

**Interlocal Agreement Between Collin County and the City of Anna  
for  
The County's Use of the City's Water Tower for Public-Safety Radio**

1. **Purpose.** Collin County is making a multi-million-dollar investment to upgrade its current 800 MHz public-safety radio system to a 700 MHz Motorola ASTRO 25 simulcast cell with a Nokia/Alcatel-Lucent MPLS microwave system (the County's simulcast cell). This document's terms constitute an agreement (this "Agreement") predicated upon the County connecting, or having the right to connect, its simulcast cell to the ASTRO 25 simulcast system collectively owned and operated by the Cities of Plano, Allen, Wylie, and Murphy (PAWM's or the Joint Radio System's simulcast system) or to an alternative ASTRO 25 master site. Once either condition is met, then the County will need to place equipment on the City of Anna's radio tower at 2609 Hackberry Drive, Anna, TX ("City's tower") and in a nearby shelter. If neither is met, this Agreement will be null and void. A separate agreement will govern the County's provision of dispatch and radio services to the City of Anna.

2. **Authority.** Collin County and the City of Anna enter this Agreement under the Interlocal Cooperation Act, Texas Government Code, Chapter 791.

3. **Timing.** Collin County's contractors are scheduled to begin installing elements of its new simulcast cell on the City's tower in 2019.

4. **Term.** This Agreement commences on the date last executed by the parties, and, given Motorola's commitment to supporting ASTRO 25 technology until 2036, will end on September 30, 2036, unless terminated under section 14. Anna reserves the right to request the County radio equipment be removed from the tower in the event that placement of City radio equipment is necessary for the proper coverage of its own radio system. Anna shall provide Collin County with a minimum of one year notice should the preceding be required. The City of Anna will work with Collin County to find a location suitable within the City, if necessary, for placement of a new radio tower for the remainder of life of the County's radio system.

5. **Liaison Officers**

The City of Anna's liaison officer for regular communications and performance under this Agreement will be Joseph Johnson, Director of Public Works, City of Anna, 3223 North Powell Parkway, Anna, TX 75049, jjohnson@annatexas.gov, 972-924-4510.

Collin County's liaison officer for regular communications and performance under this Agreement will be Commander Pam Palmisano, ppalmisano@co.collin.tx.us, 972-547-5100.

The Parties may update the identification of their respective liaison officers by providing notice of any new information in accordance with the notice provision of this Agreement.

6. **Necessary Conditions or Standards.** For Collin County's simulcast cell to operate according to the manufacturers' specifications, it must include the simulcast prime sites and simulcast remote sites and connect to the Joint Radio System's simulcast system or an alternative ASTRO 25 master site, according to the manufacturers' design and recommendations. The City of

Anna's tower will provide one of the County's simulcast remote sites with microwave and radio equipment.

a. **Tower Location.** The City's tower must remain in the precise location between other towers with microwave antennas shown on Exhibit A (site coordinates 33 21.15.13, 96 34 53.80).

b. **Tower Specifications.** The tower, tower site, and their management must meet all required manufacturer and industry standards set out in Section 8.b., below.

c. **Location for the Antennas.** The County will install its microwave and radio antennas on the City's water tower, and the antennas must remain at the same locations and heights on the tower, and with the same orientations, as shown in Exhibit A. The City's tower is located between the Wilmeth and the Verona towers, and microwaves must be able to travel the paths between these towers continuously and without interference. The County's radio antennas on the water tower must be able to send and receive signals continuously and without undue interference. Thus, the City's tower must remain free of other equipment or appurtenances that would interfere with the microwave paths to and from the County's antennas or with the County's antennas sending or receiving radio signals. The County shall be solely responsible for identifying any interfering equipment or appurtenances in place on the City's tower at the time of installation of the County's equipment and notifying the City of same, and upon such notice the City shall attempt to eliminate interference as soon as is practicable provided the removal of said equipment does not negatively affect the City's water system or the principal use of the water tower.

d. **Equipment Shelter, Generator and Fuel Tank, and Other Equipment.** Collin County will install the shelter for housing the simulcast cell's equipment, the backup generator and fuel tank, and the other equipment, including cabling or wave guide and connections to the power grid, and it will connect its equipment to the power grid, as shown on the plans in Exhibit A. The County's electricity use will be separately metered.

## **7. Collin County's Obligations and Warranties**

### **a. Tower Study**

The City of Anna had engineers review the County's plan to install equipment on the water tower and at the tower site in March 2018. Afterwards, Enertech performed a structural study of the site for the installation of the County's equipment on the City's water tower, and the site was prepared for installation. The County addressed all of the concerns listed by the City's third-party evaluation of the construction plans, and, as of August 22, 2018, the parties are satisfied with the County's plan and the water tower's and tower site's suitability to host the County's equipment.

### **b. Equipment Installation and Maintenance**

Collin County will install and maintain its antenna and related equipment on the tower and its shelter and equipment inside, its backup generator and fuel tank, and its cabling and wave guide at its expense. The County will retain ownership of its equipment.

### **c. Insurance for the Antennas and Related Equipment**

Collin County will procure and maintain warranties and insurance for its property on the tower or at the tower site, including antennas and other equipment.

**d. Fee for Fair Compensation**

As long as the City uses the County's simulcast cell for police, fire, and other radio services and receives police and fire dispatch services from the County, the County will not pay a separate fee for its licenses and rights under this agreement to place its equipment on the City's water tower. The parties' annual dispatch services agreement sets the terms of the City's use of the County's simulcast cell and receipt of police and fire dispatch services.

If the City stops using the County's simulcast cell and dispatch services and the County continues to use the City's water tower under this agreement, then the County agrees to pay the City a fee not to exceed \$20,000 per year. On or about October 1 of each contract year afterwards, the City will invoice the County for the annual fee. The County will pay the annual fee under chapter 2251 of the Government Code.

**e. License for Standby Power for Certain City Equipment**

Also in exchange for the County's rights under this agreement, the County extends the City a license to connect the equipment listed in Exhibit C to the County's generator at the City's water tower. As set out in more detail in Exhibit C, the City will be responsible for all costs of these connections and will comply with the applicable laws, building codes, and industry standards for the connections. The County must approve the plan to connect the City's equipment, and the County may inspect and approve the final work done to connect the City's equipment.

**f. Records and Requests**

Collin County will maintain records and data about its simulcast cell and its equipment at the City of Anna's tower. The County will provide information in response to the City's reasonable requests, particularly about the antennas, frequencies, and equipment at the tower site. The County will not disclose information in violation of a law, privilege, or another contract.

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 GASB Statement No. 87, Leases (2017).

**g. Relocation of City Equipment**

In the event the County requests that the City relocate any of the equipment on the City's water tower in order for the County's equipment to perform according to the manufacturers' and industry standards, the County will provide the City with documentation that the equipment unduly interferes with the County's simulcast cell. The City will relocate said equipment so as to meet its obligations under section 8 to manage the City's tower.

**h. General Cooperation**

The City of Anna intends to use the City's tower as a water tower for its lifespan and to provide an adequate radio-frequency environment for its participation in, and use of, the County's

simulcast cell. Likewise, Collin County intends to operate its simulcast cell for its lifespan and expects to need access for its antennas and equipment at the tower site during this time. The County will reasonably cooperate with the City and vice versa throughout the term of this Agreement to facilitate both parties using the tower for their respective purposes.

## **8. The City of Anna's Obligations and Warranties**

### **a. Land at the Tower's Location and Access to Power Grid**

The City of Anna warrants that it owns the land at the City's tower site in fee simple and that it owns or has an easement for access to the City's tower site from a public road. The City will maintain its ownership of the land and access rights during this Agreement's term.

The City will also continue to maintain any road, which is reasonably necessary for access to the tower and the tower's location. In the case of a road which the City does not maintain or have the right to maintain, the City of Anna will reasonably cooperate with Collin County in reporting problems to the appropriate owner or other party to maintain, repair, or improve the road.

The County's equipment will connect to the power grid and be metered separately from the City's equipment. The County may use the City's easement or other rights to maintain the County's connection to the power grid during this Agreement's term.

### **b. The Tower and Its Maintenance and Management**

**Ownership and Location.** The City of Anna warrants that it owns the tower itself in fee simple, will retain its ownership, and will keep the tower at its present location as shown in Exhibit A (site coordinates: 33 21.15.13, 96 34 53.80), during this Agreement's term.

**Soundness.** The City will maintain the water tower and the tower site, including the elevated water tank, so that they meet applicable industry standards, including (1) 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, (2) AWWA/ANSI Standard D107-10 or AWWA/ANSI Standard D107-16, and (3) NTCOG, Public Works Construction Standards (4th ed. 2004) or (5th ed. 2017). The City will maintain (4) lightning protection for the water tower according to industry standards, such as NFPA 780 (2014 ed.) or (2017 ed.) and UL 96, 467, and 96A. The County will bond its equipment-site-ground system to the City's water-tower-site ground system to ensure a single common-site-ground system. If the County becomes aware of any condition which constitutes an actual or potential violation of the standards referenced herein, the County shall timely notify the City of said conditions and cooperate with implementing a suitable remedy. Additionally, the County shall be responsible for any violation of the standards referenced herein and mitigation of such violation when said violation is caused by the County's equipment.

**RF Environment and MW Paths.** The City will maintain and manage the water tower and tower site according to industry standards such as those in chapter 8 of Motorola R56 Standards and Guidelines for Communications Sites (2005), to provide the best radio-frequency environment to support the proper operations of the County's simulcast cell. The City will also

maintain and manage the City's tower and tower site to avoid interference with the microwave paths for the County's simulcast cell.

**Routine Maintenance.** The City will be responsible for routine maintenance, including painting, on the water tower and the City's shelters, utility pole, and other equipment at the water tower site. The City will provide reasonable notice, but in no event less than 30 days' notice, to the County about any maintenance, such as painting, that may affect the County's operations at the water tower site. The City will reasonably cooperate with the County to protect its interests and continue its operations at the water tower site during any maintenance by the City.

With reasonable notice to the City, Collin County will inspect, service, and maintain its own antennas, equipment, shelter, and backup generator and fuel tank at the City's water tower site.

c. **License**

The City of Anna grants Collin County a non-exclusive license, permissions, and other ancillary rights so that the County may take all actions, including entering the City's real and personal property at the tower site and on the tower, the County deems appropriate to install, maintain, and operate its microwave and radio antennas and equipment at the tower site and on the tower at the precise locations and according to the plan and standards in Exhibit A. In brief, the County will locate two microwave antennas—These are model RFS PAD6-W57BCS1R microwave antennas on the top of the water tower at 172 feet. One of these will be directed at an azimuth of 194 degrees, and the second at an azimuth of 124 degrees.

There will be three radio antennas, model Sinclair SC412, also mounted on the top of the water tower. There will also be a Tower Top Amplifier (TTA), model Bird 432-83I. Coaxial cable will be routed as designed and illustrated in the attached Exhibit B (Motorola/Enertech Construction Drawings). Coaxial cable will be secured to the inside of the water tank base on a cable securing system installed by the County's contractor. Coaxial cable will be installed in buried conduit between the County's equipment shelter and the water tower's underground cable entrance on the south side of the water tower.

Collin County's license, permissions and rights granted by the City give it the right to install, inspect, maintain, repair, improve, or replace any component, including the shelter, antennas, and equipment, as well as to survey, study, or gather data about the tower, antennas, related equipment, and the operations of anything that the County suspects may affect the performance of its simulcast cell. The County will reasonably coordinate any such work with the City and use reasonable efforts to perform its work in the light of the City's interest in using the water tower as a water tower and as a component of the County's simulcast cell.

Collin County's license, permissions and rights granted by the City include the right to require the City of Anna to remove or relocate—or have removed or relocated—other antennas, equipment, or attachments to the tower, which may unduly interfere with the performance of the County's simulcast cell provided that the removal or relocation of the antennas, equipment or attachments does not negatively affect the City's water system, the principal use of the water tower,

or cause breach of an agreement that the City has with another party as of November 1, 2018. Prior to removing or relocating said tower attachments, the County shall notify the City of the nature of the issue and provide specific recommendations as to where the equipment can be acceptably relocated. The City and County shall then cooperate to determine the mutually agreeable process for accomplishing the removal and relocation.

Where the City of Anna lacks the right or authority to remove or redirect, or require the removal or redirection, of an antenna, piece of equipment, or attachment, or to alter its functioning, then Collin County's license permissions and rights granted by the City include the right to request that the City use reasonable efforts to restore the County's simulcast cell's performance to meet the applicable manufacturer or industry standards and the law.

**e. Access to the Tower Site (Equipment Shelter) and the Tower**

Collin County will install an equipment shelter at the tower site and microwave and radio antennas and other equipment on the water tower. The shelter will contain heat, smoke, electrical-failure, and other sensors and alarms.

The County will have the right to immediately enter the equipment shelter at the tower site. For example, the County will have to respond immediately to an alarm alert. The County will reasonably notify the City when the County enters the tower site. Said notice shall include identification of any third-party agents or contractors the County authorizes to access the City's tower site and work on the County's equipment. If the City has a fence and gate, or similar security measures, at the tower site, then the City and County will cooperate to establish a procedure by which the County can rapidly enter the shelter consistent with the City's security interests. The County may also immediately access its equipment, cabling, waveguide, or the connection of the County's equipment, at the external base of the water tower itself. The County will not enter or climb the water tower under this right.

The County will have the right to access the water tower, including climbing the tower, with reasonable advance notice to the City. For example, the County would need access to respond to an event like a lightning strike, to investigate microwave or radio-frequency interference, or to inspect or service the equipment on the tower. The City will provide the County with appropriate access to the tower under the circumstances. The County and/or its third-party agents shall not attempt to access or climb the tower in a damaging or unsafe manner. The City reserves the right to stop work if damage is being caused to the City's structure or if workers are not utilizing best practices in regard to safety. For example, an attempt to climb the tower without appropriate climbing gear would be considered unsafe and would warrant the City stopping work.

**f. Significant Information, Events, Plans, or Work**

**Possible Problems.** If, during its normal and routine operations for its own purposes, the City detects what it suspects is a possible problem with the condition of the County's antennas, equipment, or operation, then the City will promptly notify the County. The City should resolve any doubts in favor of notifying the County of a possible issue. If, during its normal and routine operations for its own purposes, the County detects what it suspects is a possible problem with the

condition of the City's tower, then the County will promptly notify the City. The County should resolve any doubts in favor of notifying the City of a possible issue.

**System Enhancements, Service, or Modifications.** In the event that there are any modifications to the water tower, tower site, connection to the power grid, or access to the site from a public road that may affect the County's simulcast radio system or its ability to maintain this simulcast site, to the extent possible, the City will notify the County of such modifications or reductions in service.

**Consideration of Tower Additions.** If the City of Anna considers adding, or allowing another person or entity to add, any equipment or appurtenances to the tower, then the City will consider how this may affect the County's system and promptly notify Collin County. The City will provide the County with sufficient information for the County to assess the proposed addition, study its potential effect on the County's simulcast cell, and to set out its position to the City. "Promptly" means with enough time for the County to exercise its rights under this subsection but, in no event, less than 60 calendar days' notice.

If the City considers allowing another person or entity (such as a cellular carrier) to add any equipment or appurtenances to the tower, which have a realistic chance of interfering with the operation of the County's antennas or equipment, then the City will include a provision in its relevant contract with the other party that subordinates the party's right to place or operate its equipment or appurtenances on the City's tower or at the tower site to the County's right to operate its antennas and equipment at the tower site as essential components of its simulcast cell. For example, the City's contract with the other party should give the City the right to require the other 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.

**Information to City Departments.** The City of Anna will supply to third parties as reasonably necessary information about the County's simulcast cell, the microwave paths, the need for microwave paths, which are line of sight, to remain clear, and undue interference, to its relevant departments, such as the Planning and Zoning Board, so that these officials are reasonably equipped to identify possible problems for the County's simulcast cell (*e.g.*, a construction application could propose a building that would block a microwave path). The City will promptly notify the County of any such issue so that the County may submit a position paper to the appropriate official or board.

g. **General Cooperation**

The City of Anna and Collin County shall reasonably cooperate to facilitate both parties using the City's tower for their respective purposes.

h. **Tower Insurance**

The City of Anna will provide a minimum of \$1 million in all-risk insurance against property damage or loss to the tower and the tower site. Such coverage will be primary to any insurance maintained by the County. If the tower is damaged or lost, then the City will promptly

submit and pursue the appropriate insurance claims consistent with the radio tower's public-safety purposes.

i. **FCC Registration and FAA Notification**

The City of Anna warrants that it has met all requirements to provide all required notice of the tower to the FAA (or that the tower is exempt from FAA-notice requirements). If any of these things changes, then the City will comply with the applicable law to renew or appropriately change the registration.

9. **Unexpected Events, Cooperation**

Unexpected events may negatively affect the City's tower, operation of the tower as a water tower, tower site, connection to the power grid, or access to a public road, or the County's shelter, antennas or equipment, or the operation of the County's simulcast cell, including damage to or failure of the water tower, damage to or failure of the antennas or equipment, interference with or obstruction of the microwave paths, loss of or changes to a party's property or contract rights with others, and changes to the applicable law (including operations, licenses, permits, registrations). The parties will discuss and cooperate to resolve or avoid problems cooperatively.

**Notice and Discussion.** Each party will promptly notify the other party of any performance problem or issue of which it becomes aware, or of concerns or information indicating a possible future problem for the City's tower, tower site, or Collin County's shelter, antennas, or equipment. As examples, a party will immediately inform the other of any known failure or damage to the water tower, shelter, antenna, or related equipment, or any other component of the simulcast cell. Under Section 8.f. the City will notify the County of various events, which might interfere with the County's simulcast cell's performance.

**Access and Evaluation.** 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 a problem or issue affecting the County's simulcast cell.

**Information Exchange.** The parties will exchange with one another their information, reports, the results of any inspection or evaluation, expert analyses and recommendations, and proposals for repairing a problem or resolving an issue. The parties will promptly exchange this information with each other before moving on to the next step of cooperation.

**Cooperation.** At all times, the parties will cooperate to resolve the problem quickly and collaboratively consistent with the water tower's and the simulcast cell's public-safety purposes and industry standards. Each party agrees promptly to take actions within its rights and authority when an action has a realistic chance of resolving or improving a problem, including moving or changing the use of the party's personal property, exercising a right or option under a contract with another person or entity, and making and pursuing a warranty or insurance claim.

If the parties decide to jointly enter into an agency relationship as part of addressing a problem, then the parties will follow section 10c. below.



**Possible Cost Sharing.** The parties may decide to share costs in identifying, assessing, or addressing a problem with the City's tower, tower site, the County's antennas or equipment, or the operation of the County's simulcast cell. For example, the parties may want to commonly engage an engineer to assess or recommend solutions for a problem. If so, the parties will negotiate, in good faith, the terms for equitably sharing the related costs on a basis that considers each party's interest in the problem and its resolution and likely receipt of benefits of the cost-sharing project.

**Emergencies or Interim Measures.** In the case of emergencies with the City's tower, tower site, or the County's antennas or equipment, the City of Anna or Collin 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.

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

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

Each party will remain the sole employer of its officials, officers, deputies, and employees, who work on or are involved with the City's tower or tower site. Said party will be solely responsible for all their compensation and benefits, including salary, overtime, pension contributions, health coverage, workers' compensation coverage, disability insurance or coverage, leave, and liability insurance, coverage, or indemnification.

Each party alone will supervise and direct its employees and other agents and be responsible for their safe work practices and compliance with all laws, agreements, and policies.

Each party alone will be the principal in its relations with independent contractors, such as Motorola, Enertech, 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, the party will be responsible for and to its contractors.

The City of Anna alone will retain its ownership or other interest in the City's tower and tower site and its property at the site. Collin County will retain its ownership of the equipment shelter, generator, antennas, and other equipment at the tower site.

##### **b. Insurance**

Other than as is provided in Section 8.f. above, 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 here.

Upon reasonable inquiry, especially during a cooperative process under Section 9, 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 or as parties to a joint venture by virtue of this Agreement alone.

If the parties decide that they should jointly retain a third party or jointly act for actions arising under this Agreement, for example, as part of addressing a problem with the City's tower 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 compensation 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 here 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.**

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

**a. Restriction of the Other Party's Liability**

One party (*e.g.*, the City of Anna) will not be liable to the other party (*e.g.*, Collin County) for claims or damages arising from the acts or omissions of the other's (*e.g.*, Collin County) employees or contractors.

**b. A Party's Duty to Defend and Indemnify**

A party (*e.g.*, Collin County) will defend, indemnify, and hold the other party (*e.g.*, Anna) harmless for all claims and damages arising from the alleged acts or omissions of the party's (the County's) employees or contractors. This provision falls under subsection (b) to sections 5 and 7 of article XI of the Texas Constitution.

**c. Covenant not to Sue**

A party (*e.g.*, the County) will not sue the other party (*e.g.*, Anna) for personal injuries or property damages resulting from the acts or omissions of the party's (the County's) employees or contractors, including (i) personal injury suffered by the party's employees or contractors, (ii) damage to the party's real or personal property, including the City's tower, tower site, shelter, antenna, or other equipment, (iii) personal injury suffered by persons who are not a party to this Agreement, or (iv) property damage suffered by persons who are not a party to this Agreement. If a party files a claim in breach of this covenant, then the other party may immediately move to dismiss the claim, to stay proceedings on the claim, or for other appropriate, interlocutory or permanent relief under the circumstances.

**d. Limitation**

This provision does not restrict the other party (*e.g.*, Anna) 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 (the County's) employees. If the personal injuries or property 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. Also, this Section 11 does not 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.

**e. Definitions and Interpretation**

"Claims or damages" means all types of claims, requests, demands, and disputes whether arising under contract or tort law or a statute, and all types of damages, including personal injuries; damage to real or personal property; statutory or regulatory damages, fines, or penalties; attorney's fees, expert costs, and litigation or ADR costs; and all forms of interest.

"Acts or omissions" means all types of acts or omissions, including those that constitute negligence; gross negligence; malice; intentional, negligent, or innocent misrepresentation; breach of contract; or other actionable conduct.

This section's rights, duties, and restrictions apply at all relevant stages of a dispute, proceeding, or lawsuit, including at the outset of the assertion of a claim, including a lawsuit's initial filing or pleading stage. This section's use of terms or phrases like "damages," "acts or omissions," and "arising from" instead of "alleged damages," "alleged acts or omissions," or "allegedly arising from" does not mean that these matters must be found, substantiated, or determined (instead of merely asserted or alleged) before this section's rights, duties, and restrictions become effective.

These rights are reciprocal; the names in the parentheses should be read as reversible.

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

**12. No Personal Liability, No Waiver of Immunity**

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 official, officer, employee, or individual agent of the other party personally liable for any personal injuries or property damage.

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 against the claim. In addition, however, each party may pursue its third-party-practice rights against the other party in the context of a claim by person who is not a party to this Agreement.

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.

### **13. Confidential Information**

#### **a. Right to Designate**

A party may designate specific information as confidential by a method reasonably designed to notify the other party that the information is confidential, such as by including “confidential” as a stamp or marking at the bottom of a page or spreadsheet or on the cover of a separately bound or self-contained document.

As examples, a party may use this designation for information that is subject to a privilege like the attorney-client privilege, executive-session information, information falling under an exception in subchapter C of title 552 of the Texas Government Code, or information that the party is obliged to protect under a contract. 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).

If a party receives a public information request which may extend to confidential information which originated from the other party, it shall provide timely notice to the other party. The parties shall cooperate in submission of any necessary request for decision to the Texas Attorney General regarding application of any mandatory or discretionary exceptions to mandatory public disclosure under the Texas Public Information Act.

A party should not designate as confidential information that is publicly available or that constitutes public information under a government-transparency law, such as the Open Meetings Act or the Public Information Act, Texas Government Code, Chapters 551 and 552.      b.

#### **Duty to Protect**

A party will protect the other party’s confidential information by the same methods and procedures that it uses to protect its own confidential information. If a party intends to disclose the other party’s confidential information to a contractor or representative, such as an attorney, subject-matter expert, consultant, or accountant, then the party will protect the information with a confidentiality provision in the related contract.

If a party uses confidential information in a court filing, then the party will use its best efforts to protect the information, such as by filing it under seal or agreeing to a protective order.

#### **c. Notice**

If a party believes that it may have to disclose the other party's confidential information (e.g., in response to a court order or subpoena), then the party will notify the other of the possible disclosure with enough information and sufficiently far enough in advance for the other party to state steps to protect its interests.

#### **14. Termination**

##### **a. By Collin County**

If Collin County intends to terminate this Agreement, the County will confer with the City of Anna ahead of time about its intention and will give the City no less than 120 calendar days' advance notice before terminating. The County alone will bear the cost of removing its antennas and equipment from the City's tower and tower site.

##### **b. By the City of Anna**

Should the City choose to relocate or sell the tower, remove the County's antenna, or to terminate this agreement, the City will give the County a one-year notice beforehand and assist the County in finding another acceptable tower location within the City limits. Collin County shall bear the full cost of the relocation.

#### **15. Dispute Resolution**

##### **a. Notice & Conferences**

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

If these discussions do not resolve an issue, then the City and County shall select designees to 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. By enacting and adopting this Agreement, the City and the County authorize said designees to resolve such issues without separate contemporaneous approval, so long as they do not materially increase the obligations assumed by their respective principals in this Agreement's express terms.

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**

The parties recognize that each are bound to the Texas Open Meetings Act and other regulations which may, in some cases, result in delays in the parties' respective designees securing authority necessary to resolve a dispute. No party may file a claim or lawsuit in any forum before the parties are finished using the above procedures, have had an opportunity to deliberate on the matter at a properly noticed meeting of its governing body, 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, 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 tower as a water tower or the County's simulcast cell.

16. **Limitation on Extraordinary Remedies**

Each party is entitled only to its benefit of the bargain under this Agreement or expenses actually and reasonably paid or incurred to keep the City's tower and tower site operating properly as a water tower or to maintain the operation of Collin County's simulcast cell. 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 7–12, 14, and 15.

17. **Other**

a. **Authorization.** Each party represents and warrants that the person or persons signing this Agreement 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 functions or 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.** Collin County and the City of Anna are agreeing to cooperate in maintaining the City's tower and the County's simulcast cell as outlined here. The County and the City 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 County's simulcast cell. Their interests should be considered in addressing problems with the County's simulcast cell or its performance. But Collin County and the City of Anna 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, Collin County and the City of Anna do not intend to benefit, much less create a claim for, persons who are not parties to this Agreement. Nothing in this Agreement alters the County's or the City's ability or rights to enter contracts apportioning or covering risks between the County

or City, on the one hand, and others, such as contractors, or the County's or City's ability to procure insurance or other coverage for such risks.

d. **Interpretation and Integration.** A court or other authority should interpret this Agreement and fashion relief, including equitable relief, so as to maintain the routine operation of the City's tower as a water tower and of the County's simulcast cell according to the manufacturers' designs and standards. This Agreement is just one agreement in a series or set of contracts and agreements for the construction and operation of the County's simulcast cell. In interpreting this Agreement and the parties' rights and obligations, a court or other authority may consider other relevant documents, including but not limited to: (i) Collin County's RFP No. 2016-020, P25 Trunked Radio System Replacement, as amended, (ii) other interlocal agreements for tower space, (iii) Collin County's agreements with its vendors, including Motorola Solutions or Nokia/Alcatel-Lucent, (iv) agreements between Collin County and police or fire departments or other agencies, who use the County's simulcast cell, (v) other agreements related to the County's simulcast cell or the City's tower (including agreements between the City and third parties which predate this Agreement), and (vi) reports, studies, and data related to scientific, engineering, or technical aspects of the County's simulcast cell or the City's tower, or to the existence, nature, extent, avoidance, amelioration, improvement, or resolution of a problem or issue with the simulcast cell or the City's tower, or their performance, including materials developed under Section 9. Where appropriate, a court or other authority may consider the concept of fair compensation under Section 791.011(e) of the Texas Government Code.

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* Gov't Code, § 791.012. Venue for disputes arising under this Agreement will lie in Collin County, Texas.

g. **Notice.**

In addition to the parties' communications through their liaison officers, each party may notify the other under this Agreement, and will notify the other of a serious dispute or an intention to file litigation at:

If to City:  
Joseph Johnson  
Director of Public Works

City of Anna  
3223 North Powell Parkway  
Anna, TX 75049  
[jjohnson@annatexas.gov](mailto:jjohnson@annatexas.gov)  
972.924.4510.

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

With copy to:  
Collin County Purchasing Dept.  
2300 Bloomdale Road, Ste. 3160  
McKinney, Texas 75071  
[purchasing@co.collin.tx.us](mailto:purchasing@co.collin.tx.us)  
972.548.4165

**h. No waiver of Immunities**

By signing this Agreement, no party waves 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 here.

**i. 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.

**j. Severability**

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

**k. 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. A party will not unreasonably withhold consent.

l. **Amendment**

As Sections 1 and 6 discuss, the County has made, and will continue to make, a substantial investment in its simulcast cell, including installing and maintaining microwave antennas and other equipment at the City's tower site. An amendment to this Agreement, which would materially affect the County's rights or its simulcast cell's operations, could cost the County tens or hundreds of thousands of dollars. Thus, the County cannot afford informal amendments to the Agreement. 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) of the Texas Government Code.

m. **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 11 or 12.

n. **No Partnership or Agency**

The Parties hereto have not created a partnership and nothing contained in this Agreement shall in any manner whatsoever constitute any Party the partner, agent or legal representative of the other Party, nor create any fiduciary relationship between them for any purpose whatsoever. No Party shall have any authority to act for, or to assume any obligations or responsibility on behalf of, the other party except as may be, from time to time, agreed upon in writing between the Parties or as otherwise expressly provided in this Agreement.

18. **Glossary**

**Antenna and related equipment** means all of the equipment that will be installed at the City's tower site, including the equipment shelter and its foundation, the radio system and uninterruptible-power-supply equipment in the shelter, the radio and microwave antennas on the top of the City's tower, the TTA on top of the City's tower, all coaxial cable between the shelter and the antennas on top of the City's tower, the back-up power generator and its foundation, the diesel fuel tank, all fencing, the electrical service and connection from Grayson Collin Electrical Cooperative (GCEC) (or successor vendor), and underground conduit for the coaxial cable. Said equipment is limited to equipment specified in Exhibit A unless otherwise mutually agreed.

**APCO** means the Association of Public-Safety Communications Officials. APCO may publish or comment on industry standards that are relevant in interpreting the parties' duties here.

**City of Anna** means the City 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, including those in Section 8, 9, or 15.

**Collin County** means the County 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, including those in Section 7, 9, or 15.

**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 includes, or will include, any equipment or sites the County may add later. The County owns or holds the radio-frequency licenses from the FCC used on its simulcast cell.

**FAA** means the Federal Aviation Administration.

**FCC** means the Federal Communication Commission.

**Immunity** means all forms of a county’s or city’s immunity, including sovereign 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 (Texas Civil Practice & Remedies Code) and damages law (Texas Civil Practice & Remedies Code, chapter 41).

**Industry Standards** means any standard that is followed in the design and implementation of Land Mobile Radio Systems, 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, ANSI TIA-222G or TIA-222H (Structural Standard for Antenna Supporting Structures and Antennas with Addendums), and 47 C.F.R. Part 90; as well as any standard that is followed in the design and operation of a water tower or elevated water storage tank, including but not limited to: FAA Advisory Circular AC No. 70/7460-1L, Obstruction Marking and Lighting (Dec. 4, 2015); AWWA/ANSI Standard D107-10 or AWWA/ANSI Standard D107-16; NTCOG, Public Works Construction Standards (4th ed. 2004) or (5th ed. 2017); Texas Administrative Code, Title 30, Chapter 290; and NFPA 780 (2014 ed.) or (2017 ed.) and UL 96, 467, and 96A (lightning protection). A court or authority may also consult an expert or publication to define technical or engineering terms.

**Interoperability** generally means the ability of different systems to operate with each other over the radio systems used.

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

**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.

**P25 or Project 25** means a set of standards for digital radio communications for use by federal, state, and local public-safety agencies in North America to enable them to communicate with other agencies and mutual-response teams. Here, P25 refers to Phase 2 standards. Phase 2 technology uses a two-slot TDMA scheme to improve spectrum use (by dividing one frequency channel into two virtual channels). Because of TDMA v. FDMA differences, the use of a phase 1 radio on a phase 2 simulcast cell will reduce the cell's efficiency (reduction of the two virtual channels to one channel).

**PAWM's or the Joint Radio System's simulcast system** means the set of Motorola ASTRO 25 simulcast master, prime, and remote sites, including a Nokia/Alcatel-Lucent MPLS loop microwave system (with all their components), collectively owned and operated by the Cities of Plano, Allen, Wylie, and Murphy. A master site contains equipment such as the core LAN switches, base radios, repeaters, core routers, gateway routers, a primary zone controller, a redundant zone controller, and a network management terminal. PAWM's master sites are located in Plano and Allen. The Joint Radio System's simulcast system includes or will include any equipment or sites that a city may add later. Plano and Allen own or hold the radio-frequency licenses from the FCC used on the Joint Radio System's simulcast system.

**RF** means radio frequency.

**TDMA** means time-division multiple access, which is a channel-access method for a multi-user radio system that allows several users to share the same frequency channel by dividing the signal into different time slots. In contrast, **FDMA** is frequency-division multiple access.

**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 federal counterparts.

**The City's tower or the water tower** means the water tower located at 2609 Hackberry Drive, Anna, TX (33 21.15.13, 96 34 53.80) on which Collin County will install its antenna and some of the related equipment.

**The tower location or the tower site** means the parcel of land on which the City's tower, equipment site, and the related equipment are located.

**The functionality provided by the City's tower**, in, for example, Section 14(b), means the contribution of the County's radio antennas and other equipment on the City's tower to the operation of the County's simulcast cell, including the RF coverage in the area served by the antennas on the City's tower as shown on a coverage map. If the County's antennas and equipment were removed from the City's tower or moved to a different tower, then the County would measure the loss in functionality by measuring the RF coverage under the new situation (no antennas on the City's tower or with the antennas moved to a different tower) as shown on new coverage maps.

**Undue interference** (or **unduly interferes**) means the unacceptable degradation of Collin County's simulcast cell's routine ability to perform its public-safety function consistent with the cell's performance specifications or industry standards. 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. 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* Gov't Code, § 311.016(2). **"May,"** as in "a Party may . . .," creates a discretionary authority. *See id.* § 311.016(1).

IN WITNESS THEREOF, the parties hereto have executed this Agreement.

COLLIN COUNTY, TX

BY: 

NAME: Chris Hill

TITLE: County Judge

DATE: 26 FEB 2019

CITY OF ANNA

BY: 

NAME: Jim Proce

TITLE: City Manager

DATE: 3/12/2019