

COMMUNICATIONS SYSTEM AGREEMENT

MUTUAL AID ACCESS (SINGLE USE) – GOVERNMENT ENTITY

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

RECITALS

WHEREAS, this Agreement is made under the authority of Sections 791, Texas Government Code; and

WHEREAS, each governing body, in performing governmental functions or in paying for the performance of governmental functions hereunder, shall make that performance or those payments from current revenues legally available to that party; and

WHEREAS, each governing body finds that the subject of this Agreement is necessary for the benefit of the public and each has the legal authority to perform and to provide the governmental function or service which is the subject matter of this Agreement; and

WHEREAS, each governing body finds that the performance of this Agreement is in the common interest of both parties and that the division of costs fairly compensates the performing party for the services or functions under this Agreement; and

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

WHEREAS, Fort Worth and **USER** may, in an emergency or under certain other circumstances, provide each other with public safety support or other mutual aid or emergency assistance; and

WHEREAS, the parties wish to enter into this Agreement to establish the terms and conditions pursuant to which **USER** will be able access CFW’s radio systems in connection with the provision of mutual aid assistance between the parties.

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

1. GRANT OF LICENSE

Fort Worth hereby grants the **USER** specific permission to operate **USER**'s owned or leased field radio equipment or equipment attached and/or interfaced to the CFW Trunked Voice Radio Systems (the "Radio System") infrastructure in mutual aid or emergency situations, provided, however, that such use must comply with the specific details and requirements for use as set forth in "**Exhibit A, Terms of Use,**" which is attached hereto, incorporated herein, and made a part of this Agreement for all purposes. Failure to comply with these specific details and requirements may result in the immediate withdrawal of the specified permissions.

2. TERM

This Agreement shall begin upon the last day executed by all authorized parties and shall continue in full force and effect unless terminated in accordance with the provisions set forth herein and in **Exhibit A**.

3. LIABILITY

With respect to the use of the Radio System, each party agrees to be liable for any damages or loss that may be caused by its own negligence, omission or intentional misconduct. For purposes of this Section 3, the term party shall include employees, directors, officers, agents, authorized representatives, subcontractors, consultants, and volunteers of the respective party. Nothing in the performance of this Agreement shall impose any liability for claims against either party other than for claims for which the Texas Tort Claims Act may impose liability. Further, this Agreement is not intended to affect the allocation of liability between the parties in connection with the provision of mutual aid assistance; liability for such mutual aid assistance shall be governed by the separate mutual aid agreement or state law provisions under which the assistance is being provided.

4. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that **USER** shall operate as an independent contractor as to all rights and privileges granted herein, and not as agent, representative or employee of the CFW. Subject to and in accordance with the conditions and provisions of this Agreement, **USER** shall have the exclusive right to control the details of its operations and activities with respect to the use of the Radio System and shall be solely responsible for the acts and omissions of its employees, directors, officers, agents, authorized representatives, subcontractors, and consultants. **USER** acknowledges that the doctrine of *respondeat superior* shall not apply as between the CFW, its employees, directors, officers, agents, and authorized representatives, and **USER** and its employees, directors, officers, agents, authorized representatives, subcontractors, and consultants. **USER** further agrees that nothing herein shall be construed as the creation of a partnership or joint enterprise between CFW and **USER**. This Agreement is not intended to affect the roles of the parties in connection with providing mutual aid assistance; coordination of mutual aid activities and chain-of-command issues shall be governed by the separate mutual aid agreement or state law provisions under which assistance is being provided.

5. NON-APPROPRIATION OF FUNDS

Fort Worth and **USER** will use best efforts to appropriate sufficient funds to support obligations under this Agreement. However, in the event that sufficient funds are not appropriated by either party's governing body, and as a result, that party is unable to fulfill its obligations under this Agreement, that party (i) shall promptly notify the other party in writing and (ii) may terminate this Agreement, effective as of the last day for which sufficient funds have been appropriated.

6. RIGHT TO AUDIT

USER agrees that the CFW shall, at no additional cost to the CFW, during and until the expiration of three (3) years after termination of this Agreement, have access to and the right to examine at reasonable times any directly pertinent books, documents, papers, records, and communications of the **USER** involving transactions relating to this Agreement. **USER** agrees that the CFW shall have access during normal working hours to all necessary **USER** facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. The CFW shall give **USER** reasonable advance notice of intended audits.

7. ASSIGNMENT

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

8. NO WAIVER

The failure of either party to insist upon the performance of any provision or condition of this Agreement or to exercise any right granted herein shall not constitute a waiver of that party's right to insist upon appropriate performance or to assert any such right on any future occasion.

9. GOVERNMENTAL POWERS/IMMUNITIES

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

10. AMENDMENTS

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

11. SEVERABILITY

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

12. CONFIDENTIAL INFORMATION

To the extent permitted by law, **USER** for itself and its officers, agents and employees, agrees that it shall treat all information provided to it by the CFW as confidential ("City Information") and shall not disclose any such information to a third party without the prior written approval of the CFW, unless such disclosure is required by law, rule, regulation, court order, in which event **USER** shall notify CFW in writing of such requirement in sufficient time to allow CFW to seek injunctive or other relief to prevent such disclosure. **USER** shall store and maintain City Information in a secure manner and shall not allow unauthorized users to access, modify, delete or otherwise corrupt City Information in any way. **USER** shall notify the CFW immediately if the security or integrity of any City Information has been compromised or is believed to have been compromised.

13. FORCE MAJEURE

The parties shall exercise their best efforts to meet their respective duties and obligations hereunder, but shall not be held liable for any delay in or omission of performance due to force majeure or other causes beyond their reasonable control, including, but not limited to, compliance with any state or federal law or regulation, acts of God, acts of omission, fires, strikes, lockouts, national disasters, wars, riots, material or labor restrictions, transportation problems, existing contractual obligations directly related to the subject matter of this Agreement, or declaration of a state of disaster or emergency by the federal, state, county, or City government in accordance with applicable law.

14. NOTICES.

Notices required pursuant to the provisions of this Agreement shall be conclusively determined to have been delivered when (1) hand-delivered to the other party, its agents, employees, servants or representatives, (2) delivered by facsimile with electronic confirmation of the transmission, or (3) received by the other party by United States Mail, registered, return receipt requested, addressed as follows:

City of Fort Worth
Attn: Susan Alanis, Assistant City Manager
200 Texas Street
Fort Worth TX 76102
Facsimile: (817) 392-8654

City of Mesquite
Attn: Cliff Keheley, City Manager
1515 N. Galloway Avenue
Mesquite, TX 75149
Facsimile: 972-216-6431

With Copy to the City Attorney
At same address

15. GOVERNING LAW / VENUE

This Agreement shall be construed in accordance with the laws of the State of Texas. Venue for any action brought on the basis of this Agreement shall lie exclusively in state courts located in Tarrant County, Texas or the United States District Court for the Northern District of Texas – Fort Worth Division. In any such action, each party shall pay its own attorneys’ fees, court costs and other expenses incurred as a result of the action.

16. SIGNATURE AUTHORITY

The person signing this Agreement hereby warrants that he/she has the legal authority to execute this Agreement on behalf of his or her respective party, and that such binding authority has been granted by proper order, resolution, ordinance or other authorization of the entity. The other party is fully entitled to rely on this warranty and representation in entering into this Agreement.

17. ENTIRETY OF AGREEMENT

This written instrument, including all Exhibits attached hereto, contains the entire understanding and agreement between Fort Worth and **USER** as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with this Agreement. Any previously executed Communication System Agreement between the parties shall be terminated simultaneously with the final execution of this Agreement by both parties.

18. COUNTERPARTS.

This Agreement may be executed in one or more counterparts and each counterpart shall, for all purposes, be deemed an original, but all such counterparts shall together constitute one and the same instrument.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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

CITY OF FORT WORTH:

By: _____
Name: Susan Alanis
Title: Assistant City Manager
Date: _____

CITY OF MESQUITE:

By: _____
Name: Cliff Keheley
Title: City Manager
Date: _____

CONTRACT COMPLIANCE MANAGER:

By signing, I acknowledge that I am the person responsible for the monitoring and administration of this contract, including ensuring all performance and reporting requirements.

By: _____
Name: Steve Streiffert
Title: Assistant Director

**APPROVED TO FORM
AND LEGALITY:**

By: _____
Name: J.B. Strong
Title: Assistant City Attorney

APPROVED TO LEGALITY:

By: _____
Name: Ileana Fernandez
Title: Senior Assistant City Attorney

ATTEST:

By: _____
Name: Mary J. Kayser
Title: City Secretary

ATTEST:

By: _____
Name: Sonja Land
Title: City Secretary

Form 1295: _____

Contract Authorization:

M&C: _____
Date Approved: _____

EXHIBIT A

CATEGORY 1, TERMS OF USE

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

DEFINITIONS

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

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

“Interoperable Communications Plan” (the “Plan”) means the plan developed and established by CFW and the Governance Committee to facilitate, enhance and simplify radio communications among all agencies utilizing the Radio System or connecting their Site Repeater Systems or Console Systems to the CFW Master Switch. The Plan is available upon request from CFW or can be found on the CFW website at <http://fortworthtexas.gov/itsolutions/cfwradios/>.

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

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

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

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

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

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

TERMS OF USE

1. The installation and maintenance of the Radio System infrastructure equipment is the responsibility of CFW unless otherwise stated in this Agreement.
2. The CFW is the holder of the FCC (Federal Communications Commission) license(s) that the Radio System uses for its operation. This Agreement shall not be construed or interpreted to grant, convey, or otherwise provide **USER** with any rights whatsoever to the CFW FCC license(s) or to the Radio Frequency spectrum used by the Radio System.
3. The CFW makes no guarantee, either express or implied, as to radio signal strength or a specific level of radio coverage in a particular location. The **USER** is responsible for conducting appropriate and applicable in-building and geographical coverage testing to determine the expected radio coverage level for **USER**'s equipment.
4. **USER** will be responsible for the acquisition, programming, and maintenance of all equipment **USER** will be utilizing in connection with the Radio System infrastructure, including, but not limited to, Subscriber Radios, consoles, and special equipment.
5. In order to ensure hardware and software compatibility with the Radio System infrastructure, all Subscriber Radios and consoles intended for use by **USER** on the Radio System shall be compliant with Project 25 standards established by the Telecommunications Industry Association. The use of unauthorized radios on the Radio System may result in suspended operation of the radios and/or termination of the Agreement.
6. **USER** agrees to exclusively utilize antennas specifically approved by the radio manufacturer for use with the specific models of **USER**'s radios. The use of short, broad spectrum, or "stubby," antennas is not recommended. **USER** shall be solely liable for coverage gaps in the event **USER** utilizes short broad spectrum or stubby antennas or other antennas not approved by the manufacturer for use with the specific models of **USER**'s radios.
7. No antenna gain greater than 3 DB will be allowed for mobiles and consolettes.
8. **USER** shall use due diligence in the maintenance and configuration of its Subscriber Radio equipment to ensure that no **USER** radio or console causes a degradation to the Radio System operation. The CFW shall have the right to remove from operation any field radio unit or equipment owned or leased by **USER** that is operating on, attached and/or interfaced to the CFW infrastructure, if CFW determines in its sole reasonable discretion that such equipment is causing interference or harm to the Radio System in any way. The CFW reserves the right to request that **USER** operated field radio units or equipment operating on, attached and/or interfaced to the infrastructure be tested for proper operation and/or repaired by an authorized radio repair facility approved by the CFW. The cost of such testing or repair will be the sole responsibility of **USER**. Furthermore, the CFW shall have the right to deactivate, without prior notification to or consent of **USER**, any field radio or other **USER** equipment suspected of causing interference, intentionally or unintentionally, to any other radios on the Radio System or to the Radio System's overall operation.

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

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

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

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

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

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

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

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

17. Roaming to other systems or the use of **USER**'s Talk Groups on other trunked systems that are interconnected to the Radio System is prohibited without prior approval by CFW. Roaming to other trunked systems will be limited to the Radio System's interoperable Talk Groups, although this capability may be terminated by CFW if its use is determined to result in performance degradation to either the Radio System or the interconnected trunked system.

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

COMPLIANCE WITH LAWS

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

20. Modification, reconfiguration, or exchange of Subscriber Radio equipment may be required in order for CFW to comply with Federal, State, and Local Laws and/ or Mandates imposed on CFW as the license holder. **Following reasonable notice from CFW, USER shall be responsible for undertaking such modifications, reconfiguration, or exchange.** In the event **USER** fails to undertake any necessary action, such failure shall be considered “misuse” under Paragraph 19, and CFW may terminate this Agreement immediately or deny access to **USER**.

[End of Document]