

**Interlocal Agreement Between Collin County and the City of McKinney  
to Exchange Tower Access for Their Public-Safety Radio Systems**

**THIS INTERLOCAL LICENSE AGREEMENT** (“Agreement”) is made and entered into by and between **COLLIN COUNTY, TEXAS**, a Texas political subdivision, and the **CITY OF MCKINNEY, TEXAS**, a Texas municipal corporation, (sometimes referred to collectively as “Parties” and individually as “Party”).

1. **Purpose and Authority.** The City of McKinney operates a Motorola ASTRO Project 25 Phase 1 simulcast system as its public-safety radio system (“simulcast system”), and Collin County is upgrading its public-safety radio system to an ASTRO 25 simulcast cell (“simulcast cell”). Under this agreement, the County will extend the City a license to locate its radio antennas and equipment on the radio tower and at the County’s Service Center at 700 Wilmeth Road, McKinney. In exchange, the City will extend the County a license to locate its radio antennas and equipment on the water tower and at the City’s water tower site at 10153 Westridge Blvd., McKinney. Each party intends for the City’s simulcast system and the County’s simulcast cell to operate according to industry standards and the manufacturers’ design, and each party will receive fair compensation by this exchange. The parties enter this agreement under the Interlocal Cooperation Act, Texas Government Code Chapter 791.

2. **Term.** Given Motorola’s commitment to support ASTRO 25 technology until 2036, the City and the County anticipate using their respective simulcast system and simulcast cell until the end of their lifespan. This agreement will go into effect on the day the party to last sign it signs it (“Effective Date”) and will continue until October 1, 2036, unless terminated under this Agreement (*see* section 15).

3. **Liaison Officers.** The parties’ liaison officers are listed in section 18(h).

4. **Collin County’s Radio Tower Site, Warranties, and Duties**

a. **The County’s Service Center**

The County warrants that it owns the land and the 402-foot radio tower at its Service Center at 700 Wilmeth Road, McKinney, TX 75069 (33 13 51.00; 96 37 7.00) in fee simple and that it owns or has an easement for access to the Service Center from a public road and that the Service Center has a connection to a commercial power grid. The County will maintain these rights and interests during the term of this Agreement.

b. **The Radio Tower and Tower Management**

The County will maintain the radio tower so that it meets applicable industry standards, including marking and lighting laws and standards such as FAA Advisory Circular AC No. 70/7460-1L, Obstruction Marking and Lighting (Dec. 4, 2015) as revised. The County’s radio tower will also meet ANSI/TIA-222-G or ANSI/TIA-222-H and International Building Code 2012 or 2015, based on a design and wind speed of 90 m.p.h. (3-second gust), structure class II, exposure C, with a topographic category 1 and a crest height of 0 feet. The County will maintain

lightning protection for the radio tower according to industry standards, such as chapters 4 and 5 of Motorola R56 Standards and Guidelines for Communications Sites (2005) and the standards discussed there.

The County will also be responsible for routine maintenance on the radio tower and the County's shelter, generator, equipment, and other property at the Service Center. The County will comply with section 9 when planning or performing work or other maintenance on the radio tower or at the Service Center.

The County will maintain and manage the radio tower and Service Center according to industry standards to provide the best radio-frequency environment so that the County's simulcast cell and the City's simulcast system operate according to the manufacturers' design and industry standards without undue interference.

The City will inspect, service, and maintain its own antennas, equipment, shelter, and standby generator at the Service Center (*see* section 5).

**c. Responsibility for Property**

Except for damage caused by the City's operations (*see* section 12), Collin County will be responsible for damage to the radio tower and the County's shelters, generator, and equipment at the Service Center that would be covered by a standard policy of property insurance with common or customary exclusions. The County may meet this duty by buying and maintaining insurance or other coverage.

**d. Fencing and Security**

Collin County will maintain physical security measures at the Service Center, including fencing, a gate, and electronic access control.

**e. Legal Compliance, Registration and Notice**

The County will manage and maintain the Service Center, the radio tower, and its equipment according to all applicable laws.

The County will maintain all of its radio tower's registrations with the FCC and the FAA, or monitor the tower's status as exempt from the FAA-notification laws and register the tower if necessary.

**f. Hazardous Materials**

The County warrants that the Service Center is free from contamination by hazardous materials. Unless the presence of hazardous materials is the result of the City's operations (*see* section 5(j)), the County will be responsible for any hazardous materials or the cost of complying with environmental laws.

## **5. City of McKinney's License and Related Obligations**

To provide radio coverage throughout its geographic jurisdiction, the City's simulcast system needs access to the County's radio tower and Service Center. The County extends a license to the City for reasonable access on these terms and with these related obligations:

### **a. General**

The County grants the City a license so that the City may take all actions, including entering the County's real and personal property at the Service Center and on the radio tower, the City deems appropriate, to install, maintain, and operate the City's simulcast system, including the antennas, equipment shelter, and standby generator, so as to meet industry standards and the manufacturers' design subject to the rights and limitations set out in this Agreement. The City's license includes the right to install, inspect, maintain, repair, improve, or replace any component, including the antennas and related equipment, as well as to survey, study, or gather data about the tower, antennas, related equipment, and the operations of the City's simulcast system or of anything that the City suspects may affect its simulcast system's performance subject to the rights and limitations set out in this Agreement.

More specific provisions in this Agreement control in the event of an actual or possible conflict with this subsection's general statement of the City's license. For example, section 5(i) governs the terms of the City's license to access the County's radio tower and the Service Center, and section 5(e) governs the terms of the City's license to add or replace antennas or equipment.

### **b. Equipment Shelter**

The City may install and maintain an equipment shelter at the Service Center to meet its needs. For example, the City may maintain its current equipment shelter with approximate dimensions of 12 feet by 15 feet on a concrete pad located on the northwest side of the County's radio tower. The City may install and maintain computer terminals, computer network devices, and fiberoptic cabling as well as heat, smoke, electrical-failure, and other sensors and alarms in its shelter. The City's equipment shelter is, and will remain, separate from the County's shelter.

### **c. Backup Generator**

The City may place and maintain a standby power generator at the tower site to meet its needs. Initially, the generator will be enclosed in a metal housing with approximate dimensions of four feet by six feet. The generator will be on a concrete pad on the east side of the City's equipment shelter. The City may also maintain a fuel tank near its generator. The City may replace its generator as needed with County approval, which approval County will not unreasonably withhold or delay.

### **d. Antenna and Equipment Placement**

The City may place the equipment and antennas identified on Exhibit A, attached hereto and incorporated herein by reference for all purposes allowed by law, or reasonable substitutes therefor on the County's radio tower subject to the County's advance written approval. In this

regard, City will provide County appropriate manufacturer and engineering information together with a structural analysis prepared by a Texas licensed engineer in support of a request to place and/or replace antennas or equipment on the radio tower or at the Service Center.

Also, the City may connect its antennas and other equipment on the radio tower to the equipment in its equipment shelter by coax running along the transmission line ladder rack of the radio tower. The City may ground all of its equipment at the radio site.

**e. Replacing Antennas or Equipment**

The City may add, remove, or change out equipment that is situated in the City's equipment shelter, platform, or cabinet at its option.

The City may not add or replace a piece of equipment or an antenna to or on the tower that is different from that shown on Exhibit A without the County's advance written approval, which approval the County won't unreasonably withhold or delay. In general, the City will be able to replace existing antennas or equipment with ones of similar weight, dimensions, wind load, and mounting requirements. The antennas and equipment identified on Exhibit A may be changed and Exhibit A amended or modified accordingly by the advance written approval of such changes by the County without the need to amend this Agreement.

The City will be responsible for all costs related to the original installation and/or to add new or substitute antennas or equipment on the County's radio tower, including any re-bracing or strengthening of the radio tower to accommodate the original installation and/or any new or substitute antennas or equipment.

This license isn't a franchise or a permit to use the County's rights-of-way.

**f. Connections to Commercial Power and Telephone Service**

The City may maintain a connection between its equipment shelter, antennas, and related equipment at the County's Service Center and a commercial power source and telephone service. The City alone will be responsible for maintaining these connections, including all costs of installation and operation.

**g. Property and Liability Insurance**

The City may buy and maintain warranties, insurance, or other coverage for its equipment shelter, standby power generator, antennas, and other equipment or property at the Service Center. The County has no duty to insure the City's property.

The City will maintain commercial general liability insurance with limits of liability of at least \$1 million per occurrence and \$3 million in the aggregate, combined single limit for bodily injury and property damage, together with an endorsement for contractual-liability coverage. The City's coverage will apply to its operations at the County's radio tower and the Service Center. The City's coverage will either name the County as an "additional insured" or it will define "insured" or "who is an insured" so as to protect the County for covered occurrences. The County

will also be provided a waiver of subrogation on any worker's compensation coverage used by the City and its contractors and subcontractors.

The City may fulfill its obligations under this Paragraph by providing a blanket insurance policy that covers the radio tower and Service Center and other locations of City, provided such blanket insurance policy complies with all of the other requirements of this License with respect to the type and amount of insurance required. City may also fulfill its requirements under this Paragraph through a program of self-insurance. If City elects to self-insure, then City shall furnish County with a letter stating that there is a self-insurance program in effect that provides for the same, or greater, coverage than required of City herein.

In response to reasonable requests, the City will provide the County with documentation about its insurance or other coverage under this subsection.

**h. Records and Requests**

The City will maintain records and data about its simulcast system, antennas, and other equipment located at the Service Center, and their performance. The City will provide information in response to the County's reasonable requests, particularly about the antennas or transmitting equipment for investigating possible undue interference. The City will also provide appropriate manufacturer and engineering information and a structural analysis in support of a request to replace its backup generator under section 5(c) or to add or substitute antennas or equipment on the radio tower or at the Service Center under section 5(e).

Except as the law may require, the City will not disclose price, cost, or proprietary information where it is not reasonably related to the County's simulcast cell or obligations under this Agreement. Also, the City will not disclose information in violation of a law, privilege, or other contract.

**i. Access to the Service Center, Equipment Shelter, and Radio Tower**

The City will have the right to immediately enter the City's equipment shelter at the Service Center. For example, the City will have to routinely inspect and service its equipment in the shelter and will have to respond immediately to an alarm alert. The City will notify the County reasonably promptly, such as by phone call or email, when the City enters the tower site. The County and the City will cooperate to establish a procedure by which the City can rapidly enter the Service Center and its shelter consistent with the County's security interests. The City will not access or climb the radio tower itself under this right.

Using established procedures, once determined and agreed upon by and between the parties, the City will have the right to access or climb the radio tower with reasonable advance notice to the County. For example, the City will need access to respond to an event like a lightning strike, to investigate microwave or radio-frequency interference, or to inspect or service its equipment on the tower. The City will also need periodic access to inspect and service its antennas and equipment on the radio tower. The County will cooperate to provide the City with appropriate access to the radio tower under the circumstances.

The City will also have the right to place a camera at the Service Center's entrance and near its equipment on the radio tower and its equipment shelter as well as to connect the cameras to the City's cabling and simulcast system to allow the City to monitor the camera feed remotely.

**j. Hazardous Materials**

The City warrants that its operations on the County's radio tower and at the Service Center won't generate hazardous materials and that it won't store or dispose of hazardous materials at the Service Center save and except for diesel fuel used to power the City's backup generator. If the City breaches these warranties, the City will be responsible for all consequential damages and all costs of bringing the affected areas of the Service Center into compliance with environmental laws.

**k. Compliance with the Law**

The City will manage, maintain, and operate its antenna and equipment on the County's radio tower and at its Service Center according to all applicable laws.

**6. The City of McKinney's Water Tower Site, Warranties, and Duties**

**a. The City's Water Tower Site**

The City warrants that it owns the partially enclosed land and the 154-foot water tower in the secure compound located at 10153 Westridge Blvd., McKinney, TX 75069 (33 11 18.65; 96 45 11.07) in fee simple and that it owns or has an easement for access to the water tower site from a public road and that the water tower site has a connection to the commercial power grid for the City's use in conjunction with the water tower. The City will maintain these rights and interests during the term of this Agreement.

**b. The Water Tower and Tower Management**

The City will maintain the water tower and its elevated water tank so that it meets applicable standards for elevated water storage tanks operated by public water systems and any lightning-protection required for such elevated water storage tanks.

The City will also be responsible for routine maintenance on the water tower and the City's compound, shelters, generator, equipment and other property at the water tower site. The City will comply with section 9 when planning or performing work or other maintenance on the water tower or at the water tower site.

The City will maintain and manage the water tower and water tower site according to standards applicable to elevated water storage tanks in an effort to provide the best radio-frequency environment so that the City's simulcast system and the County's simulcast cell operate according to the manufacturers' design and industry standards without undue interference.

The County will inspect, service, and maintain its own antennas, equipment, shelter, and standby generator at the City's water tower site (*see* section 7).

**c. Responsibility for Property**

Except for damage caused by the County's operations (*see* section 12), the City will be responsible for damage to the water tower and the City's shelters, utility pole, and other equipment at the water tower site that would be covered by a standard policy of property insurance with common or customary exclusions. The City may meet this duty by buying and maintaining insurance or other coverage.

**d. Fencing and Security**

The City will maintain physical security measures at and about the compound that houses and secures the water tower, including fencing, a gate, and limited access control.

**e. Compliance with the Law**

The City will manage and maintain the water tower and elevated tank, the water tower site, and its equipment according to all applicable laws.

**f. Hazardous Materials**

The City warrants that the water tower site is free from contamination by hazardous materials. Unless the presence of hazardous materials is the result of the County's operations (*see* section 7(j)), the City will be responsible for any hazardous materials or the cost of complying with environmental laws.

**7. Collin County's License and Related Obligations**

To provide radio coverage throughout its geographic jurisdiction, the County's simulcast cell needs access to the City's water tower site and water tower. The City extends a license to the County for reasonable access on these terms and with these related obligations:

**a. General**

The City grants the County a license so that the County may take all actions, including entering the City's real and personal property at the water tower site and on the water tower, the County deems appropriate, to install, maintain, and operate the County's simulcast cell, including the antennas, equipment compound and shelter, and standby generator, so as to meet industry standards and the manufacturers' design subject to the rights and limitations set out in this Agreement. The County's license includes the right to install, inspect, maintain, repair, improve, or replace any component, including the antennas and related equipment, as well as to survey, study, or gather data about the tower, antennas, related equipment, and the operations of the County's simulcast cell or anything that the County suspects may affect its cell's performance subject to the rights and limitations set out in this Agreement.

More specific provisions in this Agreement control in the event of an actual or possible conflict with this subsection's general statement of the County's license. For example, section 7(i) governs the terms of the County's license to access the City's water tower and water tower site, and section 7(f) governs the terms of the City's license to replace antennas and equipment.

**b. Initial Installation**

The City will permit the County to build its equipment compound and shelter and to install its antennas and related equipment at the water tower site and on the tower according to the County's simulcast cell's schedule. The County may establish and maintain an underground connection between a commercial AC-power source near the water tower and the County's equipment Shelter and simulcast cell / antenna facilities at the water tower. The County will be responsible for the connection's installation and maintenance and all related costs, initial and ongoing, for providing AC power to all County equipment at the water tower.

**c. Equipment Compound and Shelter**

The County may build and maintain an equipment compound and shelter for its needs. Initially, the County may build and maintain an 875-square-foot compound, with its own 7-foot-tall chain-link fence and gate, in an area approved in advance by the City that is situated to the northeast of the City's water tower (just north of the paved access road) inside the partially enclosed portion of the water tower site but outside of the secured water tower compound. The County may build and maintain an equipment shelter on a concrete pad inside the partially enclosed portion of the water tower site. The shelter's approximate dimensions will be 11 feet 8 inches by 12 feet 6 inches, with a 4-foot-by-5-foot concrete stoop on the east side and a concrete coax cover base with a metal cover on the west side. The County may also install and maintain GPS antennas on the equipment shelter. The County may install and maintain heat, smoke, electrical-failure, and other sensors and alarms in its shelter. The County's equipment shelter will remain separate from the City's shelter.

**d. Backup Generator**

The County may place and maintain a standby power generator at the tower site to meet its standby power requirements. Initially, the generator will be a 50 kW standby generator using natural gas inside its equipment-shelter compound. The generator will be on a new concrete pad to the south of the County's new equipment shelter. The County may replace its generator as needed with City approval, which approval City will not unreasonably withhold or delay.

**e. Antenna and Equipment Placement**

The County may place the following equipment identified on Exhibit B, attached hereto and incorporated herein by reference for all purposes allowed by law, or reasonable substitutes therefor on the City's water tower subject to the City's advance written approval. In this regard, County will provide City appropriate manufacturer and engineering information together with a structural analysis prepared by a Texas licensed engineer in support of a request to place and/or replace antennas or equipment on the water tower or at the water tower site.

Also, the County may connect its antennas and other equipment on the water tower to the equipment in its equipment shelter by coax to run vertically on existing cable supports in existing conduit to the walkway and then horizontally along the walkway to the dry tank riser on the existing cable tray, then vertically down the tower on existing cable supports and through existing



conduit to a new conduit bank connected to existing conduits, and then to the County's equipment shelter via new underground UC conduit placed in an area approved in advance by the City. The County may ground all of its equipment at the water tower site.

**f. Replacing Antennas or Equipment**

The County may add, remove, or change out equipment that is situated in the County's equipment shelter, platform, or cabinet at its option.

The County may not add or replace a piece of equipment or an antenna to or on the tower that is different from that shown on Exhibit B without the City's advance written approval, which approval the City won't unreasonably withhold or delay. In general, the County will be able to replace existing antennas or equipment with ones of similar weight, dimensions, wind load, and mounting requirements. The antennas and equipment identified on Exhibit B may be changed and Exhibit B amended or modified accordingly by the advance written approval of such changes by the City without the need to amend this Agreement.

The County will be responsible for all costs related to the original installation and/or to add new or substitute antennas or equipment to the City's water tower, including any work at the mounting sites to accommodate the original installation and/or any new or substitute antennas or equipment.

This license isn't a franchise or a permit to use the City's rights-of-way.

**g. Connections to Commercial Power and Telephone Service**

The County may maintain a connection between its equipment shelter, antennas, and related equipment at the City's water tower site and a commercial power source and telephone service. The County alone will be responsible for maintaining these connections, including all costs of installation and operation.

**h. Property and Liability Insurance**

The County may buy and maintain warranties, insurance, or other coverage for its equipment compound and shelter, standby generator, antennas, and other equipment or property on the water tower or at the water tower site. The City has no duty to insure the County's property.

The County will maintain commercial general liability insurance with limits of liability of at least \$1 million per occurrence and \$3 million in the aggregate, combined single limit for bodily injury and property damage, together with an endorsement for contractual-liability coverage. The County's coverage will apply to its operations at the City's water tower and water tower site. The County's coverage will either name the City as an "additional insured" or it will define "insured" or "who is an insured" so as to protect the City for covered occurrences. The City will also be provided a waiver of subrogation on any worker's compensation insurance coverage used by the County and its contractors and subcontractors.

The County may fulfill its obligations under this Paragraph by providing a blanket insurance policy that covers the water tower and water tower site and other locations of County,

provided such blanket insurance policy complies with all of the other requirements of this License with respect to the type and amount of insurance required. County may also fulfill its requirements under this Paragraph through a program of self-insurance. If County elects to self-insure, then County shall furnish City with a letter stating that there is a self-insurance program in effect that provides for the same, or greater, coverage than required of County herein.

In response to reasonable requests, the County will provide the City with documentation about its insurance or other coverage under this subsection.

**i. Records and Requests**

The County will maintain records and data about its radio system, antennas, and other equipment located at the water tower site, and their performance. The County will provide information in response to the City's reasonable requests, particularly about the antennas or transmitting equipment for investigating possible undue interference. The County will also provide appropriate manufacturer and engineering information, including a structural analysis, in support of a request to replace its backup generator under section 7(d) or to add or substitute antennas or equipment on the water tower or at the water tower site under section 7(f).

Except as the law may require, the County will not disclose price, cost, or proprietary information where it is not reasonably related to the City's simulcast system or obligations under this agreement. Also, the County will not disclose information in violation of a law, privilege, or other contract.

**j. Access to the Water Tower Site and the Water Tower**

The County will have the right to immediately enter the City's partially enclosed water tower site and equipment shelter that is outside the fenced area containing the water tower itself. For example, the County will have to routinely inspect and service its equipment in the shelter and will have to respond immediately to an alarm alert. The County will notify the City reasonably promptly, such as by phone call or email, when the County accesses its shelter. The County and the City will cooperate to establish a procedure by which the County can rapidly enter the water tower site and its equipment shelter consistent with the City's security interests. The County will not access or climb the water tower itself under this right.

Using established procedures, once determined and agreed upon by and between the parties, the County will have the right to access or climb the water tower with reasonable advance notice to the City. For example, the County will need access to respond to an event like a lightning strike, to investigate microwave or radio-frequency interference, or to inspect or service its equipment on the tower. The County will also need periodic access to inspect and service its antennas and equipment on the water tower. The City will cooperate to provide the County with appropriate access to the water tower under the circumstances.

The County will also have the right to place a camera at the entrances to the City's water tower site, the County's equipment compound, and near its equipment on the water tower and to

connect the cameras to the County's cabling and radio system to allow the County to monitor the camera feed remotely.

**k. Hazardous Materials**

The County warrants that its operations on the City's water tower and at the water tower site won't generate hazardous materials and that it won't store or dispose of hazardous materials at the water tower site. If the County breaches these warranties, the County will be responsible for all consequential damages and all costs of bringing the affected areas of the water tower site into compliance with environmental laws.

**l. Compliance with the Law**

The County will manage, maintain, and operate its antenna and equipment on the City's water tower and water tower site according to all applicable laws.

**8. Fees for Fair Compensation**

Each party's provision to the other of the license rights under this Agreement is a governmental or public-safety function or service for first responders, and no party will make a profit by exercising its rights under this Agreement. Each party will receive fair compensation by the license payments here. Each party will pay from currently available revenues.

The County will pay the City \$800 per month for its license rights under this Agreement, and the County may pay for multiple months or a year in advance.

The City will pay the County \$800 per month for its license rights under this Agreement, and the City may pay for multiple months or a year in advance.

As long as both parties exercise their license rights and place antennas and equipment on or at the other party's water tower and water tower site or radio tower and Service Center, then each party's license obligation (fee) will remain equal to the other party's.

Chapter 2251, Gov't Code, governs each party's other terms of payment.

If a party complies with section 15(b) and removes its antenna and equipment from the other party's radio tower and Service Center or the other party's water tower and water tower site, then the removing party's license obligation (fee) under this subsection is excused. Afterwards, the removing party may increase the other party's license obligation (fee) no more than once per year by no more than three percent per year.

The parties will provide each other with all information, documentation, and data reasonably necessary to permit the other party to account for this Agreement under the standards applicable to the party, such as those standards established by the Governmental Accounting Standards Board and possibly GASB Statement No. 87, Leases (2017).

**9. Information, Events, Plans, Maintenance, or Work**

a. **Possible Problems.** If, during its normal operations for its own purpose, the County or the City detects what it suspects might be a possible problem with the other's simulcast system, cell, antennas, or equipment, then it will promptly notify the other party.

b. **Other Users of the Radio Tower and the Water Tower.** If the County or the City considers adding, or allowing another person or entity to add, any equipment or appurtenances to its radio tower or water tower, then the County or the City will promptly notify the other and supply sufficient information for the other to assess the proposed addition. The City or the County will then have a reasonable time, not to exceed ten (10) days, to submit a response addressing any possibilities of interference.

The County or the City will include a provision in its contract with any party who will be allowed to add equipment or an antenna on its tower following the effective date of this Agreement that subordinates the party's right to place or operate its equipment or appurtenances on the radio or tower or at the tower site to the City's or the County's right to operate its antenna and equipment at the tower site as essential components of its simulcast system or simulcast cell. For example, the City's contract with the party adding equipment to the water tower should give the City the right to require the party to relocate, redirect, or shield its equipment to prevent undue interference with the County's simulcast cell. The City will enforce any provisions in its contract with other persons or entities as reasonably necessary to prevent or reduce undue interference with the County's simulcast cell. Regardless of the date of any previous license or lease, the City will enforce any provisions in its current licenses and leases with other parties as reasonably necessary to attempt to prevent or reduce undue interference with the County's simulcast cell. The County and City will share the cost of such enforcement in proportion to the benefits they receive, or stand to receive, by the enforcement.

c. **Other Possible Changes or Work, including Painting the Water Tower or Re-Bracing the Radio Tower.** The County and the City will notify the other, in advance, if it considers (1) changes to the radio tower or water tower or the Service Center or the water tower site, (2) outages or reductions in service, or (3) significant maintenance on the respective tower or at the site, including re-bracing the radio tower or painting the water tower. The County or the City will give the other reasonable information about the proposed change, work, or maintenance. The County or the City will notify the other party of major work, like re-bracing the radio tower or painting the water tower, far enough in advance of the fiscal year in which the work is to be conducted so that the other party can budget to protect its interests (such as by temporarily moving its antennas and equipment). Each party will reasonably cooperate with the other to help the other protect its interests and continue its operations at the Service Center and water tower site.

**10. Cooperation in General and Unexpected Events**

a. **General.** The City uses and will continue to use its water tower as a water tower for its lifespan, and the County uses and will continue to use its radio tower as a radio tower for its lifespan. And each party needs the radio tower and Service Center and the water tower and water tower site operated so that each party's simulcast system or simulcast cell operates according to

the manufacturers' design and standards applicable to the use of a radio tower or a water tower without undue interference. Therefore, the parties agree to reasonably cooperate with one another in all circumstances so that each party can achieve its objectives.

b. **Unexpected Events.** Unexpected events may negatively affect the City's water tower or water tower site or the County's radio tower or Service Center, or one of the party's shelter, antennas, or equipment, including damage to a tower or equipment, undue interference with the microwave paths or radio-frequency environment, loss of a party's property or contract rights, and changes to the applicable law. As result, a tower itself may have to be replaced or relocated. The parties will discuss and cooperate to resolve or avoid problems in accordance with the following provisions:

(1) **Notice.** Each party will promptly notify the other party of any damage, failure, or performance problem with respect to its radio tower or water tower, Service Center or water tower site, or the equipment at either site.

(2) **Access.** Each party will provide the other party, and its representatives and experts, with full access to any site or location or piece of personal property for an inspection and evaluation of any problem or issue at the subject locations.

(3) **Information Exchange.** The parties will promptly exchange with one another their information, reports, the results of any inspection or evaluation, expert analyses and recommendations, and proposals for fixing a problem.

(4) **Cooperation.** The parties will cooperate to resolve all problems quickly and collaboratively consistent with public safety. Each party will take actions within its rights and authority to solve or improve a problem, including moving or changing the use of the party's personal property, exercising a contract right, and pursuing a warranty or insurance claim.

(5) **Emergencies.** In the case of emergencies, the City or the County may take an interim measure to prevent or ameliorate a problem or threatened problem or to restore safe operation while the parties assess and confer on a longer-term or more permanent resolution.

## 11. **Each Party's Additional Responsibilities**

### a. **A Party's Employees and Contractors; Property**

A party will remain the sole employer of its officials, officers, deputies, and employees (collectively "Personnel"), who work on or are involved with either the water tower, water tower site, radio tower, or Service Center. Each party will be solely responsible for their respective Personnel's compensation and benefits, including salary, overtime, pension contributions, health coverage, workers' compensation coverage, disability insurance or coverage, leave, and liability insurance, coverage, or indemnification.

A party alone will supervise and direct its Personnel and be responsible for their safe work practices and compliance with all laws, agreements, and policies.

A party alone will be the principal in its relations with independent contractors, such as Motorola or Nokia/Alcatel, or other service providers. For example, such a vendor may provide repair service or alarm and failure inspection, and, as between the party and the other party to this Agreement, the party for which such vendor is providing services will be responsible for and to its vendors.

The City alone will retain its ownership or other interest in its water tower and water tower site and its property at the water tower site. The City alone will retain its ownership of its equipment on the radio tower and at the Service Center. The County alone will retain its ownership or other interest in its radio tower and Service Center, and its property at the Service Center. The County alone will retain its ownership of the antenna and equipment on the water tower and at the water tower site.

**b. Insurance**

In addition to the insurance required in sections 5(g) and 7(h), each party will procure and maintain the appropriate types and amounts of insurance or other coverage, including self-insurance, to cover its property involved in this Agreement, and the acts of its employees and agents in performing the party's respective obligations under this Agreement.

Each party will require each of its contractors and subcontractors to carry worker's compensation, commercial general liability, and automobile liability insurance in accordance with the party's own policies while the contractors or subcontractors work at the other party's Service Center or water tower site.

Upon reasonable inquiry, a party will provide the other party with appropriate insurance or coverage information related to the duties under this section.

**c. Not Co-Employers; Future Exception**

The parties are not agreeing to act as co-employers of any persons by virtue of this Agreement alone.

If the parties decide that they should jointly retain a third party for actions arising under this Agreement, for example, as part of addressing a problem with one or both of the towers or equipment, then they will collaborate with one another to memorialize the agreement in a separate written document. The parties should specify each one's obligations with respect to (i) identifying the persons to perform the work tasks, (ii) defining the work, (iii) setting the goals and schedule for the work, (iv) supervising the work as it's performed, (v) making the workplace reasonably safe, (vi) providing employer's liability and worker's compensation coverage, (vii) evaluating the work, and (viii) accepting liability for the work, including insuring or otherwise covering the relevant risks.

**d. No Restriction against Contracting or Self-Insuring**

This Agreement does not restrict a party's ability to address and assign responsibility or liability for the risks discussed in this Agreement in other contracts, including those with the party's independent contractors.

A party may also meet any of its obligations, even in part, with insurance or other form of coverage, including self-insurance.

**Notice: This provision imposes special duties on each party.**

**12. Liability-Related Provisions Benefitting the Other Party**

One party (*e.g.*, the City) will not be liable to the other (the County) for claims or damages arising from the acts or omissions of the other party's (the County's) employees or contractors. To the extent permitted by law, a party (*e.g.*, the County) will defend, indemnify, and hold the other (*e.g.*, the City) harmless for all claims and damages arising from the acts or omissions of the party's (*e.g.*, the County's) employees or contractors. A party (*e.g.*, the County) will not sue the other (*e.g.*, the City) for personal injuries or property damage resulting from the acts or omissions of that party's (*e.g.*, the County's) employees or contractors, including personal injuries or property damage suffered by the party's (*e.g.*, the County's) own employees, contractors, or guests.

This provision does not restrict the other party (*e.g.*, the City) from suing the party (*e.g.*, the County) for personal injuries or property damage that results from the acts or omissions of the party's (*e.g.*, the County's) employees. If the injuries or damage arose from the acts, directions, or omissions of the party's contractors, however, then the other party may sue the contractor, not the party—except on a claim that the party is directly liable by reason of an exercise of actual control over a person or instrument that proximately caused the injury or damage. This provision also doesn't limit a party's right to assert its third-party-practice rights, including the right to designate the other party as a responsible third party, in the context of a claim by a person who is not a party to this Agreement.

These clauses fall under subsection (b) to sections 5 and 7 of article XI of the Texas Constitution.

A court or other authority may issue any order or injunction, including a temporary restraining order or preliminary injunction, to effectuate these clauses.

"Claims or damages" means all types of claims, demands, or requests whether under contract, tort law, or statute, and all types of damages, including compensatory damages, fines, penalties, attorney's fees, and all other costs.

"Acts or omissions" means all types of conduct that may give rise to a claim.

This provision applies to all stages of a dispute, litigation, or proceeding, including the initial or pleading stage. Terms like "damages," "acts or omissions," and "arising from" (instead of those terms preceded by "alleged"), does not mean that these matters must be found or substantiated (instead of merely pleaded or alleged).

These rights are reciprocal; the names in the parentheses are reversible. Nothing herein is intended to waive any governmental immunity to which a party is entitled.

**Notice: This provision imposes special duties on all parties.**

**13. No Personal Liability, No Waiver of Immunity, No Non-Party Beneficiaries**

This Agreement does not create any form of personal liability on the part of any official, officer, employee, or agent, who is an individual, of a party. A party will not sue or try to hold an individual personally liable for any personal injuries or property damage allegedly incurred during the performance of a party's obligations under this Agreement. This clause does not apply to a person's conduct that is unrelated to the performance of a duty under this Agreement.

The parties do not waive any form of immunity by signing this Agreement.

If a person, who is not a party to this Agreement, files or asserts a claim against one or more parties to this Agreement, then the parties will assert and pursue all immunity and other defenses available against the claim.

The parties do not intend to create a claim or right for, or in favor of, a person or entity who is not a party to this Agreement.

**14. Confidential Information**

A party may designate specific information as confidential, including information that is subject to a privilege or contract obligation, or information falling under an exception in subchapter C of title 552 of the Texas Government Code. Certain information about a public-safety radio system is confidential because it relates to critical infrastructure. *See, e.g.,* Tex. Gov't Code § 423.0045(1)(A)(vii), (x); 42 U.S.C. § 5195c(e); Tex. Gov't Code chapter 552, subchapter c; Tex. Att'y Gen. OR2015-22157; Tex. Att'y Gen. ORD 143 (1976). A party shouldn't designate as confidential information that is publicly available under a transparency law, such as the Texas Open Meetings or Public Information Acts, Tex. Gov't Code Chapters 551 and 552.

As allowed by law, a party will protect the other's designated confidential information by the same methods that it protects its own, including confidentiality provisions in contracts with vendors, consultants, or experts. If a party uses confidential information in a court filing, then it will use best efforts to keep it confidential under seal or a protective order.

A party will promptly notify the other if it believes that it has an obligation to produce the other's confidential information.

**15. Termination**

**a. General Rules**

If a party intends to terminate this Agreement and require the other party to remove its antennas and related equipment from the party's radio tower and Service Center or water tower and water tower site, then the party will confer with the other party and give it no less than 279 calendar days' advance notice (approximately 9 months).

The County alone will bear the responsibility and cost of removing its equipment and antenna from the City's water tower and water tower site, as well as the costs of reasonably



remediating the licensed portions of the site. At its option, the County may transfer ownership of its equipment shelter and pad at the water tower site to the City at no cost to the City.

The City alone will bear the responsibility and cost of removing its equipment and antenna from the County's radio tower and the Service Center, as well as the costs of reasonably remediating the licensed portions of the site. At its option, the City may transfer ownership of its equipment shelter and pad at the Service Center to the County at no cost to the County.

Each party recognizes that the other's license rights under this Agreement and its related operations are a critical component of the other's public-safety simulcast system or simulcast cell. Thus, each party will reasonably cooperate with the other in its efforts to replace the functionality lost by this Agreement's termination. Alternative arrangements would most likely involve identifying an alternative tower in the local area for the affected party's antennas and other equipment and the associated microwave-path studies and radio-coverage assessments needed to relocate the relevant components of the simulcast system or simulcast cell.

**b. A Party's Removal of its Equipment from the Other's Tower and Site**

If a party intends to remove its own antennas and equipment from the other party's radio tower and Service Center or the other party's water tower and water tower site, then the party will confer with the other party and give it no less than 60 calendar days' advance notice. After the removal, this Agreement will continue in effect with the remaining party paying the fee for its license rights under section 8.

**c. Exception for Uncured Material Breach Justifying Early Termination**

If a party materially breaches this Agreement in a way that justifies early termination and fails to cure the breach or breaches within the relevant time frame for a cure or as determined in the dispute-resolution process in section 16, then the other party may terminate this Agreement early.

A material breach that justifies early termination is a party's use of its license rights or presence at the other party's water tower or water tower site, or radio tower or Service Center, so as to substantially impair the other's use of its water tower as a water tower or radio tower as a radio tower or to cause undue interference with the other's operation of its simulcast system or simulcast cell.

**16. Dispute Resolution**

**a. Notice & Conferences**

If a party believes that the other is not meeting an obligation under this Agreement, the party will contact the other's Liaison Officer. If discussions do not resolve the issue, then the party will notify the other in writing of the complaint with reasonable detail. The other party will then have a reasonable time—ordinarily not to exceed 14 calendar days—to improve its performance.

If these discussions do not resolve an issue, then the County Judge, Sheriff, or County Administrator from Collin County and the Mayor, City Manager, Director of Public Works or

Chief of Police from the City of McKinney will meet in person to discuss and try to resolve any issue. This process should take no more than five business days, unless the parties agree otherwise.

If these efforts don't resolve the issue, then the parties on each side of a dispute may write a letter to the others' governing body. Each party will circulate the other's letter to its County Judge and Commissioners or its Mayor and City Council Members.

**b. Prerequisites to a Lawsuit or Other Proceeding**

No party may file a claim or lawsuit in any forum before the parties are finished using the above procedures and the parties have participated in at least a two-day mediation with a mediator qualified and experienced in public-safety contracts of this or a similar nature. A court or other authority may stay a proceeding or dismiss a claim pending the parties' use of these procedures—except that a party may ask the court or authority to appoint a mediator if the parties cannot agree on one.

**c. Emergency Exception**

As an exception, a party may file a petition and an application for a temporary restraining order, preliminary injunction, declaration, or similar equitable relief in the event of an emergency and to continue or restore the proper operation of the City's water tower or simulcast system or the County's radio tower or simulcast cell.

**17. Limitation on Extraordinary Remedies**

Each party is entitled only to its benefit of the bargain under this Agreement and, where established, its expenses actually and reasonably paid or incurred to keep the City's water tower or simulcast system operating properly or to keep the County's radio tower or simulcast cell operating properly as a result of the other party's legal fault. The parties are not liable to each other for other consequential, incidental, indirect, special, punitive, or exemplary damages or for damages that arise from special circumstances. This provision does not affect either party's rights to remedies set out in this Agreement, including the parties' rights in sections 4(f), 5(j), 6(f), 7(j), 8, 9(b), 12, 15, 16(c), and 18(g) (lien clearance).

**18. Other**

**a. Authorization.** Each party represents and warrants that the person signing this Agreement on its behalf has the requisite authority under section 791.011(d)(1) of the Government Code.

**b. Current Revenues for Governmental Functions.** Each party paying for the performance of governmental services must make those payments from current revenues available to the paying party within the meaning of section 791.011(d)(3) of the Government Code or other provision.

**c. Non-Party Beneficiaries.** The City of McKinney and Collin County are agreeing to cooperate in maintaining the City's water tower and its simulcast system and the County's radio tower and its simulcast cell as outlined here. The City and the County are the only parties and chief

intended beneficiaries to this Agreement. But they recognize that other municipalities and towns will benefit from access to, or receipt of radio services from, the City's simulcast system and the County's simulcast cell. Their interests should be considered in addressing problems with the either the simulcast system or cell or their respective performance. But the City and the County do not intend to create a right for a non-party to sue to enforce a right under this Agreement or for alleged damages arising from an alleged breach of this Agreement. The parties also do not intend to enter a joint enterprise so as to create a right or claim in favor of another person by virtue of this Agreement alone. *See* Tex. Gov't Code § 791.006(d).

Also, the City and the County do not intend to benefit, much less create a claim for, persons who are not parties to this Agreement.

d. **Interpretation and Integration.** A court or other authority should interpret this Agreement so as to maintain the operation of the City's water tower primarily as a water tower and the County's radio tower primarily as a radio tower and each one's simulcast system or simulcast cell according to the manufacturers' design and standards secondarily to such primary use. A court or other authority may consider this Agreement and related documents, including but not limited to (1) the County's RFP No. 2016-020, as amended, (2) other agreements that relate to the City's water tower or its simulcast system or to the County's radio tower or simulcast cell, including agreements with vendors such as Motorola Solutions or Nokia/Alcatel-Lucent, and (3) reports or data related to a problem with either the simulcast system or cell, including materials developed under section 10.

e. **Latest Editions or Revisions.** Where this Agreement refers to a statute, regulation, ordinance, industry standard, policy statement, advisory circular, RFP, Agreement, contract, or similar document, the Agreement means the latest edition or revision of the document with all amendments. A later edition or revision may revise a party's duty or performance going forward. Or a party, court, or other authority may benefit by consulting the latest edition or revision in assessing or trying to solve a problem. Even if a party's performance, particularly an engineering performance, or a structure is revised, upgraded, or improved, this latest-edition clause does not retroactively make a party's earlier performance a breach.

f. **Governing Law and Venue.** Texas law will govern this Agreement and the relationship between, and claims and defenses of, the parties, except where federal law governs a specific issue (*e.g.*, FCC regulations related to radio frequency or FAA regulations related to towers). *See* Tex. Gov't Code § 791.012. Venue for disputes arising under this Agreement will lie in Collin County, Texas.

g. **Taxes and Liens.** Each party will be responsible for all taxes applicable to its property, if any, including property located at the other party's water tower site or Service Center. Each party will manage its property located at the other's water tower site or Service Center so as to prevent the placement of any type of lien on the other party's property.

h. **Notice and Liaison Officers.**

The City's **liaison officers** for regular communications and performance under this Agreement will be (i) Mike Jarrard, Communications and Radio System Coordinator, McKinney

Police Dept., 2200 Taylor-Burk Drive, McKinney, Texas 75071, [mjarrardr@mckinneytexas.org](mailto:mjarrardr@mckinneytexas.org), 972.547.2892, and (ii) David Brown, P.E., Director of Public Works, 1550 S. College Street, McKinney, Texas 75069, [dbrown@mckinneytexas.org](mailto:dbrown@mckinneytexas.org), 972.547.7341.

The County's liaison officer for regular communications and performance under this Agreement will be Commander Pam Palmisano, [ppalmisano@co.collin.tx.us](mailto:ppalmisano@co.collin.tx.us), 972-547-5100.

In addition to communications through the liaison officers, each party may provide required notice and will notify the other of a serious dispute or an intention to file litigation at:

If to the City:

Paul G. Grimes  
City Manager  
22 N. Tennessee Street  
McKinney, Texas 75069  
[pgrimes@mckinneytexas.org](mailto:pgrimes@mckinneytexas.org)  
972.547.7510

Greg Conley  
Chief of Police  
2200 Taylor-Burk Drive  
McKinney, Texas 75071  
[gconley@mckinneytexas.org](mailto:gconley@mckinneytexas.org)  
972.547.1050

David Brown, P.E.  
Director of Public Works  
1550 S. College Street  
McKinney, Texas 75069  
[dbrown@mckinneytexas.org](mailto:dbrown@mckinneytexas.org)  
972.547.7341

Brown & Hofmeister, L.L.P.  
740 E. Campbell Road, Suite 800  
Richardson, Texas 75081  
Attn.: Mark Houser, City Attorney  
[mhouser@bhlaw.net](mailto:mhouser@bhlaw.net)  
972.547.6275

If to Collin County:

Collin County Sheriff's Office  
Commander Pam Palmisano  
4300 Community Blvd.  
McKinney, Texas 75071  
[ppalmisano@co.collin.tx.us](mailto:ppalmisano@co.collin.tx.us)  
972.547.5100

Collin County Purchasing Dept.  
2300 Bloomdale Road, Ste. 3160  
McKinney, Texas 75071  
~~[shoglund@co.collin.tx.us](mailto:shoglund@co.collin.tx.us)~~ [SHOGLUND@CO.COLLIN.TX.US](mailto:SHOGLUND@CO.COLLIN.TX.US)  
972.548.4101

 i. **No waiver of Immunities**

ALSO,  
BILL BILYEU, COUNTY ADMINISTRATOR  
[BBILYEU@CO.COLLIN.TX.US](mailto:BBILYEU@CO.COLLIN.TX.US)

By signing this Agreement, no party waives any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. Likewise, the parties do not create any obligations, expressed or implied, other than those set forth in this Agreement.

j. **Compliance with Law**

Each party will observe and abide by all applicable law. If a change in, or amendment to, a law requires the parties to amend this Agreement, then the parties will reasonably cooperate to make necessary amendments.

**k. Severability**

This Agreement's provisions are severable. If a court or other authority determines that any paragraph or part of this Agreement is void or unenforceable for any reason, then the court or other authority will enforce the Agreement's remaining portions as if the invalid portions had never been included.

**l. Assignment**

A party will not assign its rights or obligations under this Agreement, in whole or in part, to another person or entity without first obtaining the other party's written consent. If a party asks the other for such consent, then the party will provide adequate information for the other party to evaluate the request and will promptly respond to reasonable requests for additional information.

**m. Amendment**

No party will attempt to enforce a purported amendment that is not properly documented and approved by each party's governing body under section 791.011(d)(1), Tex. Gov't Code, save and except that the list of antennas and equipment allowed on a party's water tower or radio tower may be modified or amended upon the written agreement of the other party without obtaining approval thereof by the governing bodies of the parties.

**n. Attorney's Fees**

In the event of a dispute under or related to this Agreement, each party will bear its own attorney's fees and costs, except where attorney's fees or costs are an element of damages for a breach of section 12 or 13.

**o. No Partnership or Agency**

The parties have not created a partnership, agency, joint venture, or fiduciary relationship under this Agreement. *See, e.g.,* Tex. Gov't Code § 791.006(d).

**19. Glossary**

**Antenna and related equipment** means the radio and microwave antenna system, which the City or the County installs on the radio tower or water tower, and *all* related and ancillary equipment, including the antennas, amplifiers, cables, wires, and transmission lines, standby generator, uninterruptable power supply (UPS), batteries and charger, switches, shelter, HVAC, ice shields, alarms and smoke detectors, fire-suppression equipment, lighting, lightning protection, and security equipment installed and maintained on the other's radio or water tower or at the Service Center or water tower site as part of the City's simulcast system or the County's simulcast cell.

**ASTRO 25** means the Motorola's version of radio equipment designed to comply with P 25 phase 2 standards.

**City of McKinney or the City** mean the City of McKinney, Texas, and its officials, officers, employees, agents, representatives, and insurers, as well as their successors. “The City” also includes its vendors, contractors, and service providers, who may perform part or all of the City’s obligations under the Agreement.

**Collin County or the County** mean Collin County, Texas, and its officials, officers, deputies, employees, agents, representatives, and insurers, as well as their successors. “The County” includes its vendors, contractors, and service providers, who may perform part or all of the County’s obligations under the Agreement.

**The City’s simulcast system** means the City’s Motorola ASTRO Project 25 Phase 1 simulcast system, including its master site, remote sites, all of the City’s dispatch and other consoles and consolettes, along with its microwave loop (with all their components), as described in the City’s contract documents with Motorola and its microwave vendor. The City’s simulcast cell includes, or will include, any equipment or sites the City may add later. The City owns or holds the RF licenses from the FCC used on its simulcast system.

**Collin County’s simulcast cell** means the County’s nine Motorola ASTRO 25 simulcast prime and remote sites, all of the County’s dispatch and other consoles and consolettes, along with a Nokia/Alcatel-Lucent MPLS loop microwave system (with all their components), as described in the County’s contract with Motorola Solutions, Inc. in connection with RFP No. 2016-020, P25 Trunked Radio System Replacement. The County’s simulcast cell connects to the master site of the PAWM or Joint Radio System. The County’s simulcast cell includes, or will include, any equipment or sites the County may add later. The County owns or holds the RF licenses from the FCC used on its simulcast cell.

**FAA** means the Federal Aviation Administration, and **FCC** means the Federal Communications Commission.

**Hazardous materials**, in section 4(f), 5(k), 6(f), and 7(k), means materials or substances, including waste or byproducts that pose an unreasonable risk to health or property. *See* 49 C.F.R. § 171.8, § 172.101; 29 C.F.R. §§ 1910.1000–1910.1499.

**Immunity** means all forms of a city’s, county’s, official’s, or officer’s immunity including sovereign immunity, official immunity, good-faith immunity, qualified immunity, assigned burdens of proof, heightened standards of proof, notice and procedural protections, and limitations or caps under state or federal law, including those in the Texas Tort Claims Act (Civil Practice & Remedies Code chapter 101) and damages law (Civil Practice & Remedies Code chapter 41).

**Industry Standards or Industry Standard** mean any standard that is followed in the design and implementation of Land Mobile Radio Systems, including a radio tower, or a water tower and elevated water storage tank, such as Project 25, T1.333.2001 Grounding and Bonding of Telecommunications Equipment, Motorola R56, Standards and Guidelines for Communications Sites (2005), NEC, National Electrical Code, and ANSI TIA-222G or TIA-222H (Structural Standard for Antenna Supporting Structures and Antennas with Addendums); FAA Advisory Circular AC70/7460-1L with changes, Obstruction Marking and Lighting (2016); the International

Building Code; AWWA/ANSI Standard D107-10 or D107-16; NTCOG, Public Works Construction Standards; and NFPA 78, as applicable. A court or authority may also consult an expert or publication to define technical or engineering terms.

**Law** means all local, state, or federal law, including statutes, regulations, rules, and ordinances, as amended.

**Maintain or maintenance** means all steps reasonably necessary to ensure that a simulcast system or cell and its equipment, facilities, and support structures are kept in good operating condition, including inspections, testing, modifications, and work that maintain functional capacity and structural integrity. Maintenance includes replacing existing antennas with others of a similar weight, dimensions, wind load, and mounting requirements subject to the provisions of this Agreement.

**May**, as in “a party may . . . ,” creates an option or discretionary authority and may be read as “is entitled to.” See Tex. Gov’t Code § 311.016(1), (5).

**MW** means microwave.

**Microwave Path** means a microwave radio path between two tower sites that provides connectivity between the two sites. A microwave path must have line-of-sight clearance with no obstructions to work properly.

**PAWM’s or the Joint Radio System’s simulcast system** means the ASTRO 25 simulcast system owned and operated by the Cities of Plano, Allen, Wylie, and Murphy. The County will connect its simulcast cell to the PAWM or Joint Radio System.

**RF** means radio frequency.

**Safe work practices**, in section 11(a), include practices for working around telecommunications towers, such as 29 C.F.R. § 1910.268, OSHA, Communication Tower Best Practices, OSHA 3877-06 2017, and OSHA Instruction, Directive No. CPL 02-01-056 (2014) (Inspection Procedures for Accessing Communication Towers by Hoist), and practices related to RF exposure such as 47 C.F.R. § 1.1307, 29 C.F.R. § 1910.97, and OET Bulletin 65 with supplements. Safe practices also include the issuance and use of personal protective equipment. *E.g.*, 29 C.F.R. §§ 1910.132–1910.140.

**The Service Center or the radio tower site** means Collin County’s service center at 700 Wilmeth Road, McKinney, including the portion of the Center that contains the County’s radio tower and its shelters and equipment, as well as the City’s shelter and equipment.

**Third-Party-Practice Rights** means all forms of third-party practice, including claims for contribution or indemnity, defenses (*e.g.*, proportionate responsibility), and practice under Rules 34, 38, and 39 of the Texas Rules of Civil Procedure and chapters 32 and 33 of the Texas Civil Practice & Remedies Code, or their counterparts from other jurisdictions.

**The radio tower** means Collin County’s 402-foot radio tower at the Service Center (33 13 51.00, 96, 37 7.00).

**The water tower** means the City of McKinney's 154-foot tall elevated water storage tank located at the water tower site at 10153 Westridge Blvd., McKinney, TX 75069 (33 11 18.65, 96 45 11.07).

**The water tower site** means the partially enclosed land and the 154-foot water tower in the secure compound located at 10153 Westridge Blvd., McKinney, TX 75069, that contains the City's 154-foot elevated water storage tank, the City's compound, shelter, and utility pole, as well as the County's equipment compound with its shelters and generator that will be situated outside of the secure compound in which the water tower is situated.

**The tower location or the tower site** means the specific parcel or parcels of land on which the tower and some of the related equipment are located.

**Undue interference (or unduly interferes)** means the unacceptable degradation of either the City of McKinney's simulcast system's or Collin County's simulcast cell's (with reference to §§ 4(b) and 6(b)) routine ability to perform its public-safety function consistent with the system's or cell's performance specifications or industry performance standards. A system's or cell's MW paths or RF environment may suffer interference, and interference may have several causes. Sources or causes include, but are not limited to, physical interference from equipment or appurtenances, frequency interference from intermodulation products, transmitter noise or receiver desensitization, and physical blockage of microwave paths. Interference should be measurable or objectively detectable or demonstrable. For example, a substantial degradation of a portable radio's in-building ability to transmit or receive radio signals (without a bi-directional amplifier or in-building signal booster) is a sign or result of undue interference. Interference may be undue even though it is seasonal, periodic, intermittent, or otherwise variable.


**Will**, as in "a party will . . .," imposes a duty and may be read as "shall." See Tex. Gov't Code § 311.016(2).

**IN WITNESS WHEREOF**, City and County have duly executed this Agreement as of the dates written below to be effective as of the Effective Date.

**CITY OF MCKINNEY, TEXAS**

**COLLIN COUNTY, TEXAS**

By:   
PAUL G. GRIMES  
City Manager 7/26/19

By:   
JUDGE CHRIS HILL  
County Judge



