

INTERLOCAL AGREEMENT

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THIS INTERLOCAL AGREEMENT (“ILA”), made and entered into pursuant to the Texas Interlocal Cooperation Act, Chapter 791, Texas Government Code (the “Act”), by and between the North Central Texas Council of Governments, hereinafter referred to as “NCTCOG,” having its principal place of business at 616 Six Flags Drive, Arlington, TX 76011, and Collin County, a local government, a state agency, or a non-profit corporation created and operated to provide one or more governmental functions and services, hereinafter referred to as “Participant,” having its principal place of business at 2300 Bloomdale Road, McKinney, TX 75071.

WHEREAS, NCTCOG is a regional planning commission and political subdivision of the State of Texas operating under Chapter 391, Texas Local Government Code; and

WHEREAS, pursuant to the Act, NCTCOG is authorized to contract with eligible entities to perform governmental functions and services, including the operation, management and facilitation of emergency communication services in North Texas; and

WHEREAS, in reliance on such authority, NCTCOG, as part of its 9-1-1 Services Program, has contracted to construct multiple telecommunication towers on selected sites throughout North Texas, many of which sites are located on property owned/leased by other local governments; and

WHEREAS, Participant has agreed to allow for the location of one such tower on property owned by Participant and has represented that it is an eligible entity under the Act, that its governing body has authorized this Agreement on March 7 2016 (Date), and that it desires to contract with NCTCOG on the terms set forth below;

NOW, THEREFORE, NCTCOG and the Participant do hereby agree as follows:

ARTICLE 1: LEGAL AUTHORITY

The Participant represents and warrants to NCTCOG that it is eligible to contract with NCTCOG under the Act for the purposes recited herein because it is one of the following: a local government, as defined in the Act (a county, a municipality, a special district, or other political subdivision of the State of Texas or any other state, or a combination of two or more of those entities, a state agency (an agency of the State of Texas as defined in Section 771.002 of the Texas Government Code, or a similar agency of another state), or a non-profit corporation created and operated to provide one or more governmental functions and services, and it possesses adequate legal authority to enter into this Agreement.

ARTICLE 2: DESCRIPTION OF PROJECT

NCTCOG agrees to construct at its expense a telecommunication tower on property owned by Participant at the location described on Exhibit A. The description of the tower, including height, design and materials is set forth on Exhibit B. Construction shall commence no later than June 1, 2016 unless otherwise agreed by the parties. NCTCOG agrees during the term hereof to maintain the tower and related facilities at its sole expense. The tower shall at all times be exclusively owned by NCTCOG. NCTCOG shall have the right at all times to allow third parties access to the tower for installation of additional third party equipment. Participant shall also have the non-exclusive right of access to the tower for installation of Participant’s equipment so long as it does not materially interfere with tower operations. All expenses incurred in the installation of Participant’s equipment, including structural analysis and possible tower improvements shall be paid by Participant. Participant shall maintain such equipment at its sole expense.

ARTICLE 3: TOWER REVENUE; INSURANCE

All revenue generated from tower operations, with the exception of Participant equipment, shall be the property of NCTCOG. All taxes and fees, if any, assessed on such revenue shall be paid by NCTCOG. PARTICIPANT shall at all times maintain adequate insurance on the tower and all related improvements, including comprehensive general liability coverage that includes NCTCOG as the tower owner. Participant shall at all times maintain adequate insurance on its equipment, if any, located on the tower and shall insure NCTCOG to the extent of its interest in the tower.

ARTICLE 4: TERM

This Agreement shall be effective on the Effective Date shown below and shall remain in full force and effect for ten (10) years. This Agreement shall automatically renew for successive five (5) year terms unless sooner terminated in accordance with Article 6 below. Any modification of this Agreement must comply with the requirements of Article 5 below. Upon termination of this Agreement NCTCOG shall be responsible at its expense for removing the tower and all related equipment from the tower site.

ARTICLE 5: CHANGES AND AMENDMENTS

This Agreement may be amended only by a written amendment executed by both parties, except that any alternations, additions, or deletions to the terms of this Agreement which are required by changes in Federal and State law or regulations are automatically incorporated into this Agreement without written amendment hereto and shall become effective on the date designated by such law or regulation.

ARTICLE 6: TERMINATION PROCEDURES

NCTCOG or the Participant may cancel this Agreement for cause provided written notice is provided to the other party specifying the nature of the cause and allowing the defaulting party six (6) months' time to cure any alleged default under the Agreement. If the default is not cured, this Agreement will terminate upon thirty (30) days written notice by certified mail to the other party. The parties may also terminate this Agreement by mutual agreement.

ARTICLE 7: AVAILABILITY OF FUNDING

Except for tort or tort-related claims, this Agreement and all claims, suits, or obligations arising under or related to this Agreement are subject to and limited to the receipt and availability of funds which are received from the funding agencies by NCTCOG and that are dedicated for the purposes of this Agreement. NCTCOG will give prompt written notice to Participant in the event NCTCOG loses funding. In the event NCTCOG loses funding, Participant and NCTCOG shall immediately terminate this Agreement.

ARTICLE 8: DISPUTE RESOLUTION

The parties to this Agreement agree to the extent possible and not in contravention of any applicable state or federal law or procedure established for dispute resolution, to attempt to resolve any dispute between them regarding this Agreement informally through voluntary mediation, arbitration or any other local dispute mediation process before resorting to litigation.

ARTICLE 9: INDEMNIFICATION

To the extent allowed by law, each party agrees to release, defend, indemnify, and hold harmless the other (and its officers, agents, and employees) from and against all claims or causes of action for injuries (including death), property damages (including loss of use), and any other losses, demands, suits, judgements and costs, including reasonable attorneys' fees and expenses, in any way arising out of, related to, or resulting from its performance under this Agreement, or caused by negligent acts or omissions (or those of its respective officers, agents, employees, or any other third parties for whom it is legally responsible) in connection with performing this agreement.

ARTICLE 10: MISCELLANEOUS

- a. This Agreement has been made under and shall be governed by the laws of the State of Texas. Venue and jurisdiction of any suit or cause of action arising under, or in connection with, this Agreement shall lie exclusively in Collin County, Texas.
- b. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective entities.
- c. This Agreement and the rights and obligations contained herein may not be assigned by either party without the prior written approval of the other party to this Agreement.
- d. All parties agree that should any provision of this Agreement be determined to be invalid or unenforceable, such determination shall not affect any other term of this Agreement, which shall continue in full force and effect.
- e. To the extent that either party to this Agreement shall be wholly or partially prevented from the performance within the term specified of any obligation or duty placed on such party by reason of or through strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, accident, order of any court, act of God, or specific cause reasonably beyond the party's control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty shall be suspended until such disability to perform is removed; provided, however, force majeure shall not excuse an obligation solely to pay funds.
- f. This Agreement and any attachments/addendums, as provided herein, constitute the complete agreement between the parties hereto, and supersede any and all oral and written agreements between the parties relating to matters herein.

THIS INSTRUMENT HAS BEEN EXECUTED IN TWO ORIGINALS BY THE PARTIES HERETO AS FOLLOWS:

(SIGNATURES TO FOLLOW ON NEXT PAGE)

**North Central Texas
Council of Governments**
Next Generation 911 Services Program
616 Six Flags Drive
Arlington, Texas 76011

NCTCOG Executive Director or Designee

Mike Eastlund

Signature of Executive Director or Designee

Date: 3/10/16

EFFECTIVE DATE: _____, 2016

Participant

Keith Self, County Judge
Name & Title of Authorized Official or Designee

By: *Keith W. Self*
Signature of Authorized Official or Designee

Date: 3/8/16

Collin County
Name of Entity

2300 Bloomdale Road, Suite 3160
Mailing Address

McKinney, TX 75071
City, State, ZIP Code