

**INTERLOCAL AGREEMENT BY AND BETWEEN THE CITIES OF PLANO AND
ALLEN AND COLLIN COUNTY FOR A PUBLIC SAFETY RADIO
COMMUNICATIONS SYSTEM**

This **COMMUNICATIONS SYSTEM AGREEMENT** (the "Agreement") is made and entered into by and between the **City of Plano, Texas, a home-rule municipal corporation**(hereinafter referred to as "**Plano**"), the **City of Allen, a home-rule municipal corporation**(hereinafter referred to as "**Allen**"), and **Collin County, Texas** (herein referred to as "**Collin County**" or "**County**"), as follows:

RECITALS

WHEREAS, the Interlocal Cooperation Act, Texas Government Code, Chapter 791, as amended (the "Act") provides authority for local governments of the State of Texas to enter into interlocal Agreements with each other for the purpose of performing governmental functions and services as set forth in the Act; and

WHEREAS, Plano, Allen, and Collin County (herein each individually referred to as "Party" and collectively referred to as "Parties") are political subdivisions within the State of Texas and are all engaged in the provision of governmental services for the benefit of their citizens; and

WHEREAS, each governing body, in performing governmental functions or in paying for the performance of governmental functions hereunder, shall make that performance or those payments from current revenues legally available to that party; and

WHEREAS, each governing body finds that the subject of this Agreement is necessary for the benefit of the public and each has the legal authority to perform and to provide the governmental function or service which is the subject matter of this Agreement; and

WHEREAS, each governing body finds that the performance of this Agreement is in the common interest of the parties and that the division of costs fairly compensates the performing party for the services or functions under this Agreement; and

WHEREAS, Plano and Allen, operate a Motorola ASTRO 25 Phase II Trunked Voice Radio System ("the Joint Radio System's simulcast system") for the purpose of providing Public Safety voice radio communications in southwest Collin County and Collin County has started building a Motorola ASTRO 25 Phase II trunked simulcast public-safety system with a simulcast cell in Collin County ("Collin County's simulcast cell"), particularly to the north and east of Plano and Allen. The County's simulcast cell will operate with a primary and a redundant simulcast prime site and remote trunked simulcast sites in the county. Under this Agreement, the Collin County simulcast controller sites and communication center will connect with dedicated links to the simulcast master sites in Plano and Allen. Collin County's microwave system will tie to the Plano and Allen microwave system with links on Plano's Ridgeview tower and one other tower site on the joint radio system network.

NOW THEREFORE, Plano, Allen, and Collin County (hereinafter collectively referred to as "Party" or "Parties"), for and in consideration of the mutual benefits and obligations set forth in this Agreement, agree as follows:

1. OBLIGATION OF THE PARTIES

Plano and Allen hereby grant Collin County specific permission to interface Collin County's simulcast cell with its Joint Radio System's simulcast system and infrastructure in accordance with the specific details and requirements for use, including pricing, as set forth in "**Exhibit A**," which is attached hereto, incorporated herein, and made a part of this Agreement for all purposes. Failure to comply with specific details and requirements that places either system at material risk may result in the immediate withdrawal of the specified permissions.

2. TERM

This Agreement shall be automatically renewed annually for a period of ten (10) one year terms in order to allow each Party the opportunity to recover their investment, unless terminated earlier as provided herein. This Agreement shall begin upon the last day executed by all authorized parties and shall continue in full force and effect unless terminated in accordance with the provisions set forth herein and in "**Exhibit A**".

3. COMPENSATION

Collin County shall remit payment to City of Plano in the amount and manner set forth in "**Exhibit A**".

4. LIABILITY

Each party agrees to be liable for any damages or loss that may be caused by its own negligence, omission, or intentional misconduct. For purposes of this Section 4, the term party shall include employees, directors, officers, agents, authorized representatives, subcontractors, consultants, and volunteers of the respective party.

5. HOLD HARMLESS

Each party agrees to hold harmless the other party and its respective officials, officers, agents, employees, in both their public and private capacities, from any and all liability, claims, suits, demands, losses, damages, attorney's fees, including all expenses of litigation or settlement, or causes of action which may arise by reason or injury to or death of any person or for loss of, damage to, or loss of use of any property arising out of or in connection with this Agreement. In the event that a claim is filed, each party shall be responsible for its proportionate share of liability.

6. NON-APPROPRIATION OF FUNDS

Plano, Allen, and Collin County will use best efforts to appropriate sufficient funds to support obligations under this Agreement. However, in the event that sufficient funds are not appropriated by either party's governing body, and as a result, that party is unable to fulfill its obligations under

this Agreement, that party (i) shall promptly notify the other parties in writing and (ii) may terminate this Agreement, effective as of the last day for which sufficient funds have been appropriated.

7. RIGHT TO AUDIT

During this Agreement and for three (3) years after the Agreement's expiration, each party will maintain and produce to one another all records and data related to the party's operational performance under this Agreement, including operating the Joint Radio System's simulcast system and Collin County's simulcast cell and calculating all fees according to the standards and procedures in "Exhibit A". Further, a party will generally make available all information that is maintained by a radio system's system-management software.

Each party will maintain and produce to the other parties all information necessary for the other parties to comply with governmental or industry standards related to either the Joint Radio System's simulcast system or Collin County's simulcast cell, including GASB Statement 87, Leases (2017).

During this Agreement and for 3 years after the Agreement's expiration, both Parties will have the right to audit and examine any books, documents, files, papers, records, or communications of the Cities of Plano and Allen about all fees paid by the County or charged by Plano or Allen under this Agreement. The Parties will give each other reasonable notice of its audits.

8. 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 parties' written consent. If a party asks another party for such consent, then the party will provide adequate information for the others to evaluate the request and will promptly respond to reasonable requests for additional information. A party will not unreasonably withhold consent.

9. NO WAIVER

The failure of either party to insist upon the performance of any provision or condition of this Agreement or to exercise any right granted herein shall not constitute a waiver of that party's right to insist upon appropriate performance or to assert any such right on any future occasion.

10. GOVERNMENTAL POWERS/IMMUNITIES

In the execution of this Agreement, none of the parties waives, nor shall be deemed hereby to have waived any immunity or any legal or equitable defense otherwise available against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein, and this Agreement does not create any rights in parties who are not signatories to this Agreement. It is understood and agreed that by execution of this Agreement, that neither Plano, Allen nor Collin County waives or surrender any of its governmental powers or immunities.

11. AMENDMENTS

No amendment to this Agreement shall be binding upon the parties hereto unless such amendment is set forth in writing, dated subsequent to the date of this Agreement, and signed by all parties.

12. SEVERABILITY

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

13. TERMINATION

As stated above, this Agreement shall be automatically renewed annually for a period of ten (10) one year terms in order to allow each Party the opportunity to recover their investment, unless terminated earlier as provided herein. Should circumstances exist that require one or more Parties to terminate this Agreement, then such termination shall be with the following conditions:

This Agreement may be terminated upon two (2) year advanced written notice from the Party seeking termination to the other Party. The Party terminating this Agreement shall reimburse the remaining Party for reconfiguring of the system, such as microwave realignment and licensing fees.

14. CONFIDENTIAL INFORMATION

To the extent permitted by law, the parties and their officers, agents and employees, agree that they shall treat all information, pertaining to this Agreement, as confidential ("Information") and shall not disclose any such information to an outside third party without the prior written approval of the other party, unless such disclosure is required by law, rule, regulation, court order, in which event the parties shall notify each party in writing of such requirement in sufficient time to allow the affected parties to seek injunctive or other relief to prevent such disclosure. Each party shall store and maintain all network information in a secure manner and shall not allow unauthorized users to access, modify, delete or otherwise corrupt network information in any way. A party shall notify the affected party immediately if the security or integrity of any County or Plano and Allen information has been compromised or is believed to have been compromised.

15. FORCE MAJEURE

The parties shall exercise their best efforts to meet their respective duties and obligations hereunder, but shall not be held liable for any delay in or omission of performance due to force majeure or other causes beyond their reasonable control, including, but not limited to, compliance with any state or federal law or regulation, acts of God, acts of omission, fires, strikes, lockouts, national disasters, wars, riots, material or labor restrictions, transportation problems, existing contractual obligations directly related to the subject matter of this Agreement, or declaration of a state of disaster or emergency by the federal, state, county, or City government in accordance with applicable law.

16. NOTIFICATION

Notices required pursuant to the provisions of this Agreement shall be conclusively determined to have been delivered when (1) hand-delivered to the other parties, its agents, employees, servants or representatives, (2) delivered by facsimile with electronic confirmation of the transmission, or (3) received by the other party by United States Mail, registered, return receipt requested, (4) e-mail with read receipt addressed as follows.

City of Plano
Attn: Office of the CIO
1117 E. 15th Street
Plano, Texas 75074

City of Allen
Attn: IT Director
305 Century Parkway
Allen, TX 75013

Collin County
Attn: Cdr. Pam Palmisano
4300 Community Ave.
McKinney, TX 75071

cio@plano.gov
Cc: City Attorney

ematthews@cityofallen.org
Cc: City Attorney

ppalmisano@co.collin.tx.us

17. GOVERNING LAW / VENUE

This Agreement shall be construed in accordance with the laws of the State of Texas. Venue for any action brought on the basis of this Agreement shall lie exclusively in state courts located in Collin County, Texas or the United States District Court for the Eastern District of Texas. In any such action, each party shall pay its own attorneys' fees, court costs and other expenses incurred as a result of the action.

18. SIGNATURE AUTHORITY

The person signing this Agreement hereby warrants that he/she has the legal authority to execute this Agreement on behalf of his or her respective party, and that such binding authority has been granted by proper order, resolution, ordinance or other authorization of the entity. The other party is fully entitled to rely on this warranty and representation in entering into this Agreement.

19. ENTIRETY OF AGREEMENT

This written instrument, including all Exhibits attached hereto, contains the entire understanding and Agreement between Plano, Allen, and Collin County as to the matters contained herein. Any prior or contemporaneous oral or written Agreement is hereby declared null and void to the extent in conflict with this Agreement. Any previously executed Communication System Agreement between the parties shall be terminated simultaneously with the final execution of this Agreement by all parties.

20. COUNTERPARTS

This Agreement may be executed in one or more counterparts and each counterpart shall, for all purposes, be deemed an original, but all such counterparts shall together constitute one and the same instrument.

21. COOPERATIVE MANAGEMENT AND DISPUTE RESOLUTION

The parties will cooperatively manage their simulcast system or simulcast cell with one another and work cooperatively to solve problems so that the system and cell meet the standards in "Exhibit A". Problems may arise in connecting and integrating Collin County's simulcast cell with the Joint Radio System's simulcast system; programming of subscriber radios, consoles, and consolettes; and managing microwave paths and undue RF interference; as well as in unexpected areas.

The Plano Radio Division, acting as the operating arm of the Joint Radio System's simulcast system, will fully participate in the resolution of any connectivity issues that may arise during the life of this Agreement. This participation includes the initial implementation of connectivity and integration of the two networks. The Parties will rely on internal staff, contractors, and vendors, as required, to ensure full functionality of the Joint Radio System's simulcast system and the Collin County's simulcast cell platforms.

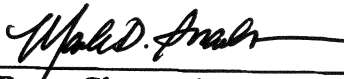
A party will promptly notify the others of any performance concern, problem, or information indicating a possible problem for the Joint Radio System's simulcast system or Collin County's simulcast cell. A party will provide the other parties, and their representatives and experts, with escorted access to any site, location or piece of equipment or infrastructure for an inspection and evaluation of a problem or issue facing the party's simulcast system or simulcast cell. Each party will provide the others with any information or data it may have, including from a radio-system-management server or similar server related to the issue. The parties will promptly exchange with one another their information, reports, results of any inspection or evaluation, expert analyses or recommendations, and proposals for avoiding, improving, or fixing any problem. The Plano Radio Division phone and email contact information shall be provided to Collin County as a first point of contact in order to address such pressing issues. The Plano Radio Division shall also be provided relevant phone and email information in order to respond and coordinate as needed. The parties will use their best efforts to solve a problem quickly.

In the event of a dispute regarding any aspect of this agreement, the dispute shall be discussed first amongst an assigned Technical Committee designee of Collin County, the City of Plano and the City of Allen in an attempt to seek an informal resolution within five business days of all parties being made aware of such dispute. If an agreement on a solution remains unresolved, then the dispute shall be referred to a joint meeting of representative City and County management of each of the Parties within a reasonable period of time from the initial meeting. If the dispute continues to remain unresolved after this process, the Parties shall refer the dispute to outside non-binding mediation for resolution prior to engaging in litigation. All Parties shall share equally in the costs of a certified mediator and each Party shall be responsible for their own attorney fees.


[Signature Page Follows]

EXECUTED IN MULTIPLE ORIGINALS on this the 27 day of December, 2018.

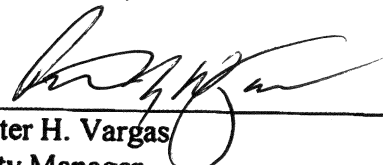
CITY OF PLANO, TEXAS

BY: 
Bruce Glasscock
City Manager

APPROVED AS TO FORM:


Paige Mims, CITY ATTORNEY

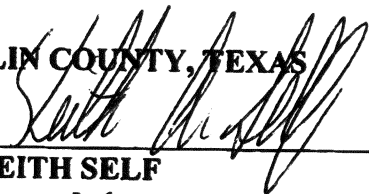
CITY OF ALLEN, TEXAS

BY: 
Peter H. Vargas
City Manager

APPROVED AS TO FORM:


Peter G. Smith, CITY ATTORNEY

COLLIN COUNTY, TEXAS

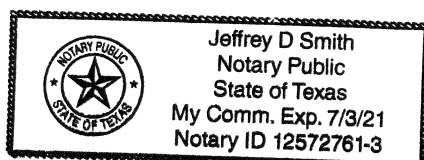
By: 
KEITH SELF
County Judge

ACKNOWLEDGMENTS

STATE OF TEXAS)
)
COUNTY OF COLLIN)

Mark Israelson, Deputy City Manager

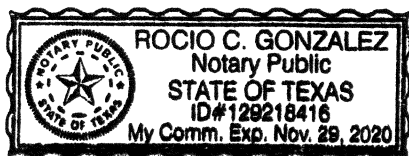
This instrument was acknowledged before me on the 27 day of December, 2018, by **BRUCE GLASSCOCK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipality, on behalf of such corporation.




Notary Public, State of Texas

STATE OF TEXAS)
)
COUNTY OF COLLIN)

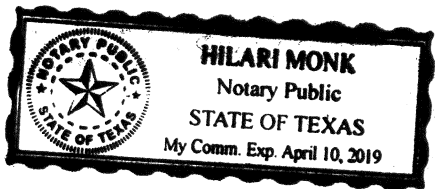
This instrument was acknowledged before me on the 22nd day of October, 2018, by **PETER H. VARGAS**, City Manager, of the **CITY OF ALLEN, TEXAS**, a home-rule municipality, on behalf of such Municipality.



Rocio C. Gonzalez
Notary Public, State of Texas

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me on the 9th day of October, 2018, by **KEITH SELF**, County Judge, of the **COLLIN COUNTY, TEXAS**, a home-rule municipality, on behalf of such Municipality.



Hilari Monk
Notary Public, State of Texas