provided in this Agreement.
17. **SEVERABILITY:** If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and every other term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

18. **CLAUSES REQUIRED BY LAW**: The parties to this Agreement understand and agree that each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to have been inserted herein. If through mistake or inadvertence, such provision is not inserted; such provision shall be deemed to have been inserted and shall have the full force and effect of law.

19. **Notices**: Notices provided for in this Agreement shall be delivered by mail to the following:

For Broome County:
County Executive
Broome County
PO Box 1766
Binghamton, NY 13902

For User:
City of Binghamton
Fire Department
38 Hawley Street
Binghamton, NY 13901

IN WITNESS WHEREOF, the parties to this Agreement have executed this Agreement on the date and year hereafter written.

Dated: _____

County of Broome

By: _____
Michael Ponticiello , Deputy County Executive

Dated: _____

City of Binghamton Fire Department

By: _____

Printed Name: _____

Title: _____