

**INTERLOCAL AGREEMENT
FOR USE OF PUBLIC SAFETY RADIO SYSTEM**

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This Agreement is made pursuant to chapter 791 of the Texas Government Code and entered into by and between **Harris County, Texas** (the “County”) acting by and through its governing body, the Harris County Commissioners Court, and _____, (the “User) acting by and through its governing body, the _____ .

RECITALS:

The County owns a public safety wireless data system and a trunked radio system that are licensed by the Federal Communications Commission (the “FCC”), which permits radio communications and transmissions via radio units and mobile digital terminals; and

The User desires to obtain access to the County’s communications systems in order to communicate among various public safety units.

NOW, THEREFORE, the parties, in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

TERMS:

I.

For purposes of this Agreement, the following definitions apply:

- A. Mobile Digital Terminal:
Mobile stationary or portable digital communications units communicating among themselves at certain airwave frequencies;
- B. Primary Dispatch System:
A communications system upon which the User, its agents, employees or assigns rely primarily when it desires or attempts the engagement of radio communications or radio transmissions of energy among its Radio Units/Mobile Digital Terminals;
- C. Priority Access:
An assigned level of system access that determines the choice of access to the Radio System between two or more Radio Units/Mobile Digital Terminals seeking use simultaneously;

- D. SmartZone Regional Radio System:
Combination of multiple Trunked Radio System(s) in and about Harris County operating under a single centralized controller as a regional radio system and managed by Harris County Information Technology Center;
- E. Private Wireless Data System:
A Public Safety Wireless Data System that is owned by Harris County, Texas, and licensed by the FCC and that enables the engagement of radio communications or radio transmissions of energy via Mobile Digital Terminals in accordance with technical specifications;
- F. Commercial Wireless Data System:
A Wireless Data System that is owned by a wireless company and provides certain two-way wireless data communications services;
- G. Wireless Data System:
A combination of the Private Wireless Data System and one or more Commercial Wireless Data Systems, and provides wireless data services to Mobile Digital Terminals;
- H. Radio System:
The combination of the SmartZone Regional Radio System and the Wireless Data System;
- I. Radio Unit:
Mobile, stationary, or portable voice radio communications units communicating among themselves at certain air wave frequencies; and
- J. System Code Identification Number:
An identification number that allows Radio Units/Mobile Digital Terminals to gain access to the Radio System to enable the Radio Units/Mobile Digital Terminals to communicate among themselves at certain airwave frequencies, providing a Primary Dispatch System for a User's Radio Units/Mobile Digital Terminals.

II.

The County agrees that during the term of this Agreement, it will:

- A. Allow the User to have access to its Radio System to engage in radio communications among its Radio Units/Mobile Digital Terminals as a Primary Dispatch System;
- B. Provide the User with a Systems Code Identification Number for a maximum of six hundred (600) Radio Units/Mobile Digital Terminals combined;

- C. Upon being notified that one or more of the User's Radio Units/ Mobile Digital Terminals have been lost or stolen, attempt to disable the lost or stolen Radio Units/Mobile Digital Terminals; and
- D. Provide the same level of Priority Access to the Radio System for the User as that afforded the County.

III.

During the term of this Agreement, the User agrees to:

- A. Affirm that the County assumes no cost or responsibility for providing the Radio Units/Mobile Digital Terminals that will have access to the County's Radio System;
- B. Give the County at least ten (10) days prior written notice of its intent to increase, decrease, or otherwise change the number of Radio Units/Mobile Digital Terminals that have access to the County's Radio System. However, notwithstanding the previous sentence, in no event may the User increase the number of Radio Units/Mobile Digital Terminals above the maximum number of units set forth in Paragraph II (B);
- C. Notify the County that one or more of its Radio Units Mobile Digital Terminals have been lost or stolen within twenty-four (24) hours of determining that the Radio Units/Mobile Digital Terminals have been lost or stolen;
- D. Use the System Code Identification Number described in this Agreement to access the County's radio system as a Primary Dispatch System; and
- E. Observe and abide by all applicable statutes, laws, rules and regulations, including, but not limited to, those of the FCC. In addition, the User agrees to observe and abide by any applicable administrative rules promulgated by the County from and after the date such rules become effective and have been delivered to User. Further, the User acknowledges that, should any of these statutes, rules, regulations or administrative rules change during the term of this Agreement and if the change necessitates a modification of the Agreement, the modification may be effectuated by the County without incurring any liability for this modification. Should the County notify the User of any such change, the User shall have thirty (30) days to review and agree to any proposed changes made to this Agreement. If assent to the change is not given, this Agreement terminates.

IV.

The User expressly understands and agrees to pay the County for access to the Radio System at a rate specified in the Fee Schedule attached hereto and incorporated herein. The User expressly

agrees to prepay said yearly charges in full at the beginning of each term of this Agreement, based upon the number of the Radio Units/Mobile Digital Terminals then in service. Should the User change the number of Radio Units/Mobile Digital Terminals in service during the term of this Agreement, the following provisions apply:

- A. In the event the number of Radio Units/Mobile Digital Terminals in service increases during a term of this Agreement, the charge for each additional Radio Unit is based upon the remaining fractional part of the current one-year term of this Agreement. The User agrees to prepay the County the entire amount owed for additional Radio Units/Mobile Digital Terminals for the time remaining in the then current term at least ten (10) days before the User obtains access to the Radio System with the additional Radio Units/Mobile Digital Terminals.
- B. In the event the number of Radio Units/Mobile Digital Terminals in service decreases during the term of this Agreement, the County agrees to either allow a credit or make a refund to the User of a fractional part of the one-year term remaining under this Agreement. The County agrees to effectuate said credit/refund within thirty (30) days of the date the User gives the County written notice of its decrease in the number of Radio Units/Mobile Digital Terminals it has in service.

V.

The User expressly understands and agrees to pay the County for the programming of the User's radios for use on the Radio System at a rate specified in the Fee Schedule, attached hereto and incorporated herein, upon initial access to the Radio System. Should the User's Radio Units/Mobile Digital Terminals require maintenance that destroys the original programming referred to above, after such maintenance each radio will be reprogrammed to the standard configuration at the rate specified in the attached Fee Schedule. In any instance in which the County performs Radio Unit programming services, the User agrees to pay the County the entire amount owed for the programming of Radio Units/Mobile Digital Terminals within thirty (30) days of the invoice date of such services.

VI.

If the User desires to gain access to the County's Radio System for use of Mobile Digital Terminals, then the User expressly understands and agrees to pay the County a one-time agency setup fee as specified in the Fee Schedule attached hereto and incorporated herein. In addition, if the User desires a data network connection back to a specified location, the User agrees to pay all associated fees for setting up and maintaining this connection as specified in Fee Schedule attached hereto and incorporated herein.

VII.

To the extent resources are available and solely at its discretion, County may provide radio equipment installation and radio services upon request of the User. If these services are provided, the User agrees to pay the County on a Time and Material basis at the rate specified in

the Fee Schedule attached hereto and incorporated herein. The County agrees to invoice the User after the services are rendered, and the User agrees to pay invoices within thirty (30) days of the invoice date. Solely at the discretion of the County, the User may purchase certain additional parts and accessories from the County at a price set by the County. The County agrees to invoice the User after the parts and/or accessories are supplied to the User. The User agrees to pay the invoice within thirty (30) days of the invoice's date.

It is expressly understood that the County neither warrants nor assumes any responsibility for installation or use of equipment or for the reliability or adequacy of services provided hereunder. Further, by requesting that the County provide these services, the User assumes the total risk of any loss associated with the installation of the radio equipment; any loss resulting from the use of the radio equipment so installed; and any loss resulting from the use of radio equipment to which other radio services have been provided by the County.

VIII.

It is expressly understood and agreed that the County may increase the fees provided in this Agreement by giving the User written notice of its intention to increase fees at least ninety days (90) before the effective date of the proposed increase. Should such increase become effective during a term of this Agreement, the increase will be prorated based upon the number of months remaining in the then current term of this Agreement. In the event of such mid-term fee increase, the User agrees to pay the total, prorated fee increase on or before thirty (30) days after the effective date of the fee increase. The User agrees to pay the County the entire amount owed from the fee increase within thirty (30) days of receiving notice. Notice may be in the form of an invoice.

IX.

The term of this Agreement is one (1) year and shall commence on the date this Agreement is executed by the User. Thereafter, this Agreement will automatically renew for successive one-year terms unless it is terminated by either party by giving the other party prior written notice of its intention to terminate not less than sixty (60) days prior to the expiration of the term of this Agreement. Notwithstanding the preceding, this Agreement terminates:

- A. Immediately if all or substantially all of the authorization held by the County or the User is revoked by the FCC or its successor agency; or
- B. Upon either party giving the other party thirty (30) days prior written notice of its intent to terminate. Should the User terminate this Agreement as provided in this paragraph, the User agrees that payment in full of all obligations owed to the County by the User is a condition precedent to termination. Should either party terminate the Agreement, the User is entitled to a refund of the pro rata share of any prepayment.

X.

If the User fails to make any payment of any sum due under this Agreement and such failure continues for forty-five (45) days after the County has given the User written notice of such failure, then the User is in default under this Agreement. In the event of the User's default, the County has the right to terminate the Agreement, deny the User any service provided by the County under this Agreement, and retain all moneys paid to the County pursuant to the terms and conditions of this Agreement as liquidated damages. Each and every right and remedy of the County and User are cumulative to and not in lieu of each and every other such right and remedy afforded by law and equity.

XI.

Should the County fail to perform as provided under the terms of this Agreement, the User's sole remedy is termination of this Agreement, and the County agrees to make a refund to the User of the portion of the pre-paid fee based upon that fractional part of the one-year term remaining under this Agreement.

XII.

It is expressly understood and agreed that one hundred percent (100%) coverage of any area at all times is improbable. There may be adverse transmission condition such as short-term unpredictable meteorological effects and sky-wave interference from distant stations that can interrupt the Radio System. Likewise, there are other causes beyond reasonable control of the County, including, but not limited to, motor ignition and other electrical noise that may be minimized by corrective devices at the User's expense. Any surveys, studies, research, or other measures taken to ensure the adequacy of coverage provided to the User under this Agreement are the sole responsibility and expense of the User.

XIII.

All notices and communications permitted or required under this Agreement are to be mailed by United States Postal Service, certified mail, return-receipt requested, to the following addresses:

FOR THE COUNTY: All notices and communications must be mailed as follows:

Original to: 1. Harris County Information Technology Center
406 Caroline, 4th Floor
Houston, TX 77002-2027

and

Copy to: 2. Commissioners Court of Harris County

Harris County Administration Building
1001 Preston, 9th Floor
Houston TX 77002-1891
Attention: Clerk of Commissioners Court

FOR THE USER:

These addresses may be changed upon giving prior written notice to the other party. All mailed notices and communications are deemed given and complete upon depositing them in the United States Mail.

XIV.

Neither party hereto shall sell, assign, or transfer any of its rights or obligations under this Agreement in whole or in part, without the prior written consent of the other party. This Agreement shall bind and benefit the County and the User and shall not bestow any rights upon any third party.

XV.

This Agreement is governed by and construed according to the laws of the State of Texas. Exclusive venue of any action or claim arising out of this Agreement is Harris County, Texas. Failure of either party hereto to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies accruing hereunder upon the default or failure by an appropriate remedy, shall not be considered a waiver of strict compliance with any other obligation hereunder, and shall not be considered a waiver of the exercise of any rights or remedies occurring as a result of any future development or failure of performance.

XVI.

The User will pay its obligations hereunder from available current revenues.

XVII.

This instrument contains the entire Agreement between the parties relating to the rights granted and the obligation assumed. Any modifications concerning this Agreement are of no force and effect unless in writing and executed by both parties except for those modifications effectuated pursuant to the provisions of Paragraph III (E).

This Agreement may be executed in multiple counterparts, each having equal force and effect of an original. This Agreement shall become binding and effective only after it has been authorized and approved by the governing bodies of each governmental entity, as evidenced by the signature of the appropriate authority.

APPROVED AS TO FORM:

MIKE STAFFORD
County Attorney

HARRIS COUNTY, TEXAS

By: _____
Assistant County Attorney

By: _____
ED EMMETT
County Judge

Date Signed: _____

ATTEST:

By: _____

By: _____

Print Name: _____

Title: _____

Date Signed: _____

APPROVED AS TO FORM:

By: _____
Name: _____