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**CITY COUNCIL AGENDA ITEM**

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**TO:** Mayor & City Council

**DATE:** September 10, 2014

**FROM:** John McDonough, City Manager

**AGENDA ITEM:** Consideration of North Fulton Regional Radio System Authority Contribution Agreement

**MEETING DATE:** For Submission onto the September 16, 2014, City Council Regular Meeting Agenda

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*BACKGROUND INFORMATION: (Attach additional pages if necessary)*

See attached:

Memorandum  
Contribution Agreement

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APPROVAL BY CITY MANAGER: BRP APPROVED

PLACED ON AGENDA FOR: **09/16/2014**

CITY ATTORNEY APPROVAL REQUIRED: (  ) YES (  ) NO

CITY ATTORNEY APPROVAL: SMJ



TO: John McDonough, City Manager

FROM: Wendell K. Willard

DATE: September 5, 2014 for Submission onto the September 16, 2014, City Council Meeting Agenda

ITEM: North Fulton Regional Radio System Authority - Contribution Agreement

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### **Background:**

Attached is the proposed Contribution Agreement which has been forwarded to the City from the North Fulton Regional Radio Authority. This Agreement will provide for the continuation of the financial commitments as originally outlined in the IGA dated January 28, 2013.

### **Discussion:**

The Agreement is similar in form to the City's previous Agreement with the Authority and will in essence continue the relationship and financial obligation for Sandy Springs. The same agreement form is to be adopted by each participating city.

### **Financial Impact:**

The Agreement provides terms for the payment of these services.

### **Attachments:**

- Contribution Agreement

**CONTRIBUTION AGREEMENT  
BY AND BETWEEN THE NORTH FULTON REGIONAL RADIO SYSTEM AUTHORITY  
AND THE CITY OF \_\_\_\_\_, GEORGIA**

**THIS CONTRIBUTION AGREEMENT** (“Agreement”), is entered into by and between the North Fulton Regional Radio System Authority (“Authority”) and the City of \_\_\_\_\_, Georgia (“City”), this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**BACKGROUND**

**WHEREAS**, the Authority is a political subdivision of the state and a public corporation duly created by an act of the General Assembly of the State of Georgia effective July 1, 2013 (“Act”); and

**WHEREAS**, the City is a municipal corporation duly created under provisions of Georgia law; and

**WHEREAS**, the City entered into a certain Intergovernmental Agreement for the Development and Implementation of a Unified Radio System by and among the Cities of Alpharetta, Milton, Roswell and Sandy Springs, Georgia (“IGA”), dated January 28, 2013, for the creation of a new, unified radio system including, but not limited to, erection of a radio tower or towers, implementation of equipment in existing locations, and maintenance and upgrade of radio equipment and facilities (“System”) for use by the named cities (“Participating Cities”) to meet their respective public needs; and

**WHEREAS**, each of the Participating Cities agreed to certain financial obligations in the IGA and agreed to contribute its weighted share, as defined in the IGA and as attached to this Agreement as Exhibit A (“Weighted Share”); and

**WHEREAS**, the Participating Cities anticipated the creation of the Authority and agreed that, upon creation of the Authority, each of their governing bodies would acknowledge the transfer of authority under the IGA and System assets to the Authority and would pledge its Weighted Share by agreement with the Authority; and

**WHEREAS**, the City now desires to enter an agreement with the Authority to acknowledge the transfer of authority under the IGA and to set forth the rights and obligations of the City and the Authority, particularly with respect to financial commitments; and

**WHEREAS**, the City has authorized the execution of this Agreement through appropriate resolution adopted by its governing body;

**AGREEMENT**

**NOW, THEREFORE**, pursuant to the terms and conditions set forth below, the Authority and the City hereby agree as follows:

Section 1. Intent. The System shall be operated by the Authority as a joint project to serve, initially, the Participating Cities and, subsequently, any subsequent subscribers upon such terms and conditions as may be provided in the Act and by separate agreement of the Participating Cities. (The Participating Cities and subsequent subscribers are herein sometimes referred to as “Subscribers.”)

Section 2. Capitalization. The City shall contribute its Weighted Share to the initial capitalization of the System in the percentage and amounts set forth opposite its name in Exhibit A. To the extent a subsequent subscriber makes a contribution for capital costs fully paid, then upon a tender of funds by such subsequent subscriber, the City shall be entitled to an equivalent refund in the same percentage as its Weighted Share.

In the event the System shall need additional capital over and above the initial capitalization, the governing body of the Authority ("Board of Managers") shall submit verification of need to the governing body of the City and obtain approval for the City's Weighted Share of any additional capital by resolution from the governing body.

Section 3. Maintenance. The City shall pay its Weighted Share of all maintenance, upgrade or other fees incurred in connection with operating the System including, but not limited to, fees associated with acquisition or leasing of land for communications towers. Periodically the Board of Managers shall re-evaluate portioning of contributions to maintenance, upgrade and ongoing fees incurred in connection with System operations. The City's contributions shall be re-evaluated according to its Weighted Share.

Section 4. Payment. As obligations are incurred or to be incurred for the System, the Authority shall submit an invoice to the City with a request for payment of its Weighted Share ("Request"). The City shall review the invoice and acknowledge the obligation of payment pursuant to the invoice and shall make payment to the Authority at such time and as directed in the Request. In the event payment is not received from the City in accordance with the Request ("Delinquent Portion"), the City shall incur a late fee in the amount of five percent (5%) of the Delinquent Portion, and the remaining Subscribers shall contribute, in a timely manner to avoid additional cost and late penalties, the Delinquent Portion in accordance with their Weighted Shares. Subscribers paying the Delinquent Portion shall be entitled to reimbursement from the City within fourteen (14) days of the date the City shall have paid its Weighted Share of the Delinquent Portion. Reimbursement payments not made by the City within fourteen (14) days as hereinabove provided shall incur interest at the rate of six percent (6%) per annum.

Section 5. Income Into the System. The Board of Managers shall be responsible for identifying and taking steps to implement opportunities to derive income from the System. Any potential income opportunities (i.e., co-locations with private entities, etc.) shall be returned to the governing authority of the City for ratification prior to such becoming binding on the System. Any income derived from the System shall be returned to the City in a percentage that is no less than its Weighted Share contribution to the System, though the City may be entitled to a market rate land lease payment to account for greater initial contributions to the System by providing land to the System. In the event of such a special circumstance, the Board of Managers shall make a recommendation that the City should realize more than its Weighted Share as described above.

Section 6. Retained Powers. The City shall retain responsibility and authority for its operational departments and for such equipment and services as are required at its place of operation to interconnect to the System's operations.

Section 7. Non-Assignability. The parties shall not assign any of the obligations or benefits of this Agreement.

Section 8. Entire Agreement. This Agreement constitutes the entire understanding and Agreement of the parties regarding the subject matter of the Agreement, and supersedes all prior oral or written agreements or understandings.

Section 9. Amendment. This Agreement may be modified at any time upon mutual written consent of the parties, with resolution of the governing body of the City.

Section 10. Notices. All notices, statements, modifications, amendments, demands, requests, consents, approvals, or authorizations hereunder given by either party to the other shall be in writing and sent by registered or certified mail, postage prepaid. Notices shall be addressed as follows:

**If to the City:**

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With a copy to:

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**If to the Authority:**

Chairman of the Authority  
City address of Chairman

With a copy to:

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Section 11. Severability, Venue and Enforceability. If a court of competent jurisdiction renders any provision of this Agreement (or any portion of a provision) to be invalid or otherwise unenforceable, that provision or portion of the provision will be severed and the remainder of this Agreement will continue in full force and effect as if the invalid provision or portion were not part of this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia and should either party institute suit concerning this Agreement, venue shall be in the Superior Court of Fulton County, Georgia. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of both parties have participated in the preparation hereof.

Section 12. Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, the parties' successors, heirs and assigns.

Section 13. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

**IN WITNESS WHEREOF**, the Authority and the City have executed this Agreement through their duly authorized officers on the day and year first above written.

**NORTH FULTON REGIONAL RADIO SYSTEM AUTHORITY**

\_\_\_\_\_  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

(SEAL)

**CITY OF** \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_  
(Name)

Mayor

\_\_\_\_\_  
City Clerk

(SEAL)

Approved as to form:

\_\_\_\_\_  
\_\_\_\_\_  
(Name)

City Attorney

\_\_\_\_\_  
\_\_\_\_\_  
(Name)

City Administrator or City Manager

**EXHIBIT A**

**INITIAL SUBSCRIBERS  
WEIGHTED SHARES**

<b>Population</b>	<b>City Population</b>	<b>%</b>
Alpharetta	57,551	21.13%
Milton	32,661	11.99%
Roswell	88,346	32.43%
Sandy Springs	93,853	34.45%
<b>Total</b>	<b>272,411</b>	<b>100.00%</b>

<b>Land Mass</b>	<b>Square Miles</b>	<b>%</b>
Alpharetta	26.91	18.71%
Milton	38.52	26.79%
Roswell	40.72	28.32%
Sandy Springs	37.64	26.18%
<b>Total</b>	<b>143.79</b>	<b>100.00%</b>

<b>Subscriber Radios</b>	<b>Radios</b>	<b>%</b>
Alpharetta	409	29.49%
Milton	95	6.85%
Roswell	489	35.26%
Sandy Springs	394	28.41%
<b>Total</b>	<b>1387</b>	<b>100.00%</b>

<b>Weighted</b>		
<b>Initial Subscriber</b>	<b>Weighted Share (Percentage)</b>	<b>Capital Contribution based on Initial Capitalization of \$16,000,000</b>
Alpharetta	23.11%	\$ 3,697,569.56
Milton	15.21%	\$ 2,433,492.61
Roswell	32.00%	\$ 5,120,328.92
Sandy Springs	29.68%	\$ 4,748,608.91
<b>Total</b>	<b>100.00%</b>	<b>\$16,000,000.00</b>