

23

COMMUNICATIONS SYSTEM AGREEMENT

CATEGORY 1 – GOVERNMENT ENTITY

This INTERLOCAL AGREEMENT (this “Agreement”) is made and entered into in the County of Dallas, State of Texas, by and between the CITY OF DALLAS, TEXAS, a municipal corporation, duly incorporated and existing under the constitution and laws of the State of Texas (“DALLAS”), and the [Navarro County Office of Emergency MGT.] (“USER”), a municipal corporation, duly incorporated and existing under the constitution and laws of the State of Texas.

WHEREAS, USER and DALLAS (the “Parties”) are local governments as defined in Texas Government Code, Section 791.003(4) (the “Interlocal Cooperation Act”), that have the authority to enter into this Agreement, and have each entered into this Agreement by the action of its governing body in the appropriate manner prescribed by law; and

WHEREAS, DALLAS’ existing radio communications network is at the end of its product life cycle; and

WHEREAS, pursuant to that certain Interlocal Agreement between DALLAS and County of Dallas, Texas (“COUNTY”), (“County ILA”), DALLAS and COUNTY partnered, secured and committed financial funding for the modernization and upgrading of DALLAS’ dated communications network (current radio system and infrastructure) to create a P25 compliant trunk voice radio communications system in compliance with state and federal requirements and capable of countywide coverage for use by both public safety and public works groups in DALLAS, COUNTY, and all Dallas County cities and political subdivisions seeking to engage the system for their local needs through subscriber agreements approved by DALLAS; and

WHEREAS, in 2017, to achieve the purposes of the County ILA, DALLAS procured and entered into a contract with Motorola Solutions Inc. for completion of the P25 compliant countywide digital public radio system and added a microwave backbone that can be shared in the DALLAS’ Public Safety and Public Works communications system (the “Radio System” or “Project”); and

WHEREAS, in order to obtain the maximum radio interoperability and reliability of the Project between DALLAS, other governmental entities in Dallas County, and governmental entities within the regionally interoperable radio communications area surrounding DALLAS, including incidental interoperability use by these other non-DALLAS entities during catastrophic or special use circumstances or during daily operations based on agreed subscriber terms, it is necessary to establish and enable a countywide equipment installation to achieve Project coverage spanning beyond DALLAS jurisdictional boundaries; and

WHEREAS, DALLAS will own, operate, and maintain Trunked Voice Radio Systems for the purpose of providing Public Safety voice radio communications and is the sole license holder of the DALLAS Trunked Voice Radio Systems with all privileges and responsibilities thereof; and

WHEREAS, pursuant to all the foregoing USER and DALLAS desire to enter into this agreement pursuant to the Interlocal Cooperation Act, as amended, to set forth the terms of their cooperation, rights, and obligations; and

WHEREAS, pursuant to all the foregoing, the Parties desire to enter into this Agreement pursuant to the Interlocal Cooperation Act, as amended, to set forth the terms of their cooperation, rights, and obligations in the Project, including, but not limited to, DALLAS' grant of a license to USER for utilization of radio equipment interfaced to the Project.

NOW, THEREFORE, IN CONSIDERATION of the mutual terms, conditions, promises, and covenants hereinafter set forth, the Parties agree to perform the following acts and to be bound by the following statements to establish, operate, and maintain the Project:

1. Grant of License. DALLAS hereby grants USER specific permission to operate USER's owned or leased field radio equipment or equipment attached and/or interfaced to the Radio System infrastructure in accordance with the specific details and requirements for use as set forth in "Exhibit A, Terms of Use," which is attached hereto, incorporated herein, and made a part of this Agreement for all purposes. Failure to comply with these specific details and requirements may result in the immediate withdrawal of the specified permissions.
2. Term. The Agreement shall become effective upon the signing of the Agreement by the City of DALLAS (the "Effective Date") and shall continue in full force and effect unless terminated in accordance with the provisions set forth herein and in Exhibit A.
4. Responsibilities of the Parties. USER agrees to be responsible for its own acts of negligence, and DALLAS agrees to be responsible for its own acts of negligence, which may arise in connection with this Agreement. In the event of joint and concurrent negligence, USER and DALLAS agree that responsibility shall be apportioned comparatively. This obligation shall be construed for the benefit of the Parties hereto, and not for the benefit of any third-parties, nor to create liability for the benefit of any third-parties, nor to deprive the Parties hereto of any defenses or immunities each may have as against third-parties under the laws and court decisions of the State of Texas.
5. Independent Contractor. It is expressly understood and agreed that USER shall operate as an independent contractor as to all rights and privileges granted herein, and not as agent, representative or employee of DALLAS. Subject to and in accordance with the conditions and provisions of this Agreement, USER shall have the exclusive right to control the details of its operations and activities and be solely responsible for the acts and omissions of its employees, directors, officers, agents, authorized representatives, subcontractors, and consultants. USER acknowledges that the doctrine of *respondeat superior* shall not apply as between DALLAS, its employees, directors, officers, agents, and authorized representatives, and USER and its employees, directors, officers, agents, authorized representatives, subcontractors, and consultants. USER further agrees that nothing herein shall be construed as the creation of a partnership or joint enterprise between DALLAS and USER.
6. Non-Appropriation of Funds. DALLAS and USER 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 party 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. USER agrees that DALLAS shall, at no additional cost to DALLAS, during and until the expiration of three (3) years after termination of this Agreement, have access to and the right to examine at reasonable times any directly pertinent books, documents, papers, records, and communications of the USER involving transactions relating to this Agreement. USER agrees that DALLAS shall have access during normal working hours to all necessary USER facilities and shall be provided adequate and appropriate workspace in order to conduct audits in compliance with the provisions of this section. DALLAS shall give USER reasonable advance notice of intended audits.

8. Assignment. USER shall not have the right to assign or subcontract any of its duties, obligations, or rights under this Agreement without the prior written consent of DALLAS, which such right shall be granted solely at the discretion of DALLAS. Any assignment in violation of this provision shall be void.

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. It is understood and agreed that by execution of this Agreement, neither DALLAS nor USER waives or surrenders any of its governmental powers or immunities.

11. Amendments. No amendment to this Agreement shall be binding upon either party hereto unless such amendment is set forth in writing, dated subsequent to the date of this Agreement, and signed by both 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. Confidential Information. To the extent permitted by law, USER for itself and its officers, agents, and employees, agrees that it shall treat all information provided to it by DALLAS as confidential ("City Information") and shall not disclose any such information to a third party without the prior written approval of DALLAS, unless such disclosure is required by law, rule, regulation, court order, in which event USER shall notify DALLAS in writing of such requirement in sufficient time to allow DALLAS to seek injunctive or other relief to prevent such disclosure. USER shall store and maintain City Information in a secure manner and shall not allow unauthorized users to access, modify, delete or otherwise corrupt City Information in any way. USER shall notify DALLAS immediately if the security or integrity of any City Information has been compromised or is believed to have been compromised.

14. 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, 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.

15. Notices. Notices required pursuant to the provisions of this Agreement shall be conclusively determined to have been delivered when (1) hand-delivered to the other party, its agents, employees, servants or representatives, (2) delivered electronically via email to CISFinanceTeam@dallas.gov or (3) received by the other party by United States Mail, registered, return receipt requested, addressed as follows:

If intended for DALLAS, to: City of Dallas Information & Technology Services, Director Attn: Chief Information Officer Dallas, TX 75201	If intended for USER, to: Navarro County Office of Emergency MGT. Attn: Bret Latta 312 W. 2 nd . AVE. Corsicana, TX 75110
---	--

16. 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 Dallas County, Texas or the United States District Court for the Northern District of Texas – DALLAS Division. In any such action, each party shall pay its own attorneys' fees, court costs and other expenses incurred as a result of the action.

17. Entirety of Agreement. This written instrument, including all Exhibits attached hereto, contains the entire understanding and agreement between DALLAS and USER 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 both Parties.

18. 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.

[Remainder of page intentionally blank. Signatures on next page.]

DALLAS has executed this Agreement, signing by and through its City Manager, duly authorized pursuant to City Council Resolution No. 22-0857 approved on the 8th day of June 2022. USER has executed this Agreement, through its duly authorized officials pursuant to Board Action Number _____, approved on the ____ day of _____ 20__.

Effective as of the ____ (day) of _____ (month), 20__ (the "Effective Date").

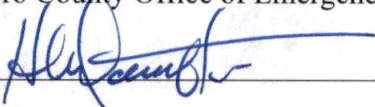
APPROVED AS TO FORM:
TAMMY L. PALOMINO
City Attorney

CITY OF DALLAS
KIMBERLY BIZOR TOLBERT
Interim City Manager

BY _____
Assistant City Attorney

BY _____
Assistant City Manager

[Navarro County Office of Emergency MGT.]

BY  _____

H.M. Davenport

Title:
County Judge _____

EXHIBIT A

CATEGORY 1, TERMS OF USE

The following definitions shall have the meanings set forth below and apply to this Agreement and the Terms of Use set forth herein:

DEFINITIONS

“Console System” shall mean all hardware and software associated with any dispatch console or set of consoles operated by the USER that are connected to the DALLAS Master Switch.

“Interoperable Communications Governance Committee” (“Governance Committee”) shall mean that group of individuals tasked with maintaining and administering the Interoperable Communications Plan. The Governance Committee shall consist of ten to fifteen individuals with DALLAS selecting at least one representative and each classification of users selecting at least one representative. The Governance Committee shall determine and may periodically adjust the number of members and the method for selecting members for each classification of users with a goal of ensuring that the Governance Committee reflects the full range of user types.

“Interoperable Communications Plan” (the “Plan”) means the plan developed and established to facilitate, enhance and simplify radio communications among all agencies utilizing the Radio System or connecting their Site Repeater Systems or Console Systems to the DALLAS Master Switch. The Plan is available upon request from DALLAS.

“Master Switch” shall mean the primary processing and network infrastructure to which all Console Systems and Site Repeater Systems must connect in order to operate on the Radio System. The Master Switch is currently located at the DALLAS Oak Lane facility.

“Over the Air Rekeying” (“OTAR”) shall mean the management and support of Subscriber Radio encryption keys via over-the-air, radio channel transmission.

“Private Call” shall mean a feature that reserves channel resources specifically for conversations between two Subscriber Radios.

“Site Repeater System” shall mean the base stations, shelter, tower and all site-specific hardware and software infrastructure associated with the provision of a radio site connected to the DALLAS Master Switch.

“Subscriber Radio” shall mean a radio that has a unique identification number and is programmed to operate on the Radio System. The term shall include, but not be limited to, control stations (desk top radios), mobile radios, and portable radios.

“Talk Group” shall mean a specific group of Subscriber Radios allowed to communicate privately within that group over shared infrastructure resources.

TERMS OF USE

1. The installation and maintenance of the Radio System infrastructure equipment is the responsibility of DALLAS unless otherwise stated in this Agreement.

2. DALLAS will use licensed radio frequencies specifically licensed to the State of Texas, Department of Public Safety who shall be the holder of the FCC (Federal Communications Commission) license(s) that the Radio System uses for its operation. This Agreement shall not be construed or interpreted to grant, convey, or otherwise provide USER with any rights whatsoever to the State of Texas FCC license(s), the agreement between DALLAS and the State of Texas or to the Radio Frequency spectrum used by the Radio System.

3. DALLAS makes no guarantee, either express or implied, as to radio signal strength or a specific level of radio coverage in a particular location. USER is responsible for conducting appropriate and applicable in-building and geographical coverage testing to determine the expected radio coverage level for USER's equipment.

4. USER will be responsible for the acquisition, programming, and maintenance of all equipment USER will be utilizing in connection with the Radio System infrastructure, including, but not limited to, Subscriber Radios, consoles, and special equipment.

5. In order to ensure hardware and software compatibility with the Radio System infrastructure, all Subscriber Radios and consoles intended for use by USER on the Radio System shall be compliant with Project 25 standards established by the Telecommunications Industry Association. The use of unauthorized radios on the Radio System may result in suspended operation of the radios and/or termination of the Agreement.

6. USER agrees to exclusively utilize antennas specifically approved by the radio manufacturer for use with the specific models of USER's radios. The use of short, broad spectrum, or "stubby," antennas is not recommended. USER shall be solely liable for coverage gaps in the event USER utilizes short broad spectrum or stubby antennas or other antennas not approved by the manufacturer for use with the specific models of USER's radios unless specifically okayed in writing by DALLAS.

7. No antenna gain greater than 3 DB will be allowed for mobiles and consolettes.

8. USER shall use due diligence in the maintenance and configuration of its Subscriber Radio equipment to ensure that no USER radio or console causes a degradation to the Radio System operation. DALLAS shall have the right to remove from operation any field radio unit or equipment owned or leased by USER that is operating on, attached and/or interfaced to the DALLAS infrastructure, if DALLAS determines in its sole reasonable discretion that such equipment is causing interference or harm to the Radio System in any way. DALLAS reserves the right to request that USER-operated field radio units or equipment operating on, attached and/or interfaced to the infrastructure be tested for proper operation and/or repaired by an authorized radio repair facility approved by DALLAS. The cost of such testing or repair will be the sole responsibility of USER. Furthermore, DALLAS shall have the right to deactivate, without prior notification to or consent of USER, any field radio or other USER equipment

suspected of causing interference, intentionally or unintentionally, to any other radios on the Radio System or to the Radio System's overall operation.

9. In instances in which the Parties are engaged in providing mutual aid assistance, USER's radios may be used for voice radio communications over the Radio System infrastructure in accordance with the terms and conditions of this Agreement for as long as this Agreement remains in effect. This Agreement does not authorize regular or day-to-day use of the Radio System in situations that do not involve mutual aid assistance between the Parties in an emergency.

10. DALLAS will be responsible for managing infrastructure loading and demand. DALLAS reserves the right, without notice to incumbent users, to enter into a similar agreement with other entities or to deny the addition of new Subscriber Radio equipment to any user of the Radio System. DALLAS shall have sole discretion in determining whether to allow additional users or radios based on DALLAS' determination of whether such addition to the Radio System can be made without adversely impacting the Radio System.

11. USER is prohibited from utilizing telephone interconnect on the Radio System. This prohibition shall include, but is not limited to, connecting to either the PSTN (Public Switched Telephone Network) or USER's internal phone system(s) through a console patch into the Radio System or to any Subscriber Radio on the Radio System.

12. Due to the radio infrastructure resource allocations required by "Private Call," USER is not permitted to utilize "Private Call" on the Radio System.

13. USER is prohibited from utilizing data communications on the Radio System without DALLAS' explicit written permission.

14. The use of OTAR in association with Subscriber Radio encryption is prohibited without prior approval of DALLAS. Administration of encryption keys will be performed exclusively by DALLAS. USER may utilize and administer other encryption methods as required.

15. DALLAS will provide USER with an Advanced System Key (ASK) for use with the USER's Subscriber Radios only. The ASK will expire annually and USER shall be responsible for requesting a renewal following expiration if one is required. USER will be responsible for safeguarding the security of the ASK to prevent theft and/or loss. USER agrees to notify DALLAS immediately upon the theft or loss of the ASK.

16. DALLAS has established a coordinated Interoperable Communications Plan to apply to DALLAS and the users of its Radio System. USER agrees to participate in the Plan and include the Plan's interoperable Talk Groups in the programming of its Subscriber Radios and Console Systems.

17. Roaming to other systems or the use of USER's Talk Groups on other trunked systems that are interconnected to the Radio System is prohibited without prior approval by DALLAS. Roaming to other trunked systems will be limited to the Radio System's

interoperable Talk Groups, although this capability may be terminated by DALLAS if its use is determined to result in performance degradation to either the Radio System or the interconnected trunked system.

18. Either USER or DALLAS may terminate this Agreement for any reason, with or without cause, upon ninety (90) days written notice to the other party. DALLAS further reserves the right to terminate this Agreement immediately, or deny access to the USER, upon notice of USER misuse of the Radio System. Notwithstanding the foregoing, DALLAS, in its sole discretion, reserves the right to immediately deny access to the USER if such action is required to prevent the spread of a security breach or threatened security breach or due to an emergency, operational issue, or other critical incident between the Master Switch and the USER's environment. DALLAS will use best efforts to restore access to the USER as soon as possible once the security breach, emergency, operational issue, or critical incident is resolved.

COMPLIANCE WITH LAWS

19. USER shall comply with all current and future Federal, State, and Local laws, Ordinances, and Mandates, including Federal Communications Commission rules and regulations regarding proper use of radio communications equipment. USER will also comply with the guidelines, or procedures set out in this Agreement. USER is responsible for enforcing such compliance by its employees, directors, officers, agents, authorized representatives, subcontractors, and consultants for USER Subscriber Radio equipment. USER will be responsible for payment of any fines and penalties levied against DALLAS (as the license holder) as a result of improper or unlawful use of Subscriber Radio equipment owned or leased by USER.

21. Modification, reconfiguration, or exchange of Subscriber Radio equipment may be required in order for DALLAS to comply with Federal, State, and Local Laws and/ or Mandates imposed on DALLAS as the license holder. Following reasonable notice from DALLAS, USER shall be responsible for undertaking such modifications, reconfiguration, or exchange. In the event USER fails to undertake any necessary action, such failure shall be considered "misuse" under Paragraph 19, and DALLAS may terminate this Agreement immediately or deny access to USER. USER will attach to this Agreement a list of radios it utilizes pursuant to this Agreement in the form of the attached Schedule One; USER will specify the make, model, and serial number of each radio it utilizes on Schedule One.

[End of Document]