



City of Pembroke Pines

SECOND AMENDMENT TO DIGITAL RADIO AGREEMENT

THIS AMENDMENT ("Second Amendment"), dated this 11th day of February, **2021**, is by and between:

THE CITY OF PEMBROKE PINES, a municipal corporation organized and operating under the laws of the State of Florida, with an address of **601 City Center Way, Pembroke Pines, FL 33025**, hereinafter referred to as "USER",

and

INDUSTRIAL COMMUNICATIONS AND ELECTRONICS, INC., a profit corporation as listed with the Massachusetts Division of Corporations, authorized to do business in the State of Florida, and with a business address of **40 Lone St., Marshfield, MA 02050**, hereinafter referred to as "INDUSTRIAL". "USER" and "INDUSTRIAL" may hereafter be collectively referred to as the "Parties".

WHEREAS, on **November 6th, 2019**, USER and INDUSTRIAL entered into the Digital Radio Agreement ("Original Agreement") to provide Digital Radio Services for an initial **two (2) year period**, commencing on **September 1st, 2019** and naturally expiring on **August 31st, 2021**; and

WHEREAS, on **August 19th, 2020**, the Parties executed the First Amendment to the Original Agreement to limit the total compensation to an amount not to exceed ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$125,000.00) annually, to cover the airtime needed for additional radios to be purchased for the Charter Schools; and

WHEREAS, to date the Parties have been satisfied with the performance and execution of the Original Agreement, as amended, and desire to amend the term of Original Agreement, as amended, to increase the Compensation amount to account for the additional monthly FCC Regulatory Fee as more particularly described in Exhibit "A", attached hereto and by this reference made a part hereof, and to supplement the terms contained therein as set forth in this Second Amendment to Original Agreement.

W I T N E S S E T H

NOW, THEREFORE, for and in consideration of the sum of the mutual covenants and other good and valuable consideration, the receipt of which are hereby acknowledged, the Parties hereto agree as set forth below:

SECTION 1. The recitations set forth in the above "WHEREAS" clauses are true and correct and incorporated herein by this reference.



City of Pembroke Pines

SECTION 2. Any language contained in this Second Amendment, or any subsequent amendment, which is in ~~strike through type~~ shall be deletions from the terms of the Original Agreement and language in underlined type shall be additions to the terms of the Original Agreement.

SECTION 3. Section 2 of the Original Agreement, as amended, is hereby revised and amended as set forth below:

2 Services. User agrees to pay for the services provided, including the optional features at the rates indicated on the front side hereof, together with the additional monthly FCC Regulatory Fee of THIRTY-TWO CENTS (\$0.32) per unit, for a total amount not to exceed ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$125,000.00) annually. Billing will be processed on the first day of each month in advance and will include any prorated charges for the partial calendar month after service has begun. Industrial reserves the right to establish airtime limitations and appropriate charges for usage in excess of those limits. Airtime charges for the previous month will be included in the monthly billing. All payments shall be governed by the Local Government Prompt Payment Act, as set forth in Part VII, Chapter 218, Florida Statutes.

SECTION 4. The Original Agreement, as amended, is hereby revised and amended by the addition of Section 25, as set forth below:

25 E-Verify INDUSTRIAL certifies that it is aware of and complies with the requirements of Section 448.095, Florida Statutes, as may be amended from time to time and briefly described herein below.

25.1 Definitions for this Section:

25.1.1 "Contractor" means a person or entity that has entered or is attempting to enter into a contract with a public employer to provide labor, supplies, or services to such employer in exchange for salary, wages, or other remuneration. "Contractor" includes, but is not limited to, a vendor or consultant.

25.1.2 "Subcontractor" means a person or entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for salary, wages, or other remuneration.

25.1.3 "E-Verify system" means an Internet-based system operated by the United States Department of Homeland Security that allows participating employers to electronically verify the employment eligibility of newly hired employees.

25.2 Registration Requirement; Termination:

Pursuant to Section 448.095, Florida Statutes, effective January 1, 2021, Contractors, shall register with and use the E-verify system in order to verify the work authorization status of all newly hired employees. Contractor shall register for and utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:



City of Pembroke Pines

25.2.1 All persons employed by a Contractor to perform employment duties within Florida during the term of the contract; and

25.2.2 All persons (including subvendors/subconsultants/subcontractors) assigned by Contractor to perform work pursuant to the contract with the City of Pembroke Pines. The Contractor acknowledges and agrees that registration and use of the U.S. Department of Homeland Security's E-Verify System during the term of the contract is a condition of the contract with the City of Pembroke Pines; and

25.2.3 The Contractor shall comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes, but is not limited to registration and utilization of the E-Verify System to verify the work authorization status of all newly hired employees. Contractor shall also require all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The Contractor shall maintain a copy of such affidavit for the duration of the contract. Failure to comply will lead to termination of this Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination. Termination of this Contract under this Section is not a breach of contract and may not be considered as such. If this contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of one (1) year after the date of termination.

SECTION 5. In the event of any conflict or ambiguity by and between the terms and provisions of this Second Amendment, the First Amendment, and the Original Agreement, the terms and provisions of this Second Amendment shall control to the extent of any such conflict or ambiguity.

SECTION 6. The Parties agree that in all other respects the Original Agreement, as amended by the First Amendment, and this Second Amendment, shall remain in full force and effect, except as specifically modified herein.

SECTION 7. Each exhibit referred to in the Original Agreement, as amended, except as repealed herein, forms an essential part of this Second Amendment. The exhibits, if not physically attached, should be treated as part of this Second Amendment and are incorporated herein by reference.

SECTION 8. Each person signing this Second Amendment on behalf of either Party individually warrants that he or she has full legal power to execute this Second Amendment on behalf of the Party for whom he or she is signing, and to bind and obligate such Party with respect to all provisions contained in this Second Amendment.

SECTION 9. This Second Amendment may be executed by hand or electronically in multiple originals or counterparts, each of which shall be deemed to be an original and together shall constitute one and the same agreement. Execution and delivery of this Second Amendment by the Parties shall be legally binding, valid and effective upon delivery of the executed documents to the




City of Pembroke Pines

other Party through facsimile transmission, email, or other electronic delivery.

IN WITNESS OF THE FOREGOING, the Parties have set their hands and seals the day and year first written above.

ATTEST:

DocuSigned by:

F859EE604EE54F3...
MARLENE D. GRAHAM,
CITY CLERK

APPROVED AS TO FORM

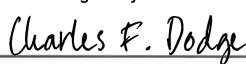
DocuSigned by:

833DB27BB2774A7...

Print Name: Jacob G. Horowitz
OFFICE OF THE CITY ATTORNEY

USER:

CITY OF PEMBROKE PINES

DocuSigned by:

BY: CHARLES F. DODGE
CITY MANAGER

INDUSTRIAL:

**INDUSTRIAL COMMUNICATIONS AND
ELECTRONICS, INC.**


Signed By: 
Print Name: Robert JANS
Title: General Manager

Exhibit "A"



Industrial Communications & Electronics, Inc.
Industrial Tower and Wireless, LLC
Industrial Communications, LLC

40 Lone Street
Marshfield, Massachusetts 02050
781-319-1111 • Fax 781-837-4000
www.industrialcommunications.com

December 18, 2020

To our valued Two-Way Radio Customers

Re: Recently imposed increase in FCC Regulatory Fee

Dear Customer,

The FCC recently changed the basis for calculating carrier contributions to the Telecommunications Relay Service (TRS) fund. In the past this fee was calculated on 1% of our customer Connect Plus Two-Way Radio monthly recurring billing. This has been changed to 100% of this billing. The impact in real numbers is a fee increase of 3,861% over previous years' fees. In the past we simply absorbed this fee as a cost of doing business along with the number portability fee and the North American Numbering Plan fee. While we deeply regret the need to pass this fee along to our customers, we simply can no longer afford to absorb these costs to this magnitude.

We have consulted with our FCC Attorney, Liz Sachs who drafted a memo (attached) outlining her recommendations on how to proceed. The FCC Regulatory Fee in the amount of 32 cents per unit shown on your monthly invoice represents the total annual FCC fees incurred by Industrial Communications divided by the total number of all Two-Way Radio customer units divided by the twelve (12) month billing cycle. The fee is equally distributed over all customer units.

As indicated on the notice slip provided with your 12/1/2020 invoice, Industrial Communications is working with FCC Counsel and other carriers in the industry to petition the FCC for relief from this dramatic increase in fees so that we can reduce or eliminate it from your invoices in the future.

We value your business and appreciate your loyalty, understanding and patience while we work with the FCC for relief in this matter. Thank you.

Sincerely,

Industrial Communications

A handwritten signature in blue ink, appearing to read "Michael J Umamo".

Michael J Umamo

President

Exhibit "A"



Industrial Communications & Electronics, Inc.
Industrial Tower and Wireless, LLC
Industrial Communications, LLC

40 Lone Street
Marshfield, Massachusetts 02050
781-319-1111 • Fax 781-837-4000
www.industrialcommunications.com

December 18, 2020

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We value your business and appreciate your loyalty, understanding and patience while we work with the FCC for relief in this matter. Thank you.

Sincerely,

Industrial Communications

A handwritten signature in blue ink that reads "Michael J Umano".

Michael J Umano

President



December 1, 2020

Notice of Change to Monthly Digital Radio Invoice

In our efforts to provide our customers digital two-way radio service for a low monthly fee, Industrial Communications has always absorbed several regulatory fees imposed by the Federal Communications Commission (FCC). In July 2020, the FCC made changes to how certain regulatory fees related to carrier services (including two-way radio services) are calculated resulting in an exorbitant increase in the fees incurred by Industrial of over 1000%. As a result, we must regrettably begin charging a nominal "FCC Regulatory Fee" in the amount of thirty-two (32) cents per unit as part of your monthly digital two-way radio service billing effective December 1, 2020.

The enclosed invoice for your December 2020 digital two-way radio service includes this "FCC Regulatory Fee" of thirty-two (32) cents per unit which appears as a separate line item on your monthly invoice and is non-taxable.

Please know that Industrial, along with other carriers in the industry, are working together to try to address this extraordinary increase with the FCC in hopes to significantly reduce or eliminate this charge so it will not be necessary in the future.

We value our business relationship and appreciate your understanding. Should you have any questions regarding this change, please feel free to contact us.

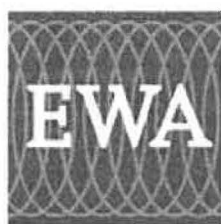
Mike Umano

From: Enterprise Wireless Alliance <ewa@enterprisewireless.org>
Sent: Thursday, August 6, 2020 4:08 PM
To: Mike Umano
Subject: EWA Member Memo -- Changes in TRS Fund Rules

[View this email in your browser](#)

EWA-BLL-2020-23

August 6, 2020



Enterprise
Wireless
Alliance®

Changes in TRS Fund Rules

Enterprise Wireless Alliance (EWA) members that file a Form 499, which reports revenue to USAC (Universal Service Administrative Company) and triggers several other payment obligations, have seen a dramatic increase in their Telecommunications Relay Services Fund (TRS Fund) invoices. This is because the FCC rules changed for the Fund Year beginning July 1 and ending June 30, 2021 to apply the TRS contribution factor to all telecommunications revenue, including intrastate, when previously it had applied only to interstate and international revenue.

For those EWA members that have received these invoices, there is no immediate vehicle for regulatory relief. A failure to pay will trigger financial penalties and will put the company in “red light” status at the FCC, freezing the processing of its applications. EWA is evaluating options for addressing this new financial burden and the obligation of its members to file Form 499s.

Elizabeth R. Sachs

8300 Greensboro Dr.
Suite 1200
Tysons, VA 22102

NOT ADMITTED IN VA

lsachs@fccclaw.com
(703) 584-8663
WWW.FCCCLAW.COM

LLGS

LUKAS
LAFURIA
GUTIERREZ
& SACHS LLP

CLIENT MEMORANDUM

FROM: Liz Sachs

RE: TRS Contribution Cost Recovery

DATE: October 16, 2020

As you are painfully aware, the FCC changed the basis for calculating contributions to the Telecommunications Relay Service (TRS) fund effective July 1, 2020. Previously the contribution was based on interstate and international revenue only so with the 1% safe harbor for interstate dispatch revenue the fee was minimal for most licensees, a cost of doing business. Now and for the foreseeable future the calculation will include intrastate revenue as well, a change that produced sticker shock in response to the July invoice. Through EWA I am taking another run at getting the FCC to reclassify all non-interconnected commercial systems as non-common carrier, which should allow licensees to decertify from the Form 499 process that triggers this fee as well as NANP and LNP. However, previous attempts have been unsuccessful and issues like this move slowly

In light of this change, you should at least consider whether you want to recover some or all of this cost from your customers as virtually all commercial carriers do. You are permitted to recover 100% of the cost as long as you describe it clearly on your bills and maintain records confirming that you didn't collect more than the actual TRS cost and that no overhead or administrative charges were added on.

The fee must be placed separately from taxes to make it clear it is not mandated by the government. The description on the invoice could be as simple as the following:

"Federal Regulatory Recovery Fee: Allows for recovery of money the company is required to pay into federal programs, including those supporting telecommunications services for the hearing impaired. The fee is a percentage of intrastate and interstate revenue, and the percentage changes each year. It is not a government tax and is charged at the company's discretion."

The more complicated part is how you determine what you collect from each customer since their assessment, whether invoiced on a monthly or annual basis, must reflect their percentage of the total revenue on which the TRS factor is based. (Line 514a revenue) It does not need to be down to the penny, but it must approximate their percentage of revenue contribution and be defensible if audited. Happy to discuss this further if it would be helpful.

If you need to explain why you are adding this charge in 2020, the simple explanation is that the company previously absorbed this cost but the FCC has changed how the contribution is calculated and increased the annual amount the company pays by more than X%. You can add that you are working with

others in the industry to try and address this extraordinary increase in the hope that this charge will not be necessary in future years.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

1/28/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER The Driscoll Agency 141 Longwater Drive, Suite 203 Norwell MA 02061	CONTACT NAME: Ken Christianson PHONE (A/C, No, Ext): 781-681-6656 FAX (A/C, No): 781-681-6686 E-MAIL ADDRESS: kchristianson@driscollagency.com
INSURER(S) AFFORDING COVERAGE	
INSURER A: United States Fire Insurance Co	
NAIC # 21113	
INSURED Industrial Communications & Electronics, Inc. Industrial Tower & Wireless, LLC Industrial Communications, LLC 40 Lone Street Marshfield MA 02050-2102	2066 INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:

COVERAGES**CERTIFICATE NUMBER:** 44179768**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> XCU Included <input checked="" type="checkbox"/> Contractual Liab GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:			5432270832	1/1/2021	1/1/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			1337490432	1/1/2021	1/1/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			5821155864	1/1/2021	1/1/2022	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 10,000,000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	4087404423	1/1/2021	1/1/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

City of Pembroke Pines is included as Additional Insured for Automobile Liability on a Primary Basis for the conduct of the (Named) Insured, but only to the extent of that liability.

Notice of cancellation provision is 30 days, except 10 days applies for non-payment of premium.

City of Pembroke Pines is included as Additional Insureds for General Liability and Excess (Umbrella) Liability as required by a signed written contract or agreement with the Named Insured.

See Attached...

CERTIFICATE HOLDER**CANCELLATION 30**

City of Pembroke Pines
 601 City Center Way
 Pembroke Pines FL 33025

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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ADDITIONAL REMARKS SCHEDULE

AGENCY The Driscoll Agency		NAMED INSURED Industrial Communications & Electronics, Inc. Industrial Tower & Wireless, LLC Industrial Communications, LLC 40 Lone Street Marshfield MA 02050-2102	
POLICY NUMBER			
CARRIER	NAIC CODE		
		EFFECTIVE DATE:	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

The Additional Insured coverage for General Liability & Excess (Umbrella) Liability detailed above applies on a primary, non-contributory basis where required by a signed written contract or agreement with the Named Insured.

The General Liability, Excess (Umbrella) Liability, Automobile Liability, and Workers Compensation / Employers Liability Policies include a Waiver of Subrogation in favor of City of Pembroke Pines on whose behalf the Named Insured is required to obtain this Waiver under a written contract or agreement executed prior to a loss.



**FIRST AMENDMENT TO AGREEMENT
BETWEEN THE CITY OF PEMBROKE PINES AND
INDUSTRIAL COMMUNICATIONS AND ELECTRONICS, INC.**

THIS IS AN AGREEMENT ("Agreement"), dated this 19th day of August, 2020, by and between:

THE CITY OF PEMBROKE PINES, a municipal corporation organized and operating under the laws of the State of Florida, with an address of **601 City Center Way, Pembroke Pines, FL 33025**, hereinafter referred to as "USER",

and

INDUSTRIAL COMMUNICATIONS AND ELECTRONICS, INC., a Foreign Profit Corporation as listed with the Massachusetts Division of Corporations, authorized to do business in the State of Florida, and with a business address of **40 Lone St, Marshfield, MA 02050**, hereinafter referred to as "INDUSTRIAL". "USER" and "INDUSTRIAL" may hereafter be collectively referred to as the "Parties".

WHEREAS, on **November 6th, 2019**, the USER and INDUSTRIAL entered into the Original Agreement ("Original Agreement") for an initial **two (2) year period**, commencing on **September 1st, 2019** and expiring on **August 31st, 2021**; and,

WHEREAS, to date the Parties have been satisfied with the performance and execution of the Agreement and desire to amend the Original Agreement to limit the total compensation amount not to exceed \$125,000.00; and,

WHEREAS, the increase is to cover the airtime needed for the additional radios that will be purchased for the Charter Schools; and,

W I T N E S S E T H

NOW, THEREFORE, for and in consideration of the sum of the mutual covenants and other good and valuable consideration, the receipt of which are hereby acknowledged, the Parties hereto agree as set forth below:

SECTION 1. The recitations set forth in the above "WHEREAS" clauses are true and correct and incorporated herein by this reference.

SECTION 2. Section 2 of the Original Agreement is hereby repealed and replaced as set forth below:

2 Services. User agrees to pay for the services provided, including the optional features at



the rates indicated on the front side hereof amount, but shall not to exceed **ONE HUNDRED TWENTY FIVE THOUSAND DOLLARS (\$125,000.00)**, annually. Billing will be processed on the first day of each month in advance and will include any prorated charges for the partial calendar month after service has begun. Industrial reserves the right to establish airtime limitations and appropriate charges for usage in excess of those limits. Airtime charges for the previous month will be included in the monthly billing. All payments shall be governed by the Local Government Prompt Payment Act, as set forth in Part VII, Chapter 218, Florida Statutes.

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SECTION 7. Each party agrees that electronic signatures, whether digital or encrypted, of the parties included in this Agreement are intended to authenticate this Agreement and to have the same force and effect as manual signatures. Delivery of a copy of this Agreement or any other document contemplated hereby bearing an original or electronic signature by facsimile transmission (whether directly from one facsimile device to another by means of a dial-up connection or whether mediated by the worldwide web), by electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing an original or electronic signature.

**THE REMAINDER OF THIS PAGE
HAS BEEN INTENTIONALLY LEFT BLANK**



City of Pembroke Pines

IN WITNESS OF THE FOREGOING, the Parties have set their hands and seals the day and year first written above.

ATTEST:

USER:

CITY OF PEMBROKE PINES

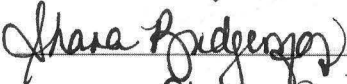

MARLENE D. GRAHAM,
CITY CLERK

BY:


CHARLES F. DODGE
CITY MANAGER

9/27/2020

APPROVED AS TO FORM


Print Name: Shana Bridgeman
OFFICE OF THE CITY ATTORNEY

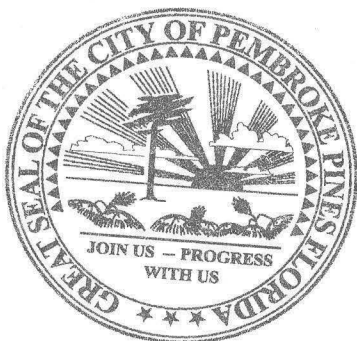
CONTRACTOR:

INDUSTRIAL COMMUNICATIONS AND
ELECTRONICS, INC.

Signed By:

Name: ROBERT JANS

Title: General Manager





City of Pembroke Pines, FL

601 City Center Way
Pembroke Pines, FL
33025
www.ppines.com

Agenda Request Form

Agenda Number: 6.

File ID: 20-0607

Type: Agreements/Contracts

Status: Passed

Version: 1

Agenda
Section:

In Control: City Commission

File Created: 08/10/2020

Short Title: Approve First Amendment to Agreement w/ Industrial
Communications and Electronics, Inc.

Final Action: 08/19/2020

Title: MOTION TO APPROVE THE FIRST AMENDMENT TO THE AGREEMENT
WITH INDUSTRIAL COMMUNICATIONS AND ELECTRONICS, INC. FOR
RADIO AIRTIME IN THE ANNUAL AMOUNT NOT TO EXCEED \$125,000.

*Agenda Date: 08/19/2020

Agenda Number: 6.

Internal Notes:

Attachments: 1. First Amendment Industrial Communications & Electronics, Inc., 2. Original Agreement, 3.
6-19-19 Commission Approval

1 City Commission 08/19/2020 approve

Pass

Action Text: A motion was made to approve on the Consent Agenda

Aye: - 5 Mayor Ortis, Vice Mayor Siple, Commissioner Good Jr., Commissioner
Schwartz, and Commissioner Chanzas

Nay: - 0

MOTION TO APPROVE THE FIRST AMENDMENT TO THE AGREEMENT WITH
INDUSTRIAL COMMUNICATIONS AND ELECTRONICS, INC. FOR RADIO AIRTIME IN THE
ANNUAL AMOUNT NOT TO EXCEED \$125,000.

PROCUREMENT PROCESS TAKEN:

- Chapter 35 of the City's Code of Ordinances is titled "PROCUREMENT
PROCEDURES, PUBLIC FUNDS."

- Section 35.18 of the City's Code of Ordinances is regarding "COMPETITIVE BIDDING
OR COMPETITIVE PROPOSALS REQUIRED; EXCEPTIONS."

- Section 35.18(C) states that "Only the following situations are exempt from the
competitive bid and competitive proposal requirements of this section:"

- Section 35.18(C)(5) states that "Commodities or services that are the subject of contracts with the state its political subdivisions or other governmental entities including the United States Government, are exempt from the competitive procurement process."

- Section 35.28 of the City's Code of Ordinances is titled "CHANGE ORDERS."

- Section 35.28(B) states that "Notwithstanding the provisions of (A) above, the City Manager is not authorized to approve a change order without authorization of the City Commission where the initial purchase required the City Commission's approval and where the sum of all change orders issued under the contract exceeds 5% of the original contract amount or \$25,000."

SUMMARY EXPLANATION AND BACKGROUND:

1. On June 19, 2019, the City Commission approved the purchase of Motorola Digital 900MHZ base, mobile, and portable radios and airtime from Industrial Communications and Electronics, Inc.
2. At the time of the award, the City purchased a total of 172 radios. Each radio has a monthly airtime charge of \$19. As a result, the cost for airtime was approved for \$39,216 annually.
3. The original agreement executed was for a 2 year period commencing on September 1, 2019 and expiring on August 31, 2021.
4. The Public Services Department is requesting to increase the approved annual amount for airtime from \$39,216 to an annual amount not to exceed \$125,000. The monthly cost per radio will still remain at \$19.
5. This increase is needed in order to cover the airtime for 15 additional radios that were needed and purchased for the Utilities Division, annual cost of \$3,420.
6. In addition, it will also enable us to pay for the airtime for 300 radios that will be added in the near future for the schools, annual cost of \$68,470. A separate item will eventually be brought to Commission for the purchase of the radios.
7. Request Commission to approve the First Amendment to the Agreement with Industrial Communications and Electronics, Inc. for radio airtime in the annual amount not to exceed \$125,000.

FINANCIAL IMPACT DETAIL:

- a) **Initial Cost:** \$125,000 Annual Amount Not to Exceed (Currently the City has 187 radios. Airtime is \$19 a month, which is a total of \$3,553 a month and \$42,636 a year.)
- b) **Amount budgeted for this item in Account No:** The airtime will be paid out of the

following accounts:

1-519-6001-46800 (Maintenance Contracts)

471-536-6010-46800 (Maintenance Contracts)

128-544-8001-46800 (Maintenance Contracts)

c) Source of funding for difference, if not fully budgeted: Not Applicable

d) 5 year projection of the operational cost of the project:

	Current FY	Year 2	Year 3	Year 4	Year 5
Revenues	\$0	\$0	NA	NA	NA
Expenditures	\$7,106	\$35,530	NA	NA	NA
Net Cost	\$7,106	\$35,530	NA	NA	NA

e) Detail of additional staff requirements: Not Applicable.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/28/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER The Driscoll Agency 141 Longwater Drive, Suite 203 Norwell MA 02061	CONTACT NAME: Ken Christianson	FAX (A/C, No): 781-681-6686	
	PHONE (A/C, No, Ext): 781-681-6656	E-MAIL ADDRESS: kchristianson@driscollagency.com	
INSURED Industrial Communications & Electronics, Inc. Industrial Tower & Wireless, LLC Industrial Communications, LLC 40 Lone Street Marshfield MA 02050-2102	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: United States Fire Insurance Co		21113
	INSURER B:		
	INSURER C:		
	INSURER D:		
	INSURER E:		
INSURER F:			

COVERAGES**CERTIFICATE NUMBER:** 953240954**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADD'L INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> XCU Included <input checked="" type="checkbox"/> Contractual Liab GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			5432246172	1/1/2020	1/1/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			1337468832	1/1/2020	1/1/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			5238108054	1/1/2020	1/1/2021	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 20,000,000 \$
A	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	4087381005	1/1/2020	1/1/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

City of Pembroke Pines is included as Additional Insured for Automobile Liability on a Primary Basis for the conduct of the (Named) Insured, but only to the extent of that liability.

Notice of cancellation provision is 30 days, except 10 days applies for non-payment of premium.

City of Pembroke Pines is included as Additional Insureds for General Liability and Excess (Umbrella) Liability as required by a signed written contract or agreement with the Named Insured.

See Attached...

CERTIFICATE HOLDER**CANCELLATION 30**

City of Pembroke Pines
601 City Center Way
Pembroke Pines FL 33025

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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**ADDITIONAL REMARKS SCHEDULE**Page 1 of 1

AGENCY The Driscoll Agency		NAMED INSURED Industrial Communications & Electronics, Inc. Industrial Tower & Wireless, LLC Industrial Communications, LLC 40 Lone Street Marshfield MA 02050-2102
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,****FORM NUMBER:** 25 **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

The Additional Insured coverage for General Liability & Excess (Umbrella) Liability detailed above applies on a primary, non-contributory basis where required by a signed written contract or agreement with the Named Insured.

The General Liability, Excess (Umbrella) Liability, Automobile Liability, and Workers Compensation / Employers Liability Policies include a Waiver of Subrogation in favor of City of Pembroke Pines on whose behalf the Named Insured is required to obtain this Waiver under a written contract or agreement executed prior to a loss.



Southeast Florida:
350 NW 215th Street
Miami, FL 33169

P: 305-423-3000
F: 305-423-3020

www.industrialcommunications.com

1. CUSTOMER INFORMATION				MAILING ADDRESS	
Company Name			Name		
CITY OF PEMBROKE PINES PUBLIC SERVICES			CITY OF PEMBROKE PINES		
Street Address			Co. Name (Business or Individual Name)		
851 POINCIANA DRIVE					
City	State	Zip Code	Street Address (or P.O. Box)		
PEMBROKE PINES	FL	33025	601 CITY CENTER WAY 3RD FLOOR - SUITE 303		
Bus. Tel	Home Tel	Fax #	City	State	Zip Code
954-437-1111			PEMBROKE PINES	FL	33025
2. FINANCIAL INFORMATION					
Federal Tax ID #			Tax Exempt ID		
59-0908106			85-8013818682C-8		
Vendor #			Purchase Order #		
42794194			20191024		
Contact			Telephone		
3. SYSTEM INFORMATION AND CHARGES					
Trunking Service					
SERVICE	# OF UNITS	MO. RATE PER UNIT	EXTENDED MONTHLY	SPECIAL INSTRUCTIONS	
Dispatch	172	\$19.00	\$3,268.00		
Additional Talk Groups			\$0.00	INCLUDED	
Private Call			\$0.00	INCLUDED	
GPS			\$0.00		
Text Messaging			\$0.00	INCLUDED	
Equipment Lease			\$0.00		
			\$0.00		
System Total Per Month Before Taxes:			\$3,268.00		
4. NON-RECURRING CHARGES					
SERVICE	# OF UNITS	CHARGE	TOTAL	SPECIAL INSTRUCTIONS	
Network Connection	0	\$50.00	\$0.00	WAIVED	
			\$0.00		
			\$0.00		
			\$0.00		
Service Total Before Taxes:			\$0.00		
INITIAL TERM OF AGREEMENT:		24	MONTHS	EFFECTIVE DATE:	9/1/2019
5. AUTHORIZATION & ACCEPTANCE					
<p>SERVICE AUTHORIZATION: Customer applies and hereby subscribes for Digital Radio Services (DRS) ("service") provided by Industrial Communications & Electronics, Inc. ("Industrial") and has read, understands, agrees to and hereby accepts the terms and conditions stated on the face and reverse of this form. Customer understands that Industrial will rely upon the information herein and the lease/credit application in making a decision to extend credit with regard to providing Services, and Customer certifies that all information is true and correct. Customer understands that Industrial will verify Customer's bank references (and authorizes the above named institutions to disclose information on the named accounts) and perform a credit history check, utilizing standard commercial credit reference services in connection with company's review of the Customer's credit worthiness. Customer understands that a security deposit may be required pending credit review. The undersigned hereby acknowledges and represents that he/she has the authority to execute this on behalf of the customer.</p> <p>In the event any equipment is leased by the customer, customer acknowledges that all the equipment must be returned in working condition. Any lost, stolen or damaged equipment is the customer's responsibility and will be charged at replacement value.</p>					
Customer Signature:				Accepted by: Industrial Communications & Electronics, Inc.	
Date:		11/6/19		By: Robert Jans	
Customer Print Name:		Charles F. Dodge		Date: 10/5/19	
Title:		City Manager			

DIGITAL RADIO AGREEMENT - TERMS AND CONDITIONS

Industrial Communications & Electronics, Inc., (herein and after known as "Industrial"), is engaged in providing Digital Radio Services (DRS) as authorized by the Federal Communications Commission (FCC), as an owner/Licensee of the Digital Radio Network and is willing to contract for the provision of said service, and user identified on the front side, wishes to obtain the DRS service provided by Industrial as owner/licensee or manager and acknowledges that Industrial has no legal obligation to provide such service except as provided by this Agreement.

NOW, THEREFORE, Industrial and the City of Pembroke Pines ("User") (Industrial and User may hereinafter be collectively referred to as the "Parties") agree as follows:

- 1 Acceptance.** This document is an application by the User which will become a contract when accepted in writing by an authorized person of Industrial. It is agreed that sales are made only on the terms and conditions stated herein. Industrial shall not be bound by terms and conditions in User's purchase order or elsewhere unless expressly agreed to in writing. In the absence of a written acceptance of these terms, acceptance of services hereunder shall constitute an acceptance of these terms and conditions by the User.
- 2 Services.** User agrees to pay for the services provided, including the optional features at the rates indicated on the front side hereof. Billing will be processed on the first day of each month in advance and will include any prorated charges for the partial calendar month after service has begun. Industrial reserves the right to establish airtime limitations and appropriate charges for usage in excess of those limits. Airtime charges for the previous month will be included in the monthly billing. All payments shall be governed by the Local Government Prompt Payment Act, as set forth in Part VII, Chapter 218, Florida Statutes.
- 3 Revision of Fees.** Industrial guarantees the pricing set forth on the front side hereof for the initial two year period of service. At the end of the initial two year period of service, and during any subsequent renewal terms, Industrial may at any time, revise the monthly service fees by giving the User written notice of the amount of increase at least thirty (30) days in advance of the date on which the increased fees are to become effective.
- 4 Term and Termination.** This Agreement will remain in full force and effect for a period of two (2) years from the date it is accepted by Industrial. User agrees that the fee for termination of this Agreement prior to the end of the initial two year service term shall be equal to the remaining value of the contract through the end of the initial two year period. If Industrial terminates this Agreement and the user is in default at the time of termination, Industrial will have the right and remedies as set forth in Section 9. This Agreement shall terminate instantly if the authorizations held by User or Industrial are revoked by the FCC. This Agreement may be terminated by the User for convenience, upon fifteen (15) business days of written notice by the User to Industrial for such termination in which event Industrial shall be paid its compensation for services performed to termination date, including services reasonably related to termination.
- 5 Assignment Subcontract.** This Agreement is a privilege and personal benefit of the User and may not be assigned in whole or part including any FCC license obtained by Industrial on User's behalf, by User to any other person or entity.
- 6 Additional Units.** If User is not in default, then at any time during the term of this Agreement or any renewal period hereof, service will be provided for additional units activated by User at the then current service rates.

- 7 **Covenants of User.** User agrees to: (a) observe and abide by all applicable statutes, laws, ordinances, rules and regulations, including but not limited to those of the FCC. User recognizes that applicable FCC and other statutes, laws, ordinances, rules and regulations may change from time to time and that accordingly Industrial at its sole discretion has the right without liability to modify this contract to comply with such changes; (b) operate the equipment so as not to cause undue interference with any other Users using the Digital Radio Network; and (c) User will not use the service for any unlawful purpose. It shall be Industrial's responsibility to be aware of and comply with all rules, regulations and requirements of the FCC as applicable.
- 8 **Coverage.** User acknowledges that one hundred percent (100%) coverage of any area at all times is improbable. Experience with actual field conditions and from tests aside indicate adverse propagation conditions, including but not limited to short term unpredictable meteorological effects and sky wave interference from distant stations, can interrupt service at times. Other causes beyond reasonable control of Industrial are motor ignition, and other electrical noise that could be minimized by corrective devices at User's expense. Satisfactory communication performance is generally viewed as intelligible reception over rolling terrain approximately ninety percent (90%) of the time. Any surveys, if provided, are to indicate general parameters of expected coverage, subject to previously mentioned conditions, and are not binding as an exact representation of coverage.
- 9 **Default and Remedies.** If User fails to make any payment of any sum due or fails to perform as required by any other provision hereunder and continues in such failure for ten (10) days after written notice has been sent by Industrial to User, the User shall be deemed in default under this Agreement. In the event of default, Industrial has the right to immediately terminate this Agreement, retain all payments made hereunder, deny User any service provided by the Digital Radio Network and impose a separate charge for disconnect and a separate charge for reconnect expenses. If disconnect takes place, User may be subjected to additional costs for reprogramming its equipment. Each and all of the rights and remedies of Industrial hereunder are cumulative to, and not in lieu of, each and every right and remedy offered by law and equity. In the event that Industrial shall find necessary to retain an attorney/or a collection agency to pursue the recovery of monies due, Industrial shall be entitled to reasonable attorney's fees or reasonable costs of collection, whether by arbitration of settlement, and the costs of suit. In addition to all other remedies available to User, this Agreement shall be subject to cancellation by User for cause, should Industrial neglect or fail to perform or observe any of the terms, provisions, conditions, or requirements herein contained, if such neglect or failure shall continue for a period of ten (10) days after receipt by Industrial of written notice of such neglect or failure.
- 10 **Warranty Limitation.** EXCEPT AS SPECIFIED HEREIN, INDUSTRIAL DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- 11 **Interruption of Service - Force Majeure.** Industrial shall not be liable to User or any other person for any loss or damage, due to force majeure. Industrial does not assume and shall have no liability under this Agreement for failure to provide, or delay in providing, service due directly or indirectly to causes beyond the control of Industrial or its subcontractors, including, but not restricted to, acts of God or governmental entities, or the public enemy, strikes, or unusually severe weather conditions. In the event of any failure or delay attributable to the fault of Industrial or its subcontractors, User's sole remedy shall be limited to User's charge for services for the time of such failure or delay. User agrees, however, that no allowance will be given if such single failure or delay does not exceed forty-eight (48) hours.
- 12 **Limitation of Liability - Indemnification.** INDUSTRIAL'S TOTAL LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT AND USER'S SOLE REMEDY REGARDLESS OF THE FORM OF THE ACTION WHETHER IN CONTRACT, TORT OR OTHERWISE, IS LIMITED TO THE PAYMENT BY INDUSTRIAL OF ACTUAL DAMAGES, NOT TO EXCEED THE TOTAL AMOUNT PAID BY USER TO INDUSTRIAL COMMUNICATIONS FOR THE AFFECTED SERVICE. IN NO EVENT, EXCEPT FOR THE GROSS NEGLIGENCE OF INDUSTRIAL, SHALL INDUSTRIAL BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS

OF USE LOSS OF TIME, INCONVENIENCE, COMMERCIAL LOSS, LOST PROFITS OR SAVINGS, TO THE FULL EXTENT SUCH MAY BE DISCLAIMED BY LAW. ANY ACTION AGAINST INDUSTRIAL MUST BE BROUGHT WITHIN TWELVE (12) MONTHS AFTER THE CAUSE OF ACTION OCCURS.

- 13 Notices.** Any notice or demand required or permitted to be given or made hereunder shall be given or made by certified or registered mail or any reliable overnight courier to the addresses given below. Industrial or User may from time to time designate any other address for this purpose by written notice to the other party. For the present, Industrial and User designate the following as the respective places for giving of notice:

User: Charles F. Dodge, City Manager
City of Pembroke Pines
601 City Center Way, 4th Floor
Pembroke Pines, FL 33025
Telephone No. (954) 450-1040

Copy: Samuel S. Goren, City Attorney
Goren, Cherof, Doody, & Ezrol, P.A.
3099 E. Commercial Blvd., Ste. 200
Fort Lauderdale, FL 33308
Phone No. (954) 771-4500

Industrial: Jerry DiLella
350 NW 215th St
Miami Gardens FL 33169
Phone Number: 305-423-3046

- 14 Waiver.** Failure or delay on the part of Industrial or User to exercise any right, remedy, power or privilege hereunder; shall not operate as a waiver thereof. A waiver, to be effective, must be in writing and signed by the party making the waiver. A written waiver of a default shall not operate as a waiver of any other default or of the same type default on a future occasion.
- 15 General.** No revision of this Agreement shall be valid unless made in writing and signed by an officer of Industrial and an authorized agent of User. This Agreement constitutes the entire agreement of the Parties and shall supersede all prior offers, negotiations and agreements. If any provision of this Agreement or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby. This agreement shall be construed in accordance with and governed by the laws of the State of Florida with venue for any actions or claims arising out of or related to this Agreement lying in Broward County, Florida. In the event that User selects its own legal counsel to conduct any defense in any legal proceeding and all costs and fees associated therewith shall be the responsibility of the User. In the event that Industrial selects legal counsel to conduct any defense in any legal proceeding on behalf of the User then all costs and fees associated therewith shall be the responsibility of Industrial.
- 16. Non-Discrimination & Equal Opportunity Employment.** During the performance of this Agreement, neither Industrial nor any subcontractors shall discriminate against any employee or applicant for employment because of race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. Industrial will take affirmative action to ensure that employees are treated during employment, without regard to their race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial

status, sexual orientation, or disability, if qualified. Such actions must include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Industrial shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. Industrial further agrees that it will ensure that subcontractors, if any, will be made aware of and will comply with this nondiscrimination clause.

17. **Independent Contractor.** This Agreement does not create an employee/employer relationship between the Parties. It is the intent of the Parties that Industrial is an independent contractor under this Agreement and not the User's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers' Compensation Act, and the State unemployment insurance law. Industrial shall retain sole and absolute discretion in the judgment of the manner and means of carrying out Industrial's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of Industrial, which policies of Industrial shall not conflict with User, State, H.U.D., or United States policies, rules or regulations relating to the use of Industrial's funds provided for herein. Industrial agrees that it is a separate and independent enterprise from the User, that it has full opportunity to find other business, that it has made its own investment in its business and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between Industrial and the User and the User will not be liable for any obligation incurred by Industrial, including but not limited to unpaid minimum wages and/or overtime premiums.
19. **Signatory Authority.** Industrial shall provide User with copies of requisite documentation evidencing that the signatory for Industrial has the authority to enter into this Agreement.
20. **Public Records.** The City of Pembroke Pines is a public agency subject to Chapter 119, Florida Statutes. Industrial shall comply with Florida's Public Records Law. Specifically, Industrial shall:
 - 20.1 Keep and maintain public records required by the User to perform the service;
 - 20.2 Upon request from the User's custodian of public records, provide the User with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
 - 20.3 Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and, following completion of the Agreement, Industrial shall destroy all copies of such confidential and exempt records remaining in its possession after Industrial transfers the records in its possession to the User; and
 - 20.4 Upon completion of the Agreement, Industrial shall transfer to the User, at no cost to the User, all public records in Industrial's possession. All records stored electronically by Industrial must be provided to the User, upon request from the User's custodian of public records, in a format that is compatible with the information technology systems of the User.

**IF INDUSTRIAL HAS QUESTIONS REGARDING THE APPLICATION OF
CHAPTER 119, FLORIDA STATUTES, TO INDUSTRIAL'S DUTY TO
PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT,
CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY CLERK
601 CITY CENTER WAY, 4TH FLOOR
PEMBROKE PINES, FL 33025
(954) 450-1050
MGRAHAM@PPINES.COM**

21. No Contingent Fees. Industrial warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Industrial to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Industrial any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, User shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

22. Scrutinized Companies. Industrial, its principals or owners, certify that they are not listed on the Scrutinized Companies that Boycott Israel List, Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Sector List, or is engaged in business operations with Syria. In accordance with Section 287.135, Florida Statutes, as amended, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with any agency or local governmental entity for goods or services if:

22.1 Any amount of, at the time bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel; or

22.2 One million dollars or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company:

22.2.1 Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes; or

22.2.2 Is engaged in business operations in Syria.

23. Insurance. Industrial shall not commence work under this Agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by the Risk Manager of the User nor shall Industrial allow any subcontractor to commence work on any subcontract until all similar such insurance required of the subcontractor has been obtained and similarly approved.

Certificates of Insurance, reflecting evidence of the required insurance, shall be filed with the User's Risk Manager prior to the commencement of this Agreement. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. The insurance company shall be rated no less than "A" as to management, and no less than "Class VI" as to financial strength according to the latest edition of Best's Insurance Guide published by A.M. Best Company.

Policies shall be endorsed to provide the User thirty (30) days' notice of cancellation or Industrial shall obtain written agreement from its agent to provide the User thirty (30) days' notice of cancellation.

Insurance shall be in force until all obligations required to be fulfilled under the terms of the Agreement are satisfactorily completed as evidenced by the formal acceptance by the User. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, Industrial shall furnish, at least fifteen (15) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension thereunder is in effect. Industrial shall neither commence nor continue to provide any services pursuant to this Agreement unless all required insurance remains in full force and effect. Industrial shall be liable to the User for any lapses in service resulting from a gap in insurance coverage.

23.1 REQUIRED INSURANCE

Comprehensive General Liability Insurance written on an occurrence basis including, but not limited to: coverage for bodily injury and property damage, personal & advertising injury, products & completed operations, and contractual liability. Coverage must be written on an occurrence basis, with limits of liability no less than:

1. Each Occurrence Limit - \$1,000,000
2. Personal & Advertising Injury Limit - \$1,000,000
3. General Aggregate Limit - \$2,000,000
4. Products & Completed Operations Aggregate Limit - \$2,000,000

Products & Completed Operations Coverage shall be maintained for ten (10) years after the final payment under this contract.

The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. City' s Additional Insured status shall extend to any coverage beyond the minimum requirements for limits of liability found herein.

23.2 REQUIRED ENDORSEMENTS

- 23.2.1 The City of Pembroke Pines shall be named as an Additional Insured on each of the General Liability policies required herein
- 23.2.2 Waiver of all Rights of Subrogation against the User
- 23.2.3 Thirty (30) Day Notice of Cancellation or Non-Renewal to the User
- 23.2.4 Industrial's policies shall be Primary & Non-Contributory
- 23.2.5 All policies shall contain a "severability of interest" or "cross liability" clause without obligation for premium payment of the User
- 23.2.6 The City of Pembroke Pines shall be named as a Loss Payee on all Property and/or Inland Marine Policies as their interest may appear.

Industrial shall name the User, as an additional insured on each of the General Liability policies required herein and shall hold the User, its elected and appointed officers, agents, employees, and instrumentalities harmless on account of claims for damages to persons, property or premises arising out of the services provided hereunder.

24. **No Waiver of Sovereign Immunity.** Nothing contained herein is intended nor shall be construed to waive User's rights and immunities under the common law of §768.28, F.S., as may be amended from time to time.



City of Pembroke Pines, FL

601 City Center Way
Pembroke Pines, FL
33025
www.ppines.com

Agenda Request Form

Agenda Number: 33.

File ID: 19-0700

Type: Purchase

Status: Passed

Version: 1

**Agenda
Section:**

In Control: City Commission

File Created: 06/06/2019

Short Title: Motorola Digital Mobile Portable Radios - Industrial
Communications

Final Action: 06/19/2019

Title: MOTION TO APPROVE THE PURCHASE OF MOTOROLA DIGITAL 900MHZ BASE, MOBILE AND PORTABLE RADIOS AND AIRTIME, FROM INDUSTRIAL COMMUNICATIONS, FOR A TOTAL NOT TO EXCEED OF \$120,047.73, WHICH INCLUDES A 10% OWNERS CONTINGENCY FEE OF \$10,913.43, AND ALSO APPROVE \$39,216 ANNUAL AIRTIME CHARGES, UTILIZING PRICING FROM THE SCHOOL DISTRICT OF LEE COUNTY INVITATION TO BID B157260RC PURSUANT TO SECTION 35.18(C)(5) OF THE CITY'S PROCUREMENT CODE.

***Agenda Date:** 06/19/2019

Agenda Number: 33.

Internal Notes:

Attachments: 1. School District of Lee County Documents, 2. Industrial Communications Quote

1 City Commission 06/19/2019 approve

Pass

Action Text: A motion was made to approve on the Consent Agenda

Aye: - 5 Mayor Ortis, Commissioner Castillo, Vice Mayor Schwartz,
Commissioner Siple, and Commissioner Good Jr.

Nay: - 0

MOTION TO APPROVE THE PURCHASE OF MOTOROLA DIGITAL 900MHZ BASE, MOBILE AND PORTABLE RADIOS AND AIRTIME, FROM INDUSTRIAL COMMUNICATIONS, FOR A TOTAL NOT TO EXCEED OF \$120,047.73, WHICH INCLUDES A 10% OWNERS CONTINGENCY FEE OF \$10,913.43, AND ALSO APPROVE \$39,216 ANNUAL AIRTIME CHARGES, UTILIZING PRICING FROM THE SCHOOL DISTRICT OF LEE COUNTY INVITATION TO BID B157260RC PURSUANT TO SECTION 35.18(C)(5) OF THE CITY'S PROCUREMENT CODE.

SUMMARY EXPLANATION AND BACKGROUND:

1. The Public Services Department is requesting to purchase the following radio equipment and accessories:

<u>QTY</u>	<u>Model</u>	<u>Description</u>	<u>Price</u>	<u>Amount</u>
87	XPR5580e	MOTOROLA DIGITAL 900MHz MOBILE RADIO	\$527.90	\$45,927.30
87	TRA8903	3DB GAIN STUBBY ANTENNA	\$24.00	\$2,088.00
87	RKN4136	IGNITION SENSE CABLE	\$26.00	\$2,262.00
87	LABOR	VEHICLE INSTALLATION	\$60.00	\$5,220.00
6	1 LOCATION	BASE STATION RADIO AND ANTENNA SWAP	\$110.00	\$660.00
6		3DB GAIN OMNI ANTENNA AND MOUNT KIT	\$52.00	\$312.00
6	XPR5580e	MOTOROLA DIGITAL 900MHZ BASE RADIO	\$522.00	\$3,132.00
79	XPR7580e	MOTOROLA 900MHZ PORTABLE RADIO WITH 5 LINE ALPHANUMERIC, BELT CLIP WITH MPRESS RAPID RATE CONDITIONING CHARGER	\$627.00	\$49,533.00
Total				\$109,134.30

2. On February 9, 2016, the School District of Lee County advertised Invitation to Bid B167260RC to Purchase two way radio equipment and repeaters, installation, maintenance, purchase and repairs.

3. On August 23, 2016, the School District of Lee County opened two (2) bids from Industrial Communications and Wireless Technology Equipment Company for a term of 1 year with a renewal option for two (2) additional one (1) year period. September 12, 2016 - September 11, 2019.

4. The School District of Lee County awarded contracts to both firms commencing on September 12, 2016. Both contracts have been renewed until September 11, 2019.

5. Industrial Communications unit price from the original Bid Tabulation Sheet, acquired from the School District of Lee County Procurement Department, offered a lower cost than Wireless Technology Equipment Company's bid submittal for the items being requested by the Public Services Department.

6. Pursuant to Section 35.18(C)(5) of the City's Procurement Code, commodities or services that are the subject of contracts with the state its political subdivisions or other governmental entities including the United States government, are exempt from from the competitive procurement process.

7. The Public Services Department has reviewed the School District of Lee County's Invitation to Bid B167260RC package and the proposal from Industrial Communications and recommends awarding the purchase to Industrial Communications.

8. In addition, each radio has a monthly airtime charge of \$19. As a result, this will cost an additional \$3,268 per month and \$39,216 annually.

9. Motion to approve the purchase of Motorola digital 900mhz base, mobile and portable radios and airtime, from Industrial Communications, for a total not to exceed of \$120,047.73, which includes a 10% owners contingency fee of \$10,913.43, and also \$39,216 of annual

airtime charges, utilizing pricing from the School District of Lee County invitation to bid B157260RC pursuant to Section 35.18(c)(5) of the City's Procurement Code.

FINANCIAL IMPACT DETAIL:

a) Initial Cost: \$120,047.73 (\$39,216 of annual airtime charges, \$9,804 will be paid in this fiscal year)

b) Amount budgeted for this item in Account No: Funds are budgeted in the following account #'s:

471-536-6010-52650 (Equip. < \$1,000) \$40,151

471-536-6010-46800 (Maint. Contr.) \$3,249

1-519-6001-52650 (Equip. < \$1,000) \$54,646

1-519-6001-46800 (Maint. Contr.) \$4,503

128-544-8001-52650 (Equip. < \$1,000) \$25,252

128-544-8001-46800 (Maint. Contr.) \$2,052

c) Source of funding for difference, if not fully budgeted: Not Applicable.

d) 5 year projection of the operational cost of the project:

	Current FY	Year 2	Year 3	Year 4	Year 5
Revenues	0	0	0	0	0
Expenditures	\$129,851.73	\$39,216	\$39,216	\$39,216	\$39,216
Net Cost	\$129,851.73	\$39,216	\$39,216	\$39,216	\$39,216

e) Detail of additional staff requirements: Not Applicable.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/6/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER The Driscoll Agency 141 Longwater Drive, Suite 203 Norwell MA 02061	CONTACT NAME: Ken Christianson	FAX (A/C, No): 781-681-6686	
	PHONE (A/C, No, Ext): 781-681-6656	E-MAIL ADDRESS: kchristianson@driscollagency.com	
INSURED Industrial Communications & Electronics, Inc. Industrial Tower & Wireless, LLC Industrial Communications, LLC 40 Lone Street Marshfield MA 02050-2102	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A : United States Fire Insurance Co		21113
	INSURER B : The North River Insurance Company		21105
	INSURER C :		
	INSURER D :		
	INSURER E :		
INSURER F :			

COVERAGES**CERTIFICATE NUMBER:** 1838685377**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDITIONAL SUBROGATION WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> XCU Included <input checked="" type="checkbox"/> Contractual Liab GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:		543228784	1/1/2019	1/1/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY		1337449302	1/1/2019	1/1/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$		5238094932	1/1/2019	1/1/2020	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 20,000,000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N N/A	4087355868	1/1/2019	1/1/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

City of Pembroke Pines is included as Additional Insureds for General Liability and Excess (Umbrella) Liability as required by a signed written contract or agreement with the Named Insured.

CERTIFICATE HOLDER**CANCELLATION 30**

City of Pembroke Pines
601 City Center Way
Pembroke Pines FL 33025

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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