

**STATE OF TEXAS        ) INTERLOCAL AGREEMENT FOR SHARED  
                                  ) DATACENTERS AND ENHANCED COMMUNICATIONS  
COUNTY OF EL PASO ) AND CONNECTIVITY**

This Agreement is entered into on the \_\_\_\_ day of \_\_\_\_\_, 2011, by and between the City of El Paso, Texas (hereinafter called the “City”), and the County of El Paso, Texas (hereinafter called the “County”) by and through their duly authorized officials, pursuant to the Interlocal Cooperation Act.

**RECITALS**

**Whereas**, the County and the City are local governments as defined in Texas Government Code, Section 79 1.003(4), 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**, the County and the City specify that each party paying for the performance of said functions of government shall make those payments from current revenues available to the paying party; and

**Whereas**, the City and the County have previously entered into an Interlocal Agreement for the purpose of consolidating the management of City and County Information Technology (“IT”) Departments.

**Whereas**, the combined management of the consolidated IT departments have developed a strategy for providing speed, redundancy, uninterrupted service and disaster recovery for the City’s and County’s electronic data, software, communication system, computer systems and related hardware.

**Whereas**, the strategy includes the construction of both a primary and a backup datacenter located in separate locations and used shared by both entities; and

**Whereas**, the strategy includes improved infrastructure to maximize connectivity of both City and County law enforcement and other public agencies, including the El Paso Police Department, El Paso Fire Department, the Sheriff’s Office, the 911 Center, the Juvenile Probation Department, and Constable Offices through extended and improved fiber and microwave connections, and

**Whereas**, the County has built out, and the City and County are presently using, converted office space located on the fourth (4<sup>th</sup>) floor of the MDR Building, located at 800 E. Overland Street, El Paso, Texas 79901, as a shared backup datacenter, more specifically depicted in the drawing attached hereto as **Exhibit A**. After substantial reconstruction, the space is suitable for use as a datacenter with specialized HVAC, fire suppression, back up coolers, generators, fiber and communication equipment, and other specialized computer requirements (“Backup Datacenter”); and

**Whereas**, the City and County have jointly identified one or more unimproved sites that are suitable for placement of a Pod to be equipped and used as a primary, shared City-County datacenter (“Primary Datacenter”), and that the proposed POD can be operational within approximately 150 days after awarding a bid; and

**Whereas**, the City owns computer software, internet fiber and microwave transmission systems, and related hardware and computer equipment (“City In-Kind Resources”)and services that can be expanded to connect with identified County’s buildings; and

**Whereas**, the County needs computer software and hardware and computer related equipment with the same features as owned by the City, but the County lacks the resources to purchase all of these items and build a redundant systems; and

**Whereas**, the parties find that the resources contributed by each party towards the Primary Datacenter, the Backup Datacenter, expansion and redundancy of the internet fiber and the microwave transmission systems, and the improved connectivity of public buildings is adequate consideration to support this Interlocal Agreement; and

**Whereas**, there is a savings to taxpayers of up to \$2,000,000 when the City and the County share their resources, rather than duplicate buildings, equipment and services, to the mutual benefit of each party.

**NOW THEREFORE**, in consideration of the mutual contributions described herein and the mutual covenants and undertakings of the parties, the receipt and sufficiency is hereby acknowledged, the City and the County agree as follows:

## **I. SCOPE OF PROJECT**

This project shall consist of the shared use of City and County IT assets and resources, including the Primary Datacenter, the Backup Datacenter, fiber communication system, microwave communication system, and certain City and County shared resources as further described in this Agreement (the “Projects”).

## **II. MDR DATACENTER**

2.1 Build Out of MDR Datacenter. In anticipation of this Agreement, the County has undertaken construction to build out and equip space allocated for a Backup City/County Datacenter (“Backup Datacenter) located on the fourth floor of the MDR building, as is more particularly described in **Exhibit A**.

2.2 Long Term Lease to City. The County will enter into a long term lease with the City for space in the Backup Datacenter. The lease will be based upon the current lease in favor of the City covering other space within the MDR Building, located at 800 E. Overland, El Paso, Texas. 2.3

2.2 Consideration. The consideration for the space will be equal to and offset the cost for the lease of space from the City to the County in the Primary Datacenter.

### III. MSC Datacenter

3.1 Build Out of MSC Datacenter. In anticipation of this Agreement, the City has awarded a contract to build out and equip a POD for use as a Primary City/County Datacenter (“Primary Datacenter”) as is more particularly described in **Exhibit B.**

3.2 Long Term Lease to County. The City will enter into a long term lease with the County covering space in the Primary Datacenter, which will be located at the Municipal Service Center, 7969 San Paulo Dr., El Paso, Texas 79915. The lease will be based upon the current lease in favor of the City covering space within the MDR Building, located at 800 E. Overland, El Paso, Texas 79901.

3.3 Consideration. The consideration for the space will be equal to and offset the cost for the lease of space from the County to the City in the Backup Datacenter.

### IV. EXTENSION & LEASE OF THE CITY’S FIBER NETWORK

4.1 City’s Fiber Network. The City maintains a fiber network to major sites and facilities in the City of El Paso. Part of the fiber network is owned by the City and a portion of the City’s fiber network is leased. The agreement for the lease of fiber allows the City to sublet wire to governmental entities.

4.2 Long Term Lease to County. The City will enter into a long term lease with the County covering 6 pairs of fiber with an option for an additional 6 pairs of fiber.

4.3 Extension of Fiber to County Facilities. The City will extend its fiber network to the Jail Annex and Sheriff’s Headquarters and to the Juvenile Probation Department within the next two (2) years.

4.4 Extension of Fiber to City Facilities. The City will continue to maintain and/or extend its fiber network to critical points within the City. In particular, the City will maintain and/or lay fiber communications lines to reach the following connection points in order for the County to link its microwave communication equipment with the fiber communication equipment:

FACILITY	LOCATION	FIBER STATUS
Pebble Hills RCC	10780 Pebble Hills	Planned
PD Westside RCC	4801 Osborne	Existing 1gb
Fire Station 35	12230 Pine Springs Dr.	Existing 1gb
Northeast RCC	9600 Dyer	Planned

4.5 Consideration. The consideration for the lease of the 12 fiber pairs will be based upon the governmental / commercial rate for leased fiber and the parties will take all necessary steps to assure compliance with Texas law that prohibits on a municipality becoming a common carrier.

4.5 Ongoing maintenance and replacement. As part of its contribution to the sharing arrangement contemplated in this Agreement, the City agrees to be responsible for maintenance and replacement of its facilities, software, licenses and equipment.

## V. PURCHASE & EXTENSION OF THE CITY'S MICROWAVE NETWORK

5.1 County to Provide Microwave Connectivity. It is the vision of this Agreement that the City will own, lease and otherwise operate a fiber-based communication system within the City of El Paso and the County will own, lease and otherwise operate a microwave communication system within the City and County of El Paso. Each entity will provide connectivity to the other in order to provide both a primary and a backup communication system throughout the County. It is believed that the redundancy and interconnectivity of the two systems will allow multiple points for moving data and alternate pathways in the event of downtime at any particular facility. Both the City and the County will make capital investments that allow them to reduce their ongoing operating budgets while providing greatly improved reliability and speed.

5.2 City's Microwave Backbone. The City is in the early stages of setting up a microwave backbone to major sites and facilities, within the County of El Paso. A purchase order for much of the equipment was issued by the City in the month of May, 2011, and the equipment has not yet been installed. The City is in the process of issuing a change order to add approximately \$90,000 of tower construction to the purchase order. The City is currently obligated by a grant to establish connectivity between a number of public libraries and other public sites within the County and has a need to establish the microwave backbone within a short period of time. Because of this, the City will continue to install the microwave backbone, as shown in **Exhibit 1**. The County will purchase this backbone

5.3 Purchase of City's Microwave Backbone by County. The County will purchase the backbone of the microwave system from the City and the price will be based upon the fair market value of the equipment and towers and related service as of the date of the conveyance. It is anticipated that the purchase will be complete within approximately 90 days from the date of this Agreement. In the event the County has inadequate funds available from the CPCAPITAL07 bond issue to purchase both equipment and the new towers to be built by the City, the County agrees to purchase the equipment immediately. The City hereby grants the County an option to purchase the towers from described in Exhibit 2 for four (4) years at a price based upon the fair market value of the towers as of the date of the conveyance.

5.4 Extension of Microwave System to City and County Facilities. The County will extend its microwave network to the Pueblo Tower (or equivalent site in the Socorro area) and to the Far East Tower (or equivalent site in the Montana Vista area) immediately upon finalizing the purchase of the City's microwave backbone. It is anticipated that the County will begin extension of this portion of the microwave system within ninety days of its purchase of the City's microwave backbone.

5.5 Extension of Microwave to Grant Partners. The City is currently obligated to provide electronic communication capacity to a number of grant partners located in El Paso County, including public libraries, the Women Infant Children (WIC) Centers; Workforce Solutions

locations, Public Health centers, Centro de Salud locations, Park & Recreation centers, Boys & Girls Club sites, Ysleta del Sur, HACEP, El Paso Community College libraries and other organizations, governmental entities, and agencies. During the term of the grant, the County agrees to allow each of the grant partners to subscribe to the County’s microwave communications network. At the end of the grant, the County’s obligation to serve these organizations shall cease. Those organizations that qualify to enter into an interlocal may then contract with the County for ongoing service based upon the subscription terms in existence at that time. The availability of subscriptions to use the County’s microwave communication system will be primarily directed to law enforcement agencies. Next, the County will open its system to other governmental entities and agencies in the County as space allows. Private organizations and non-profit organizations, including the grant partners listed above, will be required to find internet service through public companies. Each entity with a subscription service will be required to pay for the equipment it needs to use the network. The County will establish the standards for all equipment used in its system.

5.6 Compliance with State and Federal Law. The parties will take all necessary steps to assure compliance with Texas and Federal law related to licensing, microwave transmission, etc.

5.7 Offsetting consideration. It is the agreement of the parties that the value paid by the City to the County for the use of the microwave communication system and the consideration paid by the County to the City for use of the fiber communication pairs are nearly equal. It is recognized that fiber is more expensive to put into place than microwave antennas and towers, but there will be many more connections and subscribers to the microwave system. Because the value of the two systems is nearly equal, as long as each entity provides connectivity to the other, neither will be required to pay cash to the other entity. In the event that one of the parties continues to provide communication services to the other while the other does not, the rent to be paid will be based upon the then current governmental / commercial rate for microwave service or fiber service currently in place.

5.8 Sites Where the County Will Establish Microwave Communication Facilities: The County agrees that to be fully useful, the following microwave sites must be established and maintained where there are connections to the City’s fiber:

<b>FACILITY</b>	<b>LOCATION</b>	<b>CONNECTS TO</b>	<b>TYPE</b>
Ysleta Del Sur / Pueblo Tower	Socorro	Clint Tower Ysleta Annex	100’ Tower
Ysleta Annex	9521 Socorro Road	Fire Station 35 (Fiber & Roof) Ysleta Del Sur	City / Roof Mount
Westside RCC (New)	4801 Osborne	3 Hills Tower (Fiber & Roof)	City / Roof Mount

5.9 Rented third-party tower space. Currently the City leases tower space on a number of commercial towers. The County may either negotiate to share a portion of the City’s space (piggyback) or to lease other space on the same towers. The final decision will depend upon pricing, the availability of space, and a consideration on the impact, if any, on the City that will result from sharing. Leased tower space is desired at the following locations:

<b>3d PARTY FACILITY</b>	<b>LOCATION</b>	<b>CONNECTS TO</b>	<b>TYPE</b>
Clint Tower	Clint, Texas	Fire Station 35 Pueblo Tower Far East Tower Agua Dulce Tower	Lease tower space
DPS Tower	Gateway West	Far East Tower Pebble Hills Tower	Lease tower space
Ranger Peak Tower	Central Mountain -	KFOX Tower Courthouse Pebble Hills RCC (Fiber & Tower)	Lease tower space
KFOX Tower	North Mountain -	Northeast RCC 3 Hills Tower Sheriff HQ DPS Tower Ranger Peak	Lease tower space
3 Hills Tower	Redd Road ??	KFOX Tower Westside RCC	Lease tower space
Ysleta Del Sur Tower	Socorro, Texas	Clint Tower Ysleta Annex Tower	Lease tower space

5.10 County Facilities Where Towers Exist or Will Be Placed. The current design anticipates that towers will be built and/or maintained at locations belonging to the County and that these locations will hold equipment allowing connectivity to towers at other locations in the network, as shown in the following chart.

<b>COUNTY FACILITY</b>	<b>LOCATION</b>	<b>CONNECTS TO</b>	<b>TYPE</b>
Far East Tower	Homestead Meadows	Agua Dulce Tower DPS Tower Sheriff's HQ	Needs to be built
Ysleta Annex Tower	9521 Socorro Rd.	Ysleta Del Sur Fire Station 35	City will build & County will buy
Agua Dulce Tower	Miguel Teran Self Help Center 15371 Kentwood	Far East Tower Clint Tower	County owns
Sheriff's HQ (Roof Mt)	12501 Montana	KFOX Far East Tower	Needs to be built (SO Grant Funds)
Courthouse (Roof Mt)	500 E. San Antonio	Fiber City Hall Ranger Peak Sheriff HQ Fiber	County owns

5.11 City Facilities Where Towers will be Placed. The current design anticipates that towers will be built and/or maintained at locations belonging to the City and that these locations will hold equipment allowing connectivity to towers at other locations in the network, as shown in the following chart.

<b>CITY FACILITY</b>	<b>LOCATION</b>	<b>CONNECTS TO</b>	<b>TYPE</b>
Fire Station 35 Tower	12230 Pine	Clint Tower	City will build &

	Springs Dr.	Ysleta Annex City Fiber	County will buy
Northeast RCC Tower	9600 Dyer	KFOX Far East Tower	County will build later
Pebble Hills RCC (Roof Mt)	10780 Pebble Hills	Future Fiber Ranger Peak DPS Tower	City will build & County will buy
Westside RCC (Roof Mt)	4801 Osborne	3 Hills Tower Existing Fiber to City Hall	City will build & County will buy

5.12 Consideration. The City and the County both agree that the interconnectivity of all of the towers are equally valuable without regard to whether the tower is located on City property or County property. Each entity will work with the other to provide access and space for placement of the towers on the other's property. The rent due to the County from the City and to the City from the County will offset and neither entity will pay rent to the other for the use of the microwave communication system.

5.13 Ongoing maintenance and replacement. Each subscriber to the microwave system shall purchase its own microwave equipment and install it on their facility according to the specifications established by the County. The County will own and be responsible for maintenance and replacement of its facilities, software, licenses and equipment for the microwave backbone.

## **VI. OTHER COVENANTS AND AGREEMENTS**

6.1 Separate Agreements Contemplated. By this Agreement, the Parties are setting forth their outline and overview of the four areas covered by this Agreement: Primary Datacenter, Backup Datacenter, fiber communication equipment, and microwave communication equipment. Four separate agreements, each addressing the specific terms and provisions related to its topic shall be prepared and approved by the Parties. To the extent there is a difference between the terms of this agreement and the terms of the specific contract, the terms of the specific contract shall prevail.

6.2 In-kind Contributions/Billing. The parties have agreed that certain contributions to this project will be provided as in-kind contributions. To the extent the parties have agreed to provide in-kind resources as its contribution, there will be no charge the other for the goods and services provided pursuant to this Agreement.

6.3 Retention of Ownership. Upon termination of this Agreement, each party will retain ownership of its respective real and personal property, IT equipment and related supplies, whether or not the property was used or shared by both parties under this Agreement.

6.4 Responsibility for Third Party Contracts. If either party enters into a license, lease, lease/purchase agreement for services, equipment or software, the signing party shall remain responsible for all payments and interaction with the vendor. No contribution will be required from the non-signing entity except as may be required under this Agreement.

6.5 Insurance. Each entity may insure its own property, and neither party shall be liable for loss or damage to the real or personal property of the other.

6.6 No Conveyance of Real or Personal Property Interests. This Interlocal Agreement represents an agreement for the City and County Information Technology Departments to share resources. Neither party shall acquire an interest in the real or personal property of the other. Both parties agree this Interlocal Agreement is not intended to form an interest in real property. The City will acquire no rights of tenancy in the County's Datacenter or microwave tower locations, County fiber, or County in-kind resources for the term of this Agreement or during any renewal, extensions or modifications of the term of the Agreement. The County will acquire no rights of tenancy in the City Datacenter, the City's fiber, or microwave tower locations or City in-kind resources paid for by the City for the term of this Agreement or during any renewal, extensions or modifications of the term of the Agreement. It shall not be necessary for the either party to follow the law of landlord tenant, and neither party shall required to resort to eminent domain proceedings to divest the other party of any interest in the party's real property. The only notice or payment to which the either party is entitled to vacate the other party's facility will be set forth in the individual contract. This Agreement is part of the inducement and consideration each party pays to the other for sharing resources.

6.7 Stand Alone Agreement. The terms of this Agreement will be considered separate from any other County / City transaction or agreement. The mutual consideration of the Parties described herein shall be calculated without reference to any other contract, including but not limited to: (1) the reimbursements and payments authorized under the Interlocal Agreement Between El Paso County and the City of El Paso for Information Technology Departments Consolidation and (2) the Agreement between El Paso County and the City of El Paso for the lease of space in the MDR Building. Setoffs against other contractual obligations is neither contemplated by the parties nor permitted.

## **VII. GOVERNMENTAL FUNCTION AND IMMUNITY**

7.1 Governmental Function. The City and the County expressly agree that, in all things relating to this Interlocal Agreement, the parties enter into this Inter-local Agreement for the purpose of performing governmental functions and are performing governmental functions, as defined by the Texas Tort Claims Act. The parties further expressly agree that every act or omission of each party, which in any way pertains to or arises out of this Agreement, falls within the definition of governmental function.

7.2 Sovereign Immunity. The City and the County reserve, and do not waive, their respective rights of sovereign immunity and similar rights and do not waive their rights under the Texas Tort Claims Act. The parties expressly agree that neither party waives, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercise of its powers or functions or pursuant to the Texas Tort Claims Act or other applicable statutes, laws, rules, or regulations.

## **VIII. RISK ALLOCATION – LIMITATION OF LIABILITY**



8.1 Liability. This Agreement is not intended to alter or reallocate any defense or immunity authorized or available to either party by law.

8.2 Exclusion of Incidental and Consequential Damages. Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Agreement, neither party shall be liable to the other party (nor to any person claiming rights derived from such party's rights) for incidental, consequential, special, punitive, or exemplary damages of any kind - including lost profits, loss of business, and further including, mental anguish, emotional distress and attorneys fees- as a result of breach of any term of this Agreement, regardless of whether the party was advised, had other reason to know, or in fact knew of the possibility thereof, except as expressly provided herein. Neither party hereto shall be liable to the other party or any third party by reason of any inaccuracy, incompleteness, or obsolescence of any information provided or maintained by the other party regardless of whether the party receiving said information from the other party was advised, had other reason to know, or in fact knew thereof.

8.3 Intentional Risk Allocation. The City and the County each acknowledge that the provisions of this Agreement were negotiated to reflect an informed, voluntary allocation between them of all risks (both known and unknown) associated with the transactions associated with this Agreement. The disclaimers and limitations in this Agreement are intended to limit the circumstances of liability. The remedy limitations, and the limitations of liability, are separately intended to limit the forms of relief available to the parties.

8.4 No Indemnification. The City and the County expressly agree that, except as provided herein, neither Party shall have the right to seek indemnification or contribution from the other Party for any losses, costs, expenses, or damages directly or indirectly arising, in whole or part, from this Agreement.

8.5 Fines and Penalties. Each party shall be solely responsible for fiscal penalties, fines or any other sanctions occasioned as a result of a finding that violations of any applicable local, state or federal regulations, codes or laws occurred as a result of that parties actions, except as may be specifically provided by law.

## **IX. GENERAL PROVISIONS**

9.1 Compliance with Laws. In the performance of their obligations under this Agreement, the parties shall comply with all applicable federal, state or local laws, ordinances and regulations.

9.2 Governing Law. For purposes of determining the law governing the same, this Agreement is entered into in the City and County of El Paso, State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in El Paso County, Texas.

9.3 Privileges and Immunities. All privileges and immunities from liability, exemptions from laws, ordinances and rules, pension, relief, disability, worker's compensation, and other benefits which apply to the activities of officers, agents, or employees of the City and the County when performing a function

shall apply to such officers, agents, or employees to the same extent while engaged in the performance of any of their functions and duties under the terms and provisions of this Agreement.

9.4 Current Revenues. Pursuant to Section 791.001(d) (3), Texas Government Code, each party paying for the performance of governmental functions or services will make those payments from current revenues available to the paying party.

9.5 No Waiver. The failure of either party at any time to require performance by the other party of any provision of this agreement shall in no way affect the right of such party to require performance of that provision. Any waiver by either party of any breach of any provision of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right under this Agreement.

9.6 Amendment; Assignability. This Agreement and the obligations hereunder shall not be amended, assigned, transferred or encumbered, in any manner without the written consent of the other party.

9.7 Severability. All agreements and covenants contained in this Agreement are severable. Should any term or provision of this Agreement be declared illegal, invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement will not be affected; and in lieu of each provision which to be illegal, invalid or unenforceable, there will be added as part of this Agreement, a provision which preserves the intention of the unenforceable provision, but which complies with the law.

9.8 Section Headings. The paragraph or section headings contained in this Agreement are for reference purposes only and shall not in any way control the meaning or interpretation of this Agreement.

9.9 Representation of Counsel; Mutual Negotiation. Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the parties, at arms' length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.

IN WITNESS WHEREOF, this Agreement has been executed by the parties named hereinabove as of the date, month and year first written above.

**CITY OF EL PASO**

ATTEST:

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Richarda Duffy Momsen  
City Clerk

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Hon. John F. Cook  
Mayor

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

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Bertha A. Ontiveros  
Assistant City Attorney

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William F. Studer Jr., Deputy City Manager  
Financial and Management Support Services

ATTEST:

**COUNTY OF EL PASO**

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Delia Briones  
County Clerk

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Hon. Veronica Escobar  
County Judge

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

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Cygne Nemir  
Assistant County Attorney

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Peter Cooper  
Chief Technology Officer