

THE STATE OF TEXAS

KNOW ALL BY THESE PRESENTS

COUNTY OF TARRANT

COMMUNICATIONS SYSTEM AGREEMENT

**CATEGORY 2 – GOVERNMENT ENTITY
MASTER SWITCH USER**

This **COMMUNICATIONS SYSTEM AGREEMENT** (the “**Agreement**”) is made and entered into by and between the **City of Fort Worth (“Fort Worth” or “CFW”)** acting herein by and through its duly authorized Assistant City Manager, and the **City of Grand Prairie (“USER”)**, acting herein by and through its duly authorized _____, individually referred to as a “party,” collectively referred to herein as the “parties.” The term CFW or Fort Worth shall include all employees, directors, officials, agents, and authorized representatives. The term **USER** shall include all employees, directors, officials, agents, and authorized representatives.

RECITALS

WHEREAS, this Agreement is made under the authority of Sections 791.001-791.029, Texas Government Code; 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 both parties and that the division of costs fairly compensates the performing party for the services or functions under this Agreement; and

WHEREAS, Fort Worth owns, operates, and maintains Trunked Voice Radio Systems for the purpose of providing Public Safety voice radio communications and is the sole licensee of the CFW Trunked Voice Radio Systems with all privileges and responsibilities thereof.

NOW THEREFORE, Fort Worth and **USER** agree as follows:

1. GRANT OF LICENSE

Fort Worth hereby grants the **USER** specific permission to operate its owned Motorola Solutions ASTRO® Site Repeater System, Console System or equipment attached and/or interfaced to the CFW Project 25 Master Site located at the Eagle Mountain Communications Site at 6869 Bowman Roberts Road, Fort Worth, Texas (the “System”) 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

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.

3. COMPENSATION

USER shall remit payment to Fort Worth in the amount and manner set forth in **Exhibit A**.

4. LIABILITY

Nothing in the performance of this Agreement shall impose any liability for claims against **Fort Worth** or **USER** other than claims for which liability may be imposed by the Texas Tort Claims Act.

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 the City. 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 officers, agents, servants, employees, contractors and subcontractors. **USER** acknowledges that the doctrine of *respondeat superior* shall not apply as between the City, its officers, agents, servants and employees, and **USER**, its officers, agents, employees, servants, contractors and subcontractors. **USER** further agrees that nothing herein shall be construed as the creation of a partnership or joint enterprise between City and **USER**.

6. NON-APPROPRIATION OF FUNDS

Fort Worth 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 the City shall, 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 at no additional cost to the City. **USER** agrees that the City shall have access during normal working hours to all necessary **USER** facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. The City 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 the City. Which such right shall be granted solely at the discretion of the City.

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. AMENDMENTS

No amendment to this Agreement shall be binding upon either party hereto unless such amendment is set forth in writing, and signed by both parties.

11. 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.

12. CONFIDENTIAL INFORMATION

To the extent permitted by law, **USER** and City for themselves and their officers, agents and employees, agrees that each shall treat all information provided to it by the other as confidential and shall not disclose any such information to a third party without the prior written approval of the other. Each shall store and maintain the other's Information in a secure manner and shall not allow unauthorized users to access, modify, delete or otherwise corrupt the Information in any way. Each shall notify the other immediately if the security or integrity of such information has been compromised or is believed to have been compromised.

13. 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 or existing contractual obligations directly related to the subject matter of this Agreement.

14. 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 Tarrant County, Texas or the United States District Court for the Northern District of Texas – Fort Worth 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.

15. SIGNATURE AUTHORITY

The person signing this agreement hereby warrants that he/she has the legal authority to execute this agreement on behalf of the 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.

16. ENTIRETY OF AGREEMENT

This written instrument, including all Exhibits attached hereto, contains the entire understanding and agreement between Fort Worth 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. This Agreement may not be amended unless set forth in writing and signed by both parties.

[Signature Page Follows]

EXECUTED IN MULTIPLE ORIGINALS on this the ____ day of _____, 20____.

CITY OF FORT WORTH:

By: _____
Susan Alanis
Assistant City Manager
Date: _____

CITY OF GRAND PRAIRIE:

By: _____
Name: _____
Title: _____
Date: _____

ATTEST:

By: _____
Mary J. Kayser
City Secretary

ATTEST:

By: _____
Name: _____
Title: _____

**APPROVED TO FORM
AND LEGALITY:**

By: _____
Maleshia B. Farmer
Assistant City Attorney

APPROVED TO LEGALITY:

By: _____
Name: _____
Title: _____

Contract Authorization:

M&C: _____
Date Approved: _____

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 owned and operated by the **USER** that are connected to the CFW master switch.

“Infrastructure Support Fee” shall mean the annual fee charged by CFW to offset any actual increased costs incurred by the City in the operation and maintenance of the radio systems. The annual Infrastructure Support Fee is billed per active subscriber radio ID, payable in advance on an annual basis for all active radio IDs issued to **USER** at the time of the annual billing. Invoicing will occur when new radio IDs are issued on a pro-rata basis, and thereafter, at the beginning of each CFW fiscal year. There will be no refunds or credits for radios removed from service during the year billed.

“Interoperable Communications Plan” means the plan developed and established by CFW to enhance and simplify radio communications among all agencies utilizing the CFW public safety radio system or connecting its Site Repeater Systems or Console Systems to the CFW master switch.

“Master Site” shall mean the hardware and software provided by CFW as the core component of the Motorola Solutions ASTRO 25 radio communications system. All Site Repeater Systems must connect to the Master Site.

“Software Upgrade Agreement Fee” shall mean the annual fee charged by CFW to offset cost incurred by the City from Motorola Solutions for the maintenance of the Software Upgrade Agreement applicable to the **USER**’s Site Repeater Systems and Console Systems.

“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 owned and operated by the **USER** to be connected to the CFW master switch.

“Subscriber Radio” shall mean a control station (desk top radio), mobile radio, or portable radio, which has a unique identification number and is programmed to operate on the CFW Trunked Voice Radio System.

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

TERMS OF USE

1. The CFW shall provide and maintain the Motorola Solutions ASTRO 25 Master Site to which the **USER**'s Site Repeater Systems and Consoles System will connect. If the **USER** increases its number of Site Repeater Systems or Console Systems, the **USER** will incur all costs, if any, resulting from the expansion of capacity of the System and associated hardware and software required to accommodate the **USER**'s additions.
2. The CFW shall execute with Motorola Solutions a Software Upgrade Agreement for the System, every ASTRO 25 radio site connecting to the System, including those owned and operated by the **USER**, and all other hardware such as Console Systems that would be affected by the software upgrades, including those owned and operated by the **USER**. Unless the **USER** is notified otherwise, the software for the System, all Site Repeater Systems and all Console Systems will be upgraded to the current level every two years. The **USER** will provide all reasonable coordination necessary for the upgrade of its Site Repeater Systems and Console Systems.
3. The CFW shall provide radio IDs for all radios and dispatch consoles owned and operated by the **USER**. **USER** must provide written authorization to the CFW prior to the release of the **USER**'s radio IDs or any other information to a third party vendor or agency.
4. The acquisition, installation and maintenance of the **USER**'s Site Repeater Systems, and Console Systems are the responsibility of the **USER** unless otherwise stated in this Agreement. The **USER** will be responsible for managing infrastructure loading and demand of the **USER**'s Site Repeater Systems.
5. The **USER** will be responsible for the acquisition, programming, and maintenance of all subscriber radios.
6. The **USER** is the holder of the FCC (Federal Communications Commission) license(s) that the **USER**'s Site Repeater System uses for its operation.
7. The **USER** is responsible for providing all leased circuits and associated hardware and software necessary to connect its Site Repeater Systems and Console Systems to the System. All costs associated with provision of connectivity will be borne by the **USER**. Connectivity methods are limited to terrestrial facilities leased through a licensed carrier. Other connectivity methods, such as microwave, will require the prior approval of CFW and will result in additional costs to the **USER**.
8. The CFW makes no guarantee, either express or implied, as to radio signal strength or a specific level of radio coverage in a particular location. The **USER** is responsible for conducting appropriate and applicable in-building and geographical jurisdictional portable radio communications coverage testing to determine the expected radio coverage level.
9. **USER** shall use due diligence in the maintenance and configuration of their subscriber radio equipment to ensure that no **USER** radio causes a degradation to system operation. The CFW shall have the right to remove from operation any field radio unit or equipment owned by **USER**

that is operating on, attached and/or interfaced to the CFW infrastructure, if such equipment is found to cause interference or harm to the system in any way. The CFW 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 the CFW. The cost of such testing or repair will be the sole responsibility of **USER**. Furthermore, the CFW shall have the right to deactivate, without prior notification to or consent of **USER**, any field radio suspected of causing interference, intentionally or unintentionally, to any other radios on the systems or the systems operation.

10. The CFW will establish a coordinated Interoperable Communications Plan to apply to CFW and the users of its systems. **USER** agrees to participate in the Plan and include the Plan's interoperable talk groups in the programming of its subscriber units and Console Systems.

11. Either **USER** or CFW may terminate this Agreement for any reason, with or without cause, upon one hundred eighty (180) days written notice to the other party. The CFW, in its sole discretion, shall have the right to deny **USER** access to the radio infrastructure and/or the right to terminate the Agreement immediately if **USER** fails to make full payment of invoiced system fees within thirty (30) days of the date payment is due. The CFW further reserves the right to terminate this Agreement immediately, or deny access to the **USER**, upon notice of **USER** misuse of the system.

APPLICABLE FEES

12. **USER** shall pay the CFW an Annual Subscriber Unit Fee in the amount of **\$1.90** per month, per subscriber radio, payable in advance on an annual basis for all active radio IDs issued to **USER** at the time of the annual billing. Invoicing will occur when new Radio IDs are issued on a pro-rata basis, and thereafter, at the beginning of each CFW fiscal year. Further, at the beginning of each fiscal year of this Agreement, the CFW may increase the Annual Subscriber Unit Fee to offset any actual increased costs incurred by the City in the operation and maintenance of the System. There will be no refunds or credits for radios removed from service during the fiscal year.

13. **USER** shall pay the CFW an Annual Software Upgrade Fee equal to the amount invoiced to the CFW by Motorola Solutions, Inc., or its successors, for the upgrade of the **USER**'s Site Repeater Systems, Consoles Systems and any other component subject to upgrade as a result of the upgrade of the System.

COMPLIANCE WITH LAWS

14. The **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. The **USER** will also comply with the guidelines, or procedures set out in this agreement. Furthermore, the **USER** is responsible for enforcing such compliance by its employees, volunteers, or any individual operating **USER** subscriber radio equipment. Furthermore, the **USER** will be responsible for

payment of any fines and penalties levied against the CFW (as the licensee) as a result of improper or unlawful use of subscriber radio equipment owned by **USER**.

15. In order to comply with Federal, State, and Local Laws and/ or Mandates, the CFW, as the licensee, may need to act on behalf of the **USER** regarding possible modifications, reconfiguration, or exchange of owned subscriber radio equipment in order to meet these obligations. For as long as this agreement is in force, the **USER** will allow the CFW to facilitate such activities on **USER's** behalf as necessary.

16. In the instance where **USER** subscriber radio equipment is to be replaced in order to be in compliance with Federal, State, and Local Laws and/or Mandates, title and ownership of such replacement subscriber radio equipment shall pass directly to **USER** upon delivery of subscriber radio equipment to the **USER's** site. The **USER** shall provide the CFW, or its designee, with the subscriber radio equipment to be replaced, in good working order, as determined by the CFW or its designee. **USER** shall be liable for payment of any fees associated with radios deemed to be not in proper working order. **USER** shall be liable for payment of any fees associated with upgrades to subscriber radio equipment.