



Lincoln County Board of Commissioner's Agenda Item Cover Sheet

Board Meeting Date:		Agenda Item Type:	Consent Agenda:	Public Hearing:	Regular Agenda:
Submitting Person:		Presentation Time (est):			
		Phone Number/Ext:			
Presenter at Meeting:		Email:			
		Phone Number/Ext:			
Submitting Department:		Email:			
		Department Head Approval:	P		

Description of Agenda Item:

Background & Basis of Recommendations:

Action/Recommendations:

Time Sensitivity (none or explain):

Budget Impact (if applicable):

List of Attachments (if any):



COMMUNICATIONS EQUIPMENT MAINTENANCE SERVICE AGREEMENT

This Agreement is entered into on 7/1/2024 between Mobile Communications America with principal offices at Charlotte, NC (hereafter "Mobile Communications America") and; (the "Customer")
Lincoln County.

This Agreement is an offer to purchase service by the customer and applies to maintenance service, parts and labor for the equipment and/or systems as described in Attachment A. Mobile Communications America agrees to maintain the equipment under the terms and conditions described in this Agreement. Beginning on the effective date of this Agreement, Mobile Communications America agrees to provide maintenance service to keep covered equipment in good working order.

Payment Terms:

In consideration of the maintenance service provided, the customer agrees to pay to Mobile Communications America \$10,473.00 per month, \$125,676.00 annually (*State/Local taxes NOT included*). The customer will pay on a Annual basis. This service agreement will expire on: 6/30/2025. This agreement will auto renew upon the expiration date.

Once the agreement is accepted, services may be added or adjusted but may not be reduced below the initial payment terms agreement upon when executed.

By signing this Agreement, Customer agrees to accept maintenance service for the listed equipment according to all specified terms and conditions of the Agreement. Customer also agrees to provide full, free and safe access to the equipment and/or systems covered by this Agreement. The amounts noted above are due and payable within thirty (30) days of the Effective Date. This Agreement is valid only if signed by an authorized representative or officer of Mobile Communications America.

The additional terms and conditions attached to this Agreement are part of this Agreement. This Agreement is the complete understanding between Mobile Communications America and Customer superseding all prior proposals or agreements, oral or written, and all other communications between the parties relating to the subject matter of this Agreement. Customer agrees that no other representations have been made relative to this Agreement, except that which is expressed in writing herein. The Customer acknowledges that the Customer has read this entire Agreement, understands it, and agrees to be bound by its terms and conditions.

By: _____
Customer

By: _____
Mobile Communications America

Title: _____

Title: _____

Date: _____

Date: _____



Terms And Conditions

TERM AND ACCEPTANCE: THIS AGREEMENT SHALL BECOME BINDING UPON THE PARTIES WHEN ACKNOWLEDGED IN WRITING BY THE AUTHORIZED REPRESENTATIVE OF THE CUSTOMER AND MCA. It is agreed that service shall be provided only upon the terms included in this Agreement. MCA shall not be bound by terms within the Customer's purchase order or in any other document provided by Customer and provision of services to Customer does not constitute acceptance of any of Customer's terms and conditions and does not serve to modify or amend this Agreement.

GENERAL PROVISIONS: MCA agrees to provide services for the Customer for the Equipment. Services provided hereunder do not assure uninterrupted operation of the Equipment or service and MCA is not responsible for failure to render covered service due to causes beyond its control.

NORMAL WORKING HOURS: Normal working hours shall be from 8:00 AM to 5:00 PM, Monday through Friday, except holidays.

SERVICE: MCA will perform such repairs as may be required to restore Equipment to their normal operating level, provided that such repairs are necessitated by the failure of the Equipment due to normal usage. Non-fixed Equipment shall be serviced at an MCA shop during normal working hours. Travel charges and expenses incurred by MCA at the request of the Customer to resolve a malfunction of the Equipment that is not covered under this Agreement shall be billable to the Customer at current MCA rates. For emergency service or other service performed at Customer's request outside of normal working hours, for equipment not covered under this Agreement or for Equipment whose failure was due to causes not considered to be "normal usage," Customer will be billed for the service at the then current MCA rates for each occurrence.

ENHANCED SERVICE OPTION: If Customer has elected to purchase the Enhanced Service Option, emergency service is included at no additional charge per occurrence, provided that all other terms of this Agreement are satisfied. Emergency service is provided 24 hours per day, seven days per week. Customers not electing the Enhanced Service Option shall pay an additional charge for emergency service rendered at current MCA rates for each occurrence.

REPLACEMENT PARTS: MCA will replace parts and components of the Equipment on an exchange basis when failure is due to the normal and proper use of the Equipment. Parts replaced during maintenance service become the property of MCA.

PREVENTIVE MAINTENANCE: MCA will inspect the Equipment and make such repairs, adjustments, and replacements of parts and components as may be necessary to maintain the Equipment in normal operating condition provided that such services and maintenance are necessitated by normal usage of the Equipment. Inspections and preventive maintenance service will be provided by MCA during normal working hours at the locations specified. All preventive maintenance inspections will be scheduled for mutual convenience and may be performed during remedial service.

PRICE CHANGES: Unless otherwise indicated, prices quoted in this Agreement shall remain in effect for the duration indicated in this Agreement or if none is specified, for a period of [one year]. Thereafter, at the sole discretion of MCA, prices for service under this Agreement may be increased by MCA upon thirty days written notice to Customer. Such changes will become effective on the first day of the first full month following the date specified in the notice.

LIMITATIONS: MCA reserves the right to inspect any equipment or service prior to its inclusion under the terms of this Agreement. MCA may at its sole discretion require that said equipment or system be restored to proper operating specifications at Customer's expense prior to its being covered under this Agreement. MCA may at its sole discretion declare Equipment to be unserviceable. In such case, MCA's sole responsibility is to remove such Equipment from the billing under this Agreement.

EXCLUDED SERVICES: The following services are not included under the terms of this Agreement. The repair of Equipment, replacement of parts, or any additional service labor due to accident, abuse, disaster, neglect, misuse, physical damage, liquid damage, damage by lightning or other Acts of God, service by personnel other than those authorized by MCA, alterations, modifications, attachments, accessories (other than those specifically designed for use with the particular piece of Equipment), use of Equipment with unauthorized batteries and/or power supplies or reprogramming by other than MCA personnel. Travel charges and expenses incurred by MCA at the request of the Customer to resolve a malfunction of equipment or systems not covered under this Agreement shall be billable to the Customer at current MCA rates. If MCA finds that any Equipment has been altered or repaired by others, such Equipment shall not be covered by this Agreement and any services shall be billable to the Customer at current MCA rates.

TAXES: Applicable taxes will be billed to the Customer and the Customer hereby agrees to pay said taxes, unless the Customer has provided a current tax exemption certificate.

LIABILITY INSURANCE: MCA agrees to carry reasonable liability insurance and applicable worker's compensation insurance.

WARRANTY: MCA warrants that it will perform the services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement. EXCEPT FOR THE WARRANTY SET FORTH IN THIS PARAGRAPH, MCA MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE SERVICES, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY; OR (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (C) WARRANTY OF TITLE; OR (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

LIMITATION OF LIABILITY: MCA SHALL NOT BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, DAMAGE OR LOSS OF OTHER PROPERTY OR EQUIPMENT OR SYSTEMS OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT MCA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. THE LIABILITY OF MCA WITH RESPECT TO ANY OF ITS OBLIGATIONS HEREUNDER, INCLUDING SERVICE, SALE, DELIVERY, RESALE, INSTALLATION OR THE TECHNICAL DIRECTION OF INSTALLATION, REPAIR OR USE OF ANY ITEM COVERED BY OR FURNISHED HEREUNDER, WHETHER SUCH LIABILITIES ARE FOUNDED IN CONTRACT, IN TORT, UNDER ANY WARRANTY, OR OTHERWISE, SHALL NOT EXCEED THE PRICE PAID TO MCA WITH RESPECT TO THE SERVICE GIVING RISE TO THE CLAIM. NO ACTION SHALL BE BROUGHT FOR ANY BREACH OF THIS AGREEMENT MORE THAN ONE (1) YEAR AFTER THE ACCRUAL OF SUCH CAUSE OF ACTION EXCEPT FOR MONEY DUE UPON OPEN ACCOUNT.

TERMINATION: This Agreement shall terminate upon the expiration date set forth in this Agreement. With the exception of the Customer's liability for any and all payments outstanding under this Agreement, neither the Customer nor MCA shall retain any liability for any performance under this Agreement on any date following the expiration of this Agreement.

NO CHANGES: Except as previously described, no changes, alteration or modification of this Agreement may be made without the express written consent of both parties. This Agreement may not be assigned or transferred without the express written consent of MCA.

ATTORNEYS' FEES: Should any dispute arise between the parties regarding the interpretation, application, effect or enforcement of the Agreement, the prevailing party in any legal or arbitration proceedings commenced to resolve the dispute shall be entitled to costs and reasonable attorney's fees incurred in said legal proceeding.

COVENANT NOT TO SOLICIT: During the term of this Agreement and continuing for a period of two (2) years thereafter, Customer will not hire, engage on contract, solicit the employment of, or recommend employment to any third party of any employee of MCA or its subcontractors without the prior written authorization of MCA. This provision applies only to those employees of MCA or its subcontractors who are responsible for rendering services under this Agreement. If this provision is found to be overly broad under applicable law, it shall be modified as necessary to conform to such law.

GOVERNING LAW AND VENUE: This Agreement and the parties' performance hereunder shall be governed by North Carolina law, excluding choice-of-law rules. The parties agree that a party shall commence any action with respect to any dispute regarding the performance or breach of this Agreement exclusively in the State of North Carolina Courts in Lincoln County, North Carolina or the United States District Court for the Western District of North Carolina, and the parties, by entering into this Agreement, submit to the exclusive venue and personal jurisdiction of such courts, and waive all objections to jurisdiction and venue of such courts, including forum non-convenes.

COUNTERPARTS: The Agreement may be executed in counterparts, which together constitute one and the same agreement. A facsimile copy or computer image, such as a PDF or tiff image, of a signature shall be treated as and shall have the same effect as an original signature. In addition, a true and correct facsimile copy or computer image of the Agreement shall be treated as and shall have the same effect as an original signed copy of this document.

MISCELLANEOUS: This Agreement: (i) constitutes the entire agreement between MCA and Customer relating to the maintenance of the Equipment, and supersedes all prior agreements relating thereto, whether written or oral, and (ii) may not be amended or modified except in a writing signed by the parties hereto. If any provision of the Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of the Agreement. All notices given by one party to the other under this Agreement must be delivered by: (a) hand delivery, (b) certified mail, return receipt requested, (c) nationally recognized overnight courier service, or (d) facsimile, to the other party's respective address given in the preamble to the Agreement.

Location	Subscribers
Axaxis VFD	41
Boger City VFD	36
Crouse VFD	41
Denver VFD	71
East Lincoln VFD	58
Howards Creek VFD	42
Lincoln City Fire	48
North 321 VFD	43
Northbrook VFD	44
Pumpkin Center VFD	54
Southfork VFD	37
Union VFD	34
Fire Department Sub Total	549

Location	Subscribers
West Lincoln Rescue	25
Lincoln County EM	42
Lincoln County Fire Marshall	111
Lincoln County EMS	92
Lincoln County Gov / LCAS	5
LC Detention Center	44
LC Sheriff's Office	310
LC Communications	31
Fire Department Sub Total	549
LC Total Subscribers	1209