

STATE OF TEXAS : **INTERLOCAL AGREEMENT FOR**
: **CITY / COUNTY PROJECT FOR**
: **ENHANCED LAW ENFORCEMENT**
COUNTY OF EL PASO : **COMMUNICATION INTERCONNECTIVITY**

This Agreement is entered into on the _____ day of _____, 2013, 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 District are local governments as defined in Texas Government Code, Section 791.003(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 District 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 federal government has been encouraging the development of an interoperable radio communications system for the entire country, and because of its location, El Paso County has been listed as a strategic site for homeland security because of its remote border location and large population base.

Whereas, the federal government provided grant funds to assist the City to establish a master site for a community wide, public safety radio system based upon the P25 platform beginning in 2008, and millions of dollars in public money have been invested in Motorola’s master radio and microwave equipment built on a P25 platform.

Whereas, the City’s existing Motorola 800 MHz SmartNetII+ radio communications network is at the end of its product life cycle, and in 2012 the City entered into a contract with Motorola for completion of its 800 MHz digital public radio system and added a microwave backbone that can be shared by the County; and

Whereas, In order to obtain the maximum radio interoperability and the reliability of a countywide public radio system between E911 District, the City, the County and other law enforcement entities in the County, the subscriber units should be the same brand as the Microwave base system; and

Whereas, the County primarily uses a Motorola SmartNet communications infrastructure and a number of brands of radios, and the system has become obsolete, unreliable, and fails to reach throughout the County; and

Whereas, the County is currently preparing bid specifications for its anticipated solicitation for a new VHF P25digital radio system; and

Whereas, there is a savings to taxpayers of up to \$6,000,000 when the City and the County share and build upon the Motorola's ASTRO 25 master site to be located at the E911 Center, the existing UASI/PSIC P25 Master Switch and Radio Frequency site located on Mount Franklin, and the law enforcement microwave resources located throughout the County rather than duplicating equipment and services, to the mutual benefit of each party, law enforcement, the public and the taxpayers; and

Whereas, the parties find that the resources contributed by each party towards this shared interoperable radio system is adequate consideration to support this Interlocal Agreement; and

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. OBLIGATIONS OF BOTH THE CITY AND THE COUNTY

A. Shared Project Management During Construction. The City and the County agree that the Project Manager will be Ed Ozogar of the City IT Department assisted by Rene Camarillo from the County IT Department. Both the Project Manager and his Assistant Project Manager shall work together to make decisions, but the final call in the event of a dispute shall fall on the Project Manager. Because the City is several months ahead on the installation of its radio system, the Project Manager and his Assistant Project Manager may agree between themselves to switch roles once the City's system is completely installed. In such case, both parties will continue to work together to complete the installation of the County's portion of the combined public safety radio system.

B. Sharing of Knowledge & Cooperative Training. For the common goal of creating a combined, robust, Countywide public safety radio system, each entity may provide know how and training to the other, have regular combined meetings, provide assistance and direction to personnel from the other entity.

C. Shared Equipment and Software. The City and the County will each contribute software and equipment, as appropriate, in order to avoid unnecessary duplicated purchases in a common effort to provide a cost effective investment of public resources.

D. Maintenance and Replacement of Equipment and Software. The City and County shall be responsible for maintaining their respective equipment and software and to replace these items as they wear out. As technology changes, the City and County will continue to confer regarding the optimum equipment and software purchases required in order to maintain the most effective public safety communication system.

E. Shared Space. Both the City and the County will, to the extent feasible, share space for radio and microwave equipment on and adjacent to their respective towers and in buildings located adjacent to towers during the term of this Agreement. While sharing of space is encouraged where possible, the following limitations apply:

1) The City shall be entitled to place public radio related equipment in spaces that belong to the County as space limits permit. The City's right to use the space for its needs shall prevail if there is inadequate space to meet the needs of both the City and County together. The City assumes no responsibility to provide "adequate space" for the City.

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II. OBLIGATIONS OF THE COUNTY

A. Build Out. The County's new radios system will follow the City's lead and:

1) rely upon the existing Motorola ASTRO 25 system components including the Motorola ASTRO 25 master site, the existing UASI/PSIC P25 Master Switch and Radio Frequency site located on Mount Franklin (MRE), and the Motorola public-safety-dedicated microwave system being installed on several towers throughout the City;

2) utilize Motorola to provide the fixed network equipment, installation and related engineering services for the fixed network equipment the County is about to purchase for the P25 digital VHF public safety radio system, including:

a) utilizing Motorola equipment for the console upgrades at the E911 and the Sheriff's Regional Dispatch Center;

b) finishing out County used radio towers located outside of the City with Motorola's public-safety-dedicated microwave system and/or relay stations; and

c) utilizing Motorola radios for both mobile and handheld units.

III. OTHER COVENANTS AND AGREEMENTS

A. Contributions. The value of the contributions made by each party to this Agreement are difficult to quantify, but the parties agree that they have similar value.

B. Billings. Unless otherwise agreed, neither party will charge the other for the goods and services shared pursuant to this Agreement.

C. Transfer of Ownership Interest. This Interlocal Agreement represents an agreement for the City and County to share resources. Neither party shall acquire an interest in the real or personal property of the other.

D. Retention of Ownership. Upon termination of this Agreement, in accordance with section V, each party will retain ownership of its respective properties, equipment and related supplies, whether or not the property was previously shared.

E. Removal of Equipment and Restoration. Upon termination of this Agreement, the City and the County will each remove all equipment it has installed, including but limited to incoming cables and other infrastructure used to support and operate its radio related equipment. The owner of the space shall determine the cost of repair within thirty (30) days and invoice the other for the cost of restoring the site to its original condition, normal wear and tear excepted. The City shall pay the County within thirty (30) days of receipt of the invoice, and vice versa.

F. 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.

G. 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.

H. No Conveyance of Real or Personal Property Interests. Both parties agree this Interlocal Agreement is not intended to form an interest in real property and neither the City nor the County will acquire rights of tenancy in the other's facility for the initial term of this Agreement or during any renewal, extensions or modifications of the term of the Agreement. It shall not be necessary for either the City or the County to follow the law of landlord tenant, and the neither shall be required to resort to eminent domain proceedings to divest the other of any interest in real property. The only notice to which either entity is entitled to vacate the facility is the six month notice required in Section V.

I. 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. Setoffs against other contractual obligations is neither contemplated by the parties nor permitted.

IV. INITIAL TERM AND RENEWAL

A. This Agreement shall be effective on March 1, 2013 and shall terminate on September 30, 2018. It shall automatically renew on October 1 of each subsequent year for a period of one year until terminated as provided below.

V. TERMINATION

A. Notices. Either party may terminate this Agreement upon six (6) months written notice of its intention to terminate the sharing arrangement described herein to the other entity by certified mail, return receipt requested at the following addresses:

City of El Paso
Office of the Mayor
300 N. Campbell
El Paso, TX 79901

County of El Paso
Office of the County Judge
500 E. San Antonio, Room 301
El Paso, Texas 79901

Changes may be made to the above addresses and addressees through timely written notice provided to the other party.

VI. OPERATIONS

C. After Hour Access by City Personnel. The City and the County shall each designate personnel who are entitled and qualified to receive security badges, access codes and/or security clearances so that they may be assigned to work in shared spaces contemplated in this Agreement. Authorized Information Technology (“IT”) employees of the City and the County shall be permitted access 24 hours a day, 365 days a year, as necessary to perform work. Security clearances for authorized personnel will updated periodically as part of regular security measures.

VII. GOVERNMENTAL FUNCTION AND IMMUNITY

A. Governmental Function. The City and the County expressly agree that, in all things relating to this Interlocal Agreement, the parties enter into this Interlocal 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.

B. 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

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

B. 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.

C. 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.

D. 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.

E. 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

A. 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.

B. 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.

C. 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.

D. 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.

E. 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.

F. 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.

G. 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.

H. 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.

I. 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:

Richarda Duffy Momsen
City Clerk

Hon. John F. Cook
Mayor

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Assistant City Attorney

Art Armas
IT Manager

COUNTY OF EL PASO

ATTEST:

Delia Briones
County Clerk

Hon. Veronica Escobar
County Judge

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Cygne Nemir
Assistant County Attorney

Peter Cooper
Chief Technology Officer



COMMISSIONERS COURT CONTRACT FORM

CONTRACT SUMMARY

Authorize the County Judge to execute an interlocal with the City of El Paso wherein the County agrees to buy the same brand of fixed network equipment and radios as the City and both entities agree to work together on a Joint P25 Radio Project. No funds are required.

ADDITIONAL BACKGROUND:

FISCAL IMPACT:0

PRIOR COURT ACTION:

BASIC CONTRACT DETAILS

CONTRACT NO.: 2013-0115

CONTRACT TITLE: P25/Public Safety/Radio/City/Motorola/Same Vendor

SECOND PARTY: City of El Paso

CONTRACT TYPE: Interlocal Agreement

TERM AND BUDGET DETAILS

TERM: Initial Term and Auto Renew Thereafter

EXTENSION OPTIONS (If Applicable): Annual Renewal - Automatic

EFFECTIVE DATE: March 01, 2013

EXPIRATION DATE (If Applicable): February 28, 2018

EXTENSION DEADLINE DATE (If Applicable):

AMOUNT: 0

APPROVALS

COUNTY ATTORNEY APPROVAL

The attached document has been given legal review by the El Paso County Attorney's Office on behalf of the County of El Paso, its officers, and employees. Said legal review should not be relied upon by any person or entity other than the County of El Paso, its officers, and employees.

COUNTY ATTORNEY: Cygne Nemir

LEGAL REVIEW: Approved as to Form as Submitted

LEGAL REVIEW NOTES (If Applicable): This contract will allow County to purchase Motorola as a sole source product.

DATE: February 19, 2013

DIRECTOR/DEPARTMENT HEAD APPROVAL

The undersigned hereby certifies that he/she has read the contract, understands and approves the contract terms and conditions and further certifies that the contract conforms to the bid specifications, if any, and acknowledges that he/she is responsible for administering all terms and conditions.

DIRECTOR/DEPARTMENT HEAD/DESIGNEE:

DEPARTMENT CONTACT: Garcia, David

DEPARTMENT: Information Technology

DATE:

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D. 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.

E. 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.

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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:

Richarda Duffy Momsen
City Clerk

Hon. John F. Cook
Mayor

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Assistant City Attorney

Art Armas
IT Manager

COUNTY OF EL PASO

ATTEST:

Delia Briones
County Clerk

Hon. Veronica Escobar
County Judge

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Cygne Nemir
Assistant County Attorney

Peter Cooper
Chief Technology Officer