

## **MASTER INTERLOCAL RADIO SYSTEM SERVICE AGREEMENT**

This Master Interlocal Radio System Service Agreement (the “Master Agreement”) is entered into between the City of Garland, Texas (“Garland”) and the City of Mesquite, Texas, (“Mesquite”) (individually, Garland and Mesquite are also referred to as a “Party,” collectively, referred to herein as the “Cities” or “Parties”).

### **Recitals:**

**WHEREAS**, Garland and Mesquite are political subdivisions within the State of Texas, and each is engaged in the provision of governmental services for the benefit of its citizens; and

**WHEREAS**, both Garland and Mesquite are home rule municipalities as allowed by **Tex. Const. Art. 5**; and

**WHEREAS**, the Interlocal Cooperation Act, **Tex. Gov’t Code Ann. 791.001 et seq.** (the “Act”), provides authority for local governments of the State of Texas to enter into interlocal agreements with each other for the purpose of performing governmental functions and services as set forth in the Act; and

**WHEREAS**, Garland and Mesquite are local governments as that term is defined in the Act and this Master Agreement is being entered into pursuant to and under the authority of the Act; and

**WHEREAS**, municipalities own and operate radio systems and other public safety communication devices for the purpose of providing radio communications in support of their governmental operations; and

**WHEREAS**, the municipal radio systems and public safety communications devices periodically need repairs, upgrades, and routine maintenance; and

**WHEREAS**, in order to provide dependable/mission-critical radio service for use by each of the Cities and their respective users, Garland and Mesquite desire to enter into this Master Agreement to provide maintenance and repair services for said radio systems and public safety devices used by the Cities and their respective users, as such radio system coverage is essential and a necessary component of providing certain vital government services by each respective City, including, without limitation, police, fire, emergency medical and public works protection provided by each City to ensure safe, effective and efficient communications, and to benefit the greatest number of citizens both now and in the future; and

**WHEREAS**, this Master Agreement memorializes the agreement between the Cities regarding the maintenance and repair of the radio system and other public safety devices;

**NOW, THEREFORE**, for and in consideration of the mutual benefits and obligations set forth in this Master Agreement, the Cities agree as follows:

**Article 1 Definitions.**

Unless context clearly indicates a different meaning, the words and phrases set forth in this Article I shall have the following meanings when used in this Master Agreement and any Work Orders issued hereunder:

**“Business Day”** shall mean any day other than a Saturday, Sunday, or official City holiday in which either Garland’s or Mesquite’s City Hall offices are closed for business.

**“Communications System Agreement”** or **“CSA”** shall mean that interlocal agreement between Garland and Mesquite for the selection, installation, and operation of the P-25 compliant radio System approved by the governing body of each City on June 15, 2015. A true and correct copy of the CSA is attached hereto as Exhibit **“A”**.

**“Consumables”** shall mean supplies or other materials other than specific parts or equipment which are used in the course of maintaining and/or repairing Covered Equipment. Examples include solvents, solder, wires, fuses, antennae, light bulbs, etc.

**“Covered Equipment”** shall mean the communications system equipment obtained pursuant to the June 15, 2015 CSA and any approved change orders thereto and which was in Mesquite’s possession as of close of business on December 31, 2017, including:

- a)** Infrastructure equipment consisting of sixty-four (64) GTR 8000 base stations, sixteen (16) receiver voters, one (1) trunking controller, four (4) LAN routers/switches, four (4) GPS systems, and four (4) alarming systems;
- b)** Microwave radio equipment consisting of five (5) MPLS routers, DC power systems, and microwave radio equipment;
- c)** Dispatch equipment, consisting of eleven (11) MCC7500 consoles, three (3) MCC7100 consoles, and two (2) proxy servers for the communications system; and
- d)** FSA maintenance equipment, including seven (7) station controllers, one (1) alerting controller, and one (1) alerting server.

The term **“Covered Equipment”** shall not be interpreted to include Subscriber Radios.

**“Covered Services”** shall mean those services described in Article 3 herein below, subject to changes set forth in any active Work Order. The term **“Covered Services”** applies only to the labor necessary to troubleshoot and repair the Covered Equipment, and specifically

excludes parts, equipment, and consumables necessary for repairs and maintenance provided under the Master Agreement or any active Work Order.

“**Effective Date**” shall mean the later of the dates this Agreement is approved by the governing bodies of both Cities and signed by the authorized representatives of each City.

“**Governance Board**” means the administrative governing body tasked with the operation and administration of the System and created pursuant to Section 6.01 of the CSA.

“**Special Projects**” shall mean IT services other than Covered Services that Garland may agree to perform for Mesquite on a case-by-case basis and which are ancillary to the Covered Services. The Cities retain the right to refuse to reach any agreement for Special Projects.

“**Subscriber Radios**” shall mean the APX4000, APX4500, APX6000, APX6500, APX7500, and APX8000 model radios that make up one component of the System.

“**System**” means the wide area, multi-site (“simulcast”) digital trunked radio system compliant with P-25 interoperability standards as more expressly defined in the CSA.

“**Work Order**” shall mean an annual agreement between Garland and Mesquite that is executed in accordance with and governed by this Master Agreement and which incorporates the terms of this Master Agreement therein by reference.

## **Article 2 Agreement to Perform Services.**

**2.01 Work performed.** Once a mutually agreed Work Order takes effect, Garland agrees to provide the Covered Services to Mesquite under the terms and conditions set forth herein, and any Special Projects to which the Parties may agree. Garland shall provide all necessary facilities, personnel, service documentation, transportation and software to maintain, install, program, and/or modify the Covered Equipment.

**2.02 Drive-in facility.** Garland will operate a drive-in maintenance facility for Mesquite to bring Subscriber Radios and other portable Covered Equipment for maintenance and repair. The facility shall be open on all Business Days.

**2.03 Service calls and response times.** Garland agrees to the following response times and conditions:

- a) **Normal.** Garland shall provide field service for non-public safety fixed equipment during such dates and times as Garland City Hall may be open for business. Garland will respond to normal service calls within four (4) hours after Mesquite notifies Garland of the need for such services. Service notifications received after 1:00 p.m. may not be addressed until the following Business Day, depending on Garland’s volume of

work and availability.

**b) Emergency.** Garland shall provide emergency field service within two (2) hours of notification, regardless of date or time, for Fire Station Alerting (FSA) equipment, public safety repeaters, base/control stations, consoles, voting equipment, and remotes.

**2.04 Customer support line.** Garland shall maintain a twenty-four (24) hour customer support telephone line for Mesquite to report any outages. Garland shall ensure the customer support line is available each day of the year, including weekends and holidays.

**2.05 Notice by email.** For purposes of this Article 2, Mesquite may notify Garland by emailing the head of Garland's IT department or his designated proxy. Mesquite may also notify Garland by telephone by calling the customer support line.

### **Article 3 Covered Services.**

**3.01 Subscriber Radios.** Garland shall provide labor to perform technical troubleshooting of any Subscriber Radio.

**a) Maintenance issues, other.**

(1) During the troubleshooting process, if Garland determines the power cable, remote cables, power sources, antennas, or other peripheral equipment is the result of the radio failure, Garland shall notify Mesquite of the issue so that Mesquite may either provide Garland the appropriate equipment necessary to effect the repairs, or notify Garland, in writing, to obtain the necessary replacement equipment and invoice Mesquite for the necessary expense to purchase and obtain said equipment. Garland may, at its sole option, refuse to obtain any necessary replacement equipment and require Mesquite to do so at Mesquite's sole expense.

(2) If Garland determines that the Subscriber Radio failure resulted from any electrical malfunction of vehicle wiring and/or power sources, Garland will notify Mesquite. Repair of any damage caused by electrical malfunction shall be considered a Special Project. If the Cities do not agree to the Special Project, Garland shall return the damaged equipment to Mesquite at Mesquite's expense.

**b) Subscriber Radio service fees.**

(1) Garland shall charge Mesquite a monthly fee for making its technical troubleshooting services for each Subscriber Radio available to Mesquite as outlined herein below (the "Radio Fee").

- (2) The Radio Fee shall be set forth in the Work Order.
- (3) The total monthly Radio Fee for all Subscriber Radios combined shall be calculated by multiplying the total number of Subscriber Radios Mesquite possesses by the Radio Fee set forth in the Work Order (“Total Monthly Radio Fee”). The amount due for the entire year shall be determined by multiplying the Total Monthly Radio Fee by twelve (12) (“Total Annual Radio Fee”).
- (4) In the event Mesquite obtains additional Subscriber Radios during the pendency of a Work Order, it shall, within five (5) business days of taking possession of said Subscriber Radios, notify Garland, in writing, that it obtained additional Subscriber Radios and provide all necessary identifying information (model, serial numbers, etc.).
- (5) Mesquite shall pay the Radio Fee for any new Subscriber Radio(s) at the time it notifies Garland of its acquisition as set forth in Section 3.01(b)(3), *supra*, beginning in the calendar month Mesquite notifies Garland of its acquisition of said Subscriber Radio. The total amount due for any new Subscriber Radio shall be calculated by multiplying the number of months remaining under the active Work Order, including the month in which Mesquite notified Garland of the acquisition, by the monthly Radio Fee set forth in the active Work Order.
- (7) In the event Mesquite decreases the number of Subscriber Radios it possesses, it shall notify Garland within five (5) business days. Mesquite shall be entitled to a prorated refund of the Radio Fee for said Subscriber Radios, to be calculated by multiplying the amount of the Radio Fee by the remaining number of months the Work Order shall be in effect. The month in which Mesquite notifies Garland of the decrease in the number of Subscriber Radios shall not be included in this calculation.

**3.02 Manufacturer repairs.** In the event a Subscriber Radio needs to be sent to the manufacturer for repair, the following protocols shall apply.

- a) **Shipping.** Garland shall send the Subscriber Radio to the manufacturer for repairs. Garland shall invoice Mesquite for any shipping and handling expenses Garland incurs in this process.
- b) **Estimates; authorization.** Garland shall request the manufacturer provide an estimate for the cost of repairs and for the length of time the manufacturer estimates it will take to complete the repairs. Garland will forward this information, once provided by the manufacturer, to Mesquite prior to authorizing the repairs. Mesquite shall, upon receiving the manufacturer’s estimate, notify Garland whether or not the manufacturer should proceed with the recommended repairs. The Parties mutually acknowledge that

Garland shall not be held responsible in the event the manufacturer's final bill exceeds the preliminary estimate.

c) **Repair costs.** Garland shall bill Mesquite for any manufacturer depot repairs at the manufacturer's invoice amount, including any shipping and handling charges or other fees and costs the manufacturer may have invoiced.

d) **Reprogramming; installation.** Garland shall reprogram a Subscriber Radio returned from the manufacturer to the radio's specifications at the time Mesquite presented the Subscriber Radio to Garland for repairs. Garland shall then reinstall the Subscriber Radio into the Mesquite vehicle (if necessary), and ensure that the Subscriber Radio is activated on the radio System servers.

**3.03 Spare radios.** At times, the Parties recognize that Mesquite may periodically need a temporary replacement radio for use while a Subscriber Radio is being serviced, maintained, or repaired. Upon Mesquite's request, Garland shall program a spare radio and, if requested, install the spare radio into Mesquite's vehicle. Mesquite shall be solely responsible for obtaining and providing the spare radio at its own expense.

**3.04 Covered Services.** In addition to the foregoing services for Subscriber Radios, the following shall be considered "Covered Services":

a) **Covered equipment.** Garland shall provide labor to troubleshoot the Covered Equipment.

b) **On-site equipment.** Garland shall provide on-site troubleshooting and repair services for the Covered Equipment.

c) **Call management services.** Garland shall provide call management services for any issues with the infrastructure equipment, dispatch equipment, or Subscriber Radios.

**3.05 Annual preventative maintenance.** Garland shall provide the manufacturer's recommended annual preventative maintenance measures for the Covered Equipment.

**3.06 Replacement parts.** Garland shall bill Mesquite for any necessary replacement parts at Garland's cost.

**3.07 Consumables.** Garland shall bill Mesquite any Consumables necessary to repair the Covered Equipment at Garland's cost.

**3.08 Exclusions.** The following items are explicitly excluded from Covered Services: tower, generator, and power systems.

**3.09 Notice by email.** For purposes of this Article 3, Mesquite may satisfy any notice requirements contained herein by emailing the head of Garland's IT department or his designated proxy. Mesquite may also notify Garland by telephone by calling the customer support line. Likewise, Garland may satisfy any notice requirements by emailing the head of Mesquite's IT department or his designated proxy.

#### **Article 4      Special Projects.**

**4.01** The Parties recognize that Mesquite may, from time to time, request Garland provide services related to Mesquite's communications system, which are not covered by the terms of this Master Agreement or the active Work Order. These services, referred to herein as "Special Projects", may require Garland to perform electronic, electrical, and mechanical design, installation and/or modification of various equipment and sub-systems to achieve the outcome Mesquite desires. Upon Mesquite's written request, Garland may, at its sole discretion, prepare a written proposal for Mesquite's review and approval for any such Special Project. The Parties agree that the proposal is only an estimate of the cost to perform the Special Project. If the actual cost to perform the Special Project has or will exceed the estimated amount of the proposal by more than ten percent (10%), then Garland will stop work and notify Mesquite prior to proceeding with the services. Mesquite shall decide whether Garland should continue the Project, and shall notify Garland of its decision. In the event the final invoice reflecting Garland's actual costs for parts, equipment, consumables and time varies from the written proposal and Mesquite was notified and agreed to the increased cost, the final invoice shall control.

**4.02 Programming.** Any programming, alignment, tuning, or firmware updates other those set forth in Sections 3.02(c) and 3.03 above shall be considered a Special Project.

**4.03 Cost.** For any Special Projects, Garland shall invoice Mesquite as follows:

- a) **Parts and equipment.** Garland shall invoice Mesquite for parts and equipment at Garland's actual cost, including any applicable shipping and handling fees Garland incurs.
- b) **Consumables.** Garland shall invoice Mesquite for consumables used in any Special Projects at Garland's actual cost, including any applicable shipping and handling fees Garland may incur.
- c) **Labor.** Garland shall invoice Mesquite for labor on an hourly rate. The Special Project's rate shall be that set forth in the current Work Order. In the event a given Special Project spans multiple Work Orders, the hourly rate shall be the rate designated in the Work Order in effect at the time Mesquite approves Garland's proposal. A minimum of one hour of labor shall be charged for any Special Project.

## **Article 5 Work Orders.**

**5.01 Negotiation of Work Orders.** The Parties shall begin negotiations for a new Work Order in sufficient time for the Work Order and any associated fees and expenses to be accounted for in each City's budgeting process.

**5.02 Subject to Master Agreement.** Each Work Order shall state that it is subject to the terms and conditions of this Master Agreement. In the event of a conflict between the terms of a particular Work Order and this Agreement, the Work Order terms shall apply.

**5.03 Work Order Fees.** Each Work Order shall indicate the following:

- a) The annual fee Garland will charge Mesquite to provide the Covered Services;
- b) The hourly rate Garland will charge Mesquite for any Special Project;
- c) The amount of the Radio Fee for each of the Subscriber Radios; and
- d) Whether any additional equipment beyond that described in this Master Agreement shall, for the duration of that particular Work Order, be considered Covered Equipment.

**5.04 Term of Work Orders.** Unless the terms of an individual Work Order state to the contrary, each Work Order shall begin at midnight on October 1 of a given calendar year and shall continue through 11:59 p.m. on September 30 of the following calendar year.

## **Article 6 Payment**

**6.01 Annual Covered Services Fee.** Mesquite shall pay Garland the annual fee for Covered Services no later than ten (10) business days after each Work Order takes effect.

**6.02 Radio Fees.** Mesquite shall pay Garland the Total Annual Radio Fee at the same time it pays the annual Covered Services fee described in Section 6.01, *supra*.

**6.03 Invoices.** Garland shall periodically invoice Mesquite for any parts, consumables, labor or other charges not included in the Covered Services. Payment for these periodic invoices is due thirty (30) days after issuance. To the extent any invoice includes pass-through charges for equipment or manufacturer repairs not covered by warranty, Garland shall provide documentation of the expense for Mesquite's records. If Mesquite fails to pay an invoice within ninety (90) days after issuance, the failure to pay shall be considered a breach of this Master Agreement.

**6.04 Interest.** Garland shall not charge Mesquite interest for the first thirty (30) days after

Garland issues and sends Mesquite an invoice. Beginning on the thirty-first (31<sup>st</sup>) day, Mesquite shall pay Garland interest on any outstanding invoice(s) at the rate authorized pursuant to Chapter 2251 of the Texas Government Code.

## **Article 7      Term**

**7.01    Term of Master Agreement.** This Master Agreement shall commence on the Effective Date and shall continue until and including September 30, 2026 (the “Initial Term”), unless terminated earlier as provided herein. Unless terminated earlier as provided herein, following the Initial Term, this Master Agreement shall automatically renew for successive terms of three (3) years each beginning October 1, 2026 and continuing on October 1<sup>st</sup> of each third calendar year thereafter (each a “Renewal Term” and collectively the “Renewal Terms”) unless either Party elects not to renew this Master Agreement. A Party shall provide written notice to the other Party that it does not wish to renew this Master Agreement at least five hundred and forty (540) days prior to the end of the Initial Term or the then current Renewal Term, as applicable. The Initial Term and all Renewal Terms shall collectively be referred to herein as the “Term”.

**7.02    Termination in Event of Non-Appropriation of Funds.** As home rule municipalities in the State of Texas, both Parties are subject to **Tex. Const. art. III, § 52-a** prohibiting unfunded debt. All expenditures to be made by each City under the terms of this Master Agreement and any associated Work Order shall be subject to such City's appropriation of funds for such purpose to be paid in the fiscal year for which such expenditure is to be made and shall be paid only from funds of such City authorized by Article III, Section 52a of the Texas Constitution. Each Party agrees to give the other Party at least ninety (90) days prior written notice if such Party anticipates that funds may not be appropriated to meet its obligations under the terms of either this Master Agreement or any associated Work Order for the City's next fiscal year. In the event the City Council of either City fails to appropriate funds in any fiscal year during the Term of this Master Agreement and any associated Work Order for the payment of all obligations of such City under the terms of this Master Agreement and any associated Work Order for such fiscal year, such Party shall have the right to terminate this Master Agreement and any associated Work Order by giving the other Party written notice of the non-appropriation of funds within five (5) days after such City fails to appropriate the necessary funds. The termination of this Master Agreement and/or any associated Work Order as a result of either Party's failure to obtain necessary appropriations or funding shall be effective as of the last day for which funds were appropriated.

**7.03    Early Termination.** Notwithstanding anything to the contrary herein, either Party may terminate this Master Agreement without cause prior to the end of the Initial Term subject to the following:

- a)      The Party desiring to terminate this Master Agreement must give the other Party at least two hundred and ten (210) days prior written notice of termination; and

b) The termination date shall be at 11:59 p.m. on the first September 30<sup>th</sup> after passage of the two hundred and ten (210) day notice period.

**7.04 Effect of Termination of Master Agreement Pursuant to Sections 7.02 or 7.03.** In the event either Party terminates this Master Agreement pursuant to Section 7.02 or 7.03 above, the following provisions shall apply:

a) Prior to the date of termination, the terminating Party must pay any remaining financial obligations related to the active Work Order which were incurred or accrued prior to the date of the termination; and

b) The provisions of this Section 7.04 shall expressly survive the termination of this Master Agreement.

**7.05 Notice of termination.** No Notice of Termination shall be effective unless given in accordance with the provisions of Article 10.18 below.

**7.06 Effect of termination.** Any Work Order in effect at the time this Master Agreement terminates is likewise terminated. Any amounts due and owing pursuant to such Work Order, less any agreed offsets, shall be paid within thirty (30) days.

## **Article 8 Performance**

**8.01 Priority and order of work.** Garland shall have the right to determine the time, order, and priority in which its obligations under this Master Agreement shall be performed under each Work Order, as well as any other matters relative to the timely and orderly conduct of Garland's work.

**8.02 Clean up.** For repairs and maintenance performed within the corporate limits of Mesquite, Garland agrees to clean up all debris, trash, and refuse generated by its work at the end of each work day, and shall otherwise leave its work area clean and free of debris.

## **Article 9 Dispute Resolution**

**9.01** In the event of a dispute between the parties regarding the terms, performance, or any other aspect of this agreement, the parties shall attempt to resolve the dispute as set forth in this Section.

**9.02 Opportunity to cure.** If a Party asserts that the other Party has breached any provision of this Master Agreement or any active Work Order, the non-breaching Party shall provide the other Party written notification of the alleged breach, describing the facts and circumstances the non-breaching Party claims constitutes the breach. The other Party shall have one hundred and twenty (120) days to cure any such breach.

**9.03 Informal mediation.** The Cities agree that, in the event of a dispute, the appropriate technical directors and other City officials, including, but not limited to, a representative from each City's City Attorney's office and one of the three persons appointed by each City to the Governance Board, shall conduct a meeting, via telephone or in person, and shall conduct a substantive discussion of each and every dispute in a good faith effort to resolve the dispute.

**9.04 Formal mediation.** In the event the Parties are unable to resolve the dispute through the informal mediation procedure set forth above, the parties shall submit the dispute to formal mediation to be conducted at a mutually acceptable location in Dallas County, Texas. Formal mediation shall be a prerequisite for filing suit. The mediator shall be selected as follows:

- a) The Parties may jointly agree upon a particular mediator. All expenses of the mediation, including required traveling and other expenses or charges of the mediator, shall be borne equally by the parties. The expenses of participants for either side shall be paid by the party requesting the attendance of such participants.
- b) If the Parties are unable to jointly agree upon a mediator, the parties shall request the American Arbitration Association ("AAA") appoint a mediator and conduct the mediation under the AAA's Commercial Mediation Procedures. All expenses of the mediation, including any fees imposed by the AAA as well as any required traveling and other expenses or charges of the mediator, shall be borne equally by the parties. The expenses of participants for either side shall be paid by the party requesting the attendance of such participants.

**9.05 Litigation.** In the event the parties are unable to resolve any dispute through either informal or formal mediation, the dispute may be pursued through litigation.

**9.06 Venue.** The exclusive venue for all disputes shall be in any civil District Court of Dallas County, Texas.

**9.07 Recovery of litigation costs.** The prevailing party shall be entitled to recover its costs, reasonable expenses, expert fees and reasonable attorneys' fees incurred in connection with such dispute, including expenses incurred through the Formal Mediation process described in Section 9.04. For purposes of this section, a claimant or plaintiff is a "prevailing party" if it recovers at least eighty percent (80%) of the monies it seeks as damages, or obtains all injunctive relief it might seek, otherwise, the respondent or defendant shall be the prevailing party. If both Parties are "prevailing parties" or if neither Party is a "prevailing party", then each side shall bear its own costs, reasonable expenses, expert fees and reasonable attorney's fees.

## **Article 10    Miscellaneous Provisions**

**10.01 All modifications in writing.** This Master Agreement may be modified only by a

writing signed by both Cities that expressly calls for its modification and not by implication from any other written document or oral agreement. This shall not prevent other documents from being incorporated by reference.

**10.02 Severability.** Should any part, term, or provision of this Master Agreement or any Work Order governed by this Master Agreement be held void, illegal, or unenforceable, the validity of the remaining portions or provisions shall not be affected thereby. However, in such event, said part, term, or provision of this Master Agreement and/or any active Work Order issued pursuant thereto shall be modified to the minimum extent necessary to conform to the requirements of such law and be valid and enforceable, and as so modified, shall continue in full force and effect. The failure of either Party to insist upon the performance of any of the terms, covenants, or conditions of the Master Agreement and/or Work Order, or to exercise any right granted to such Party therein, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right with respect to further performance.

**10.03 Entirety of agreement.** This Master Agreement is solely for the benefit of the Parties to said Master Agreement, and represents the entire and integrated Master Agreement between the Parties, subject to any active Work Orders issued pursuant to this Master Agreement, and any exhibits hereto; and supersedes all prior negotiations, representations, and agreements, whether oral or written, and does not create a third party benefit or obligation to anyone not a party hereto.

**10.04 Assignment.** Neither Party shall assign, sublet, subcontract, or transfer any interest in this Master Agreement or any Work Orders governed by this Master Agreement without prior written consent of the other Party, which consent may be withheld at that Party's sole discretion. No assignment, delegation of duties or subcontract under this Master Agreement or any associated Work Order(s) will be effective and enforceable without the written consent of both Parties.

**10.05 No creation of debt.** To the extent, if any, that this Master Agreement or any active Work Order imposes an obligation on either City to make a payment or other expenditure of any sort, such payment or expenditure shall be payable solely from current revenues that are immediately available for such purposes, and no debt is or is intended to be created by reason of said Master Agreement or Work Order. All obligations of a City under this Master Agreement and any active Work Order are payable solely from that City's operations budget in parity with all other operating expenses of that City and no ad valorem tax revenue or other revenues of that City shall in any manner be pledged or be deemed to have been pledged to the payment of any amounts under this Master Agreement or any active Work Order nor shall any Party have the right to demand payment of any amounts under same be paid from funds raised or to be raised from ad valorem taxation. The obligations under this Master Agreement and active Work Order shall never be construed to be a debt or pecuniary obligation of either City of such kind as to require the City to levy and collect ad valorem taxes to discharge its obligations and no obligation of either City to make a payment or other expenditure under same shall be payable

through funds raised by taxation. Neither City has created and is not required to create any sort of sinking fund to secure the obligations of payment or other expenditure under this Master Agreement and active Work Order. To the extent not otherwise covered in this Master Agreement and active Work Order, each City retains its governmental and sovereign immunities and its limitations of liability. The Parties agree that each City is entering into this Master Agreement and any Work Order governed by same in its governmental capacity and the subject and nature of these agreements are governmental rather than proprietary. In any event, the procedures and limitations of Chapter 271, Texas Local Government Code apply.

**10.06 Validity of conflicting terms.** Any provision of this Master Agreement or any active Work Order is void and unenforceable if it: (1) limits or releases either Party from liability that would exist by law in the absence of the provision; (2) creates liability for either Party that would not exist by law in the absence of the provision; or (3) waives or limits either Party's rights, defenses, remedies, or immunities that would exist by law in the absence of the provision.

**10.07 Notices.** Except as otherwise provided herein above, any notice required or desired to be given from one Party to the other Party to this Master Agreement or any active Work Order shall be in writing and shall be given and shall be deemed to have been served and received (whether actually received or not) if (i) delivered in person to the recipient Party's City Secretary at the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to the City Secretary of the recipient Party at the address hereinafter specified; or (iii) delivered to such Party's City Secretary by courier receipted delivery. Either Party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other Party, the last address of such Party designated for notice shall remain such Party's address for notice.

**10.08 Waiver.** Either City shall have the right to waive any requirement contained in this Master Agreement (or any active Work Order) which is intended for the waiving Party's benefit, but, except as otherwise provided herein, such waiver shall be effective only if in writing executed by the Party for whose benefit such requirement is intended. No waiver of any breach or violation of any term of this Master Agreement or any active Work Order shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or of a different type of breach or violation.

**10.09 Paragraph Headings; Construction.** The paragraph headings contained in this Master Agreement and any active Work Order are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both Parties have participated in the negotiation and preparation of same, and this Master Agreement and any active Work Order shall not be construed either more or less strongly against or for either Party.

**10.10 Binding Effect.** Except as limited herein, the terms and provisions of this Master

Agreement and any active Work Order shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, devisees, personal and legal representatives, successors and assigns.

**10.11 Counterparts.** This Master Agreement and any Work Order governed thereby may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

**10.12 Exhibits.** All exhibits to this Master Agreement and any active Work Order are incorporated herein by reference for all purposes wherever reference is made to the same.

**10.13 Computation of Deadlines.** If any deadline contained herein ends on a Saturday, Sunday or a legal holiday recognized by the Texas Supreme Court, such deadline shall automatically be extended to the next day that is not a Saturday, Sunday or legal holiday.

**10.14 Relationship of Parties; No Third-Party Beneficiaries.** Nothing contained in this Master Agreement or any Work Orders governed thereby shall be deemed or construed by the Parties hereto or by any third party to create the relationship of principal and agent or of partnership, joint venture, or employment, it being expressly understood and agreed that no provision contained in said documents nor any act or acts of the Parties hereto shall be deemed to create any relationship between the Parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Master Agreement and any Work Order governed thereby. Neither Party has the authority to enter into contracts or to assume any obligation for the other, nor to make warranties or representations on behalf of the other except in accordance with the express terms of this Master Agreement and associated Work Orders or as otherwise authorized in writing by the other. There are no third-party beneficiaries to this Master Agreement or any associated Work Orders and no third-party beneficiaries are intended by implication or otherwise.

**10.15 Force Majeure.** Notwithstanding anything in this Master Agreement which is or may appear to be to the contrary, if the performance of any covenant or obligation to be performed hereunder by any Party is delayed as a result of circumstances which are beyond the reasonable control of such Party (which circumstances may include, without limitation, pending litigation, acts of God, war, acts of civil disobedience, fire or other casualty, shortage of materials, adverse weather conditions (such as, by way of illustration and not of limitation, severe rain storms or below freezing temperatures, or tornados) labor action, strikes or similar acts, moratoriums or regulations or actions by governmental authorities), the time for such performance shall be extended by the amount of time of such delay, but no longer than the amount of time reasonably occasioned by the delay.

**10.16 No Waiver of Immunity or Defense.** No Party, by execution of this Master Agreement, waives nor shall be deemed to have waived, any immunity or defense that would otherwise be available to it including, without limitation, immunity from liability and suit for damages to one

another or to any third-party except as otherwise provided by law. By entering into this Master Agreement and /or any Work Order(s) governed by this Master Agreement, the Parties do not create any obligations, express or implied, other than those set forth herein, and this Agreement shall not create any rights in parties not signatories hereto.

**10.17 AS-IS.** THE WARRANTIES CONTAINED IN THIS MASTER AGREEMENT AND ANY ASSOCIATED WORK ORDERS ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE GOODS AND SERVICES BEING PROVIDED UNDER THIS MASTER AGREEMENT AND ANY ASSOCIATED WORK ORDERS ARE BEING OFFERED AND SOLD AS IS.

MESQUITE AGREES THAT GARLAND SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES OR FOR THE LOSS OF PROFIT OR REVENUE ARISING FROM THE PROVISION OF GOODS OR SERVICES UNDER THIS MASTER AGREEMENT AND ANY ASSOCIATED WORK ORDERS EVEN IF GARLAND HAS BEEN ADVISED OF SUCH POSSIBILITY. IN NO EVENT SHALL DAMAGES TO MESQUITE, WHETHER ARISING FROM BREACH OF CONTRACT OR WARRANTY, BY TORT, STRICT LIABILITY OR OTHERWISE EXCEED THE AMOUNT PAID BY MESQUITE UNDER THIS MASTER AGREEMENT AND ANY WORK ORDER IN EFFECT AT THE TIME SUCH DAMAGES AROSE. IF THE EVENT OR OCCURRENCE SPANS MULTIPLE WORK ORDERS, GARLAND'S DAMAGES SHALL BE LIMITED TO THE AMOUNT PAID BY MESQUITE FOR THE EARLIEST INDIVIDUAL WORK ORDER, ALL OTHER WORK ORDERS BEING DISREGARDED FOR DAMAGE CALCULATION PURPOSES.

**MESQUITE WAIVES ITS RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT, SECTION 17.41 ET SEQ., BUSINESS & COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF ITS OWN SELECTION, MESQUITE VOLUNTARILY CONSENTS TO THIS WAIVER.**

**10.18 Addresses.** The following addresses shall be used for purposes of satisfying the notice provisions of Articles 7, 9 or 10:

- a) City Secretary  
City of Garland, Texas  
200 North Fifth Street  
Garland, Texas 75040
  
- b) City Secretary  
City of Mesquite, Texas

1515 North Galloway Avenue  
Mesquite, Texas 75149

**10.19 Warranty.** Garland makes no warranties regarding its work and expressly disclaims any and all such warranties. To the extent this Master Agreement discusses warranty work, it is referring only to the warranty agreement between the manufacturer and Mesquite covering the Subscriber Radios and associated equipment. The Parties agree that any disputes regarding the quality of any manufacturer repairs, the existence or extent of any manufacturer's warranty, and any terms of said warranty are solely between Mesquite and the manufacturer.

**10.21 Time is of the Essence.** The Parties agree that time is of the essence in the performance of this Master Agreement.

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**EXECUTED** this \_\_\_\_ day of \_\_\_\_\_, 2018.

**CITY OF GARLAND, TEXAS**

By: \_\_\_\_\_  
Bryan Bradford  
City Manager

Approved as to form:

\_\_\_\_\_  
Stephen M. Hines  
Sr. Assistant City Attorney

**EXECUTED** this \_\_\_\_ day of \_\_\_\_\_, 2018.

**CITY OF MESQUITE, TEXAS**

By: \_\_\_\_\_  
Cliff Keheley  
City Manager

Approved as to form:

\_\_\_\_\_  
Assistant City Attorney