

**INTERLOCAL AGREEMENT
FOR USE OF PUBLIC SAFETY COMMUNICATIONS SYSTEMS**

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 **City of Bay City** (the “User”), acting by and through its governing body and in accordance with the Interlocal Cooperation Act Tex. Gov’t Code §§ 791.001, *et. seq.*, as amended.

RECITALS:

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

The County operates a Mobility Services Program which builds, procures, hosts and/or administers mobile technologies including mobile applications, devices and supporting equipment;

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

The County finds that allowing User access to the County’s communication systems will predominantly serve a public purpose;

The County will ensure the public receives a proper return benefit for allowing User access to the County’s communication systems; and

The County will retain sufficient control over all network equipment to ensure the public purpose is maintained.

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

T E R M S:

I.

For purposes of this Agreement, the following definitions apply:

- A. 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;
- B. Priority Access:
An assigned level of system access that determines the choice of access to the Radio System between two or more Radio Units seeking use simultaneously;
- C. 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 Universal Services;
- D. Project 25 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 Universal Services;
- E. Radio System:
The combination of the SmartZone Regional Radio System and the Project 25 Regional Radio System;
- F. Radio Unit:
Mobile, stationary, or portable voice radio communication units communicating among themselves at certain air wave frequencies; and
- G. System Code Identification Number:
An identification number that allows Radio Units to gain access to the Radio System to enable the Radio Units to communicate among themselves at certain airwave frequencies, providing a Primary Dispatch System for a User's Radio Units;
- H. Radio Authentication:
Radio authentication utilizes the Project 25 TIA102.AACE Link Layer Authentication standard. It is over-the-air compatible with other P25 manufacturer's equipment that incorporates the Link Layer standard. One of the key issues a system manager must address is minimizing the use of unauthorized radios, whether they have been lost or stolen, or have been cloned illegitimately. The Radio Authentication solution provides an extra level of verification, every time a radio registers to the system; and

I. Project 25 (P25) Phase 2

(P25) Phase 2 refers to P25 requirements and standards for a digital Common Air Interface (CAI), Time Division Multiple Access (TDMA) based, which provides one voice channel per 6.25 kHz channel spectrum efficiency. The current standards effort focuses on 2-slot TDMA which provides two voice traffic channels in a 12.5 kHz allocation.

J. Interoperable Mobile Applications

Products and services made available at User's option to access the County's public safety communication systems using various technologies beyond land mobile radio.

II.

The County agrees that during the term of this Agreement, it will provide one or more of the following Services, in accordance with User's signed quote(s):

- A. Allow the User to have access to its Radio System to engage in radio communications among its Radio Units as a Primary Dispatch System, which includes the following:
 - i. Providing the User with a Systems Code Identification Number for a maximum of six hundred (600) Radio Units combined;
 - ii. Upon being notified that one or more of the User's Radio Units have been lost or stolen, attempting to disable the lost or stolen Radio Units;
 - iii. Providing the same level of Priority Access to the Radio System for the User as that afforded the County;
- B. Provide installation and repair services on a Time and Material Basis, to the extent resources are available and solely at its discretion, to equipment used on the Radio System; and
- C. Provide Users with the option to adopt or subscribe to various products and services as part of its Mobility Services Program.

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 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 that have access to the County's Radio System, or to make changes to interoperable mobile application subscription services. However, notwithstanding the previous sentence, in no event may

the User increase the number of Radio Units above the maximum number of units set forth in Paragraph II (A);

- C. Notify the County that one or more of its Radio Units have been lost or stolen within twenty-four (24) hours of determining that the Radio Units 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.

If the User requests access to the Radio System, the User expressly understands and agrees to pay the County for said access at a rate specified in the Fee Schedule attached hereto and incorporated herein. The User expressly agrees to pay said monthly charges in full after the end of each month during the term of this Agreement, based upon the number of the Radio Units then in service. Should the User change the number of Radio Units in service during a monthly billing period, the monthly charge will be increased or decreased proportionally. Notwithstanding any provision to the contrary, the parties agree that the County may provide such monthly invoices to the User by email sent to a mutually agreed upon email address.

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 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 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 any Radio Units, all radios, regardless of Manufacturer, must contain active P25 Phase 2 TDMA and Radio Authentication options. Any radio without these featured options will not be activated.

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.

Mobility Services Program: The County provides Users with the option of adopting the following products and services at the rates specified in the Fee Schedule for various interoperable mobile applications ("apps") and other technologies beyond land mobile radio:

- A. Mobile Apps
 - i. App licenses- County will bill monthly subscriptions for end user licenses for applications selected by User;
 - ii. App administration- includes account creation/deletion, group management, will be bundled into the monthly subscription fee;
 - iii. App setup- includes planning and configuration for app deployment;
 - iv. App training- end user training of mobile apps;
 - v. App support- may be bundled into the monthly subscription or billed separately depending on the application and end user preferences.

- B. Equipment
 - i. Equipment rental
 - ii. Equipment programming and configuration
 - iii. Inventory management

The User expressly agrees to pay monthly charges for interoperable mobile applications products and services selected by User in full after the end of each month during the term of this Agreement. Notwithstanding any provision to the contrary, the parties agree that the County may provide such monthly invoices to User by email sent to a mutually agreed upon email address.

IX.

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.

X.

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 for a maximum of five (5) years unless it is terminated by either party by giving the other party prior written notice of its intention to terminate not less than thirty (30) 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.

XI.

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.

XII.

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.

XIII.

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.

XIV.

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. Universal Services
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: City of Bay City
1901 5th Street
Bay City, TX 77414
Attention: Scotty Jones, Finance Director

E-Invoicing Address: accountspayable@cityofbaycity.org
sjones@cityofbaycity.org

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. Notwithstanding any provision to the contrary, the parties agree that the County may provide monthly invoices to the User by email sent to a mutually agreed upon email address.

XV.

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.

XVI.

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.

XVII.

The User will pay its obligations hereunder from available current revenues. User shall have the right to cancel this Agreement at the end of any current fiscal year (fiscal year defined as September 1 through August 31) if funds are not allotted for the next fiscal year to continue this Agreement.

XVIII.

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.

[EXECUTION PAGE FOLLOWS]

CITY OF BAY CITY

HARRIS COUNTY

By: _____
ROBERT K. NELSON
MAYOR

By: _____
LINA HIDALGO
COUNTY JUDGE

Date: _____

ATTEST:

APPROVED AS TO FORM:
VINCE RYAN
COUNTY ATTORNEY

By: _____
Jeanna, Thompson
City Secretary

By: _____
Amy Samples
Assistant County Attorney
20GEN1551