

**THE CITIES OF GARLAND AND MESQUITE AND THE
CITY OF UNIVERSITY PARK & TOWN OF HIGHLAND PARK RADIO SYSTEM
INTERLOCAL AGREEMENT
(Participant Agreement)**

This Interlocal Agreement (this “Agreement”) is entered into as of the Effective Date between the **CITY OF GARLAND (“Garland”) and CITY OF MESQUITE (“Mesquite”)**, Texas home-rule municipalities with the authorization of their governing bodies, (hereinafter collectively referred to as “System Owners”), and the **TOWN OF HIGHLAND PARK** and the **CITY OF UNIVERSITY PARK**, Texas home-rule municipalities with the authorization of their governing bodies (hereinafter collectively referred to as the “Park Cities”). System Owners and the Park Cities may be collectively referred to as the “Parties” or individually as a “Party”.

WITNESSETH:

WHEREAS, System Owners and the Park Cities are local governments within the State of Texas, and each is engaged in the provision of governmental services for the benefit of its citizens; and

WHEREAS, the Interlocal Cooperation Act, Texas Government Code, Chapter 791, as amended (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, System Owners currently own and operate a Motorola 700 Megahertz radio system for the purpose of providing radio communications in support of their governmental operations; and

WHEREAS, System Owners entered into the City of Garland and the City of Mesquite Radio System Interlocal Agreement dated July 7, 2015 (the “Garland/Mesquite Radio System ILA”), to implement a combined wide area, multi-site digital trunked simulcast radio system that is compliant with P-25 interoperability standards (the radio system as defined herein below and being hereinafter referred to as the “System”); and

WHEREAS, pursuant to the Garland/Mesquite Radio System ILA, it is anticipated that various municipalities, school districts and other third parties will participate in the System by using services provided by the System (individually a “Participant” and collectively the “Participants”); and

WHEREAS, pursuant to the Garland/Mesquite Radio System ILA, it is further anticipated that some Participants (individually, an “Infrastructure Participant” and collectively, the “Infrastructure Participants”) will purchase and locate within their municipal boundaries various items of equipment, materials, hardware, firmware, structures, and other items composing a portion of the System (“Infrastructure Components”); and

WHEREAS, the Park Cities desire to: (i) participate in the System as more fully set forth herein and in that certain Interlocal Radio System Usage Agreement (as defined below); and (ii) purchase the Infrastructure Components more fully described herein as the “Park Cities Infrastructure Components,” upon the terms and conditions more fully set forth herein; and

WHEREAS, in order to provide dependable/mission-critical radio service for use by System Owners, the Park Cities and all other Participants, the Parties desire to enter into this Agreement allowing the Park Cities to participate in the System, which radio system coverage is essential and a necessary component of providing certain vital governmental services by each of the Parties and other Participants, including, without limitation, police, fire, emergency medical, and public works protection provided by each of the Parties and other Participants to ensure safe, effective, and efficient communications, and benefit the greatest number of citizens of each of the Parties and other Participants both now and in the future; and

WHEREAS, concurrently with the execution of this Agreement, the Parties shall execute that certain Interlocal Radio System Usage Agreement in the form attached hereto as **Exhibit A** and fully incorporated herein by reference, which may be amended from time to time as more fully set forth therein, which expressly sets forth the rights, duties, obligations, and responsibilities of the Park Cities as an Infrastructure Participant to the System (the “Interlocal Radio System Usage Agreement”); and

WHEREAS, System Owners will enter into communication systems agreements with the Selected Vendor, relating to the purchase and installation of the System and its components and are joint owners in the Shared Components (defined below) of the System; and

WHEREAS, the Parties desire to enter this Agreement for the purpose of memorializing the agreement of the Parties regarding the Park Cities’ participation in the System as an Infrastructure Participant (defined below); and

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

I. DEFINITIONS

Any capitalized terms used within this Agreement and not otherwise defined herein shall have the meanings set forth in the Garland/Mesquite Radio System ILA, a copy of which has been provided to the Park Cities. Unless the 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 Agreement:

“**Act**” shall have the meaning set forth in the Recitals to this Agreement.

“**Business Day**” means any day other than a Saturday, Sunday, or official City holiday in which any of the Parties’ respective City Offices are closed for business.

“Communication System Agreement” or **“CSA”** means that certain Communication System Agreement to be entered into between System Owners (as Buyer) and the Selected Vendor (as Seller) relating to the purchase and installation of the Non-Shared Components of the System to be purchased by System Owners (as defined in the Garland/Mesquite Radio System ILA). The Park Cities shall enter into their own CSA with the Selected Vendor for all non-shared components.

“Default” shall mean the failure of a Party to timely keep or perform any term, provision, covenant, or condition to be kept or performed by such Party under the terms of this Agreement and such failure continues for thirty (30) days after written notice by any non-defaulting Party to the defaulting Party and copied to all other Parties.

“Effective Date” means the later of the dates this Agreement is approved by the governing bodies of the System Owners and the Park Cities and signed by the authorized representatives of each entity.

“Governance Board” means the administrative governing body tasked with the operation and administration of the System and being more particularly described in the Garland/Mesquite Radio System ILA.

“Infrastructure Costs” means those costs relating to the purchase, installation, operation, repair, maintenance, and upgrade of the Park Cities’ Infrastructure Components (as defined below) including, but not limited to, all amounts to be paid pursuant to the Park Cities’ CSA for the purchase and installation of the Park Cities Infrastructure Components and all amounts to be paid pursuant to the SMA relating to repair and maintenance of the Park Cities’ Infrastructure Components. These Infrastructure Costs shall be itemized in detail by an addendum executed by each of the Parties and attached to this Agreement and incorporated by reference as **Exhibit B** after design review by the Selected Vendor.

“Infrastructure Participants” means municipalities, whether one or more, other than System Owners, that participate in the System by using services provided by the System and that own Infrastructure Components of the System located within their respective municipalities. Infrastructure Participants shall pay Participant Fees in accordance with fee schedules established from time to time by the Governance Board.

“Non-Shared Components” means the components of the System individually owned by each System Owner, individually, as more fully defined in the Garland/Mesquite Radio System ILA. The term shall also refer to the components owned by the Park Cities and located within their own Town or City or placed within the Garland/Mesquite System as necessary to support the Park Cities Simulcast Cell.

“Park Cities Infrastructure Components” means the equipment, materials, hardware, software, firmware, structures and other items composing a portion of the System that are located within the municipal boundaries of either of the Park Cities and which are more specifically detailed and itemized in **Exhibit C** attached hereto and incorporated herein by reference.

“Participant” means an Infrastructure Participant or a Subscriber Participant, and **“Participants”** collectively means all Infrastructure Participants and Subscriber Participants.

“Participant Fee Fund” means the fund consisting of the Participant Fees described in Section 7.01 of this Agreement.

“Participant Fees” means all fees paid by Participants to use the System.

“RFP” means that certain Request For Proposal dated August 12, 2014 and titled *Cities of Garland, Mesquite, Rowlett & Sachse P25 Radio System Request for Proposal RFP No 4469-14*, published and distributed by Garland on or about August 13, 2014, and advertised by Garland for the purpose of seeking proposals from qualified vendors relating to the purchase, installation, repair and maintenance of the System and related services as described therein.

“Selected Vendor” means the vendor from whom the System Owners agree to purchase the Shared Components of the System and from whom the Parties individually agree to purchase their respective Non-Shared Components of the System.

“Selected Maintenance Vendor” means the vendor System Owners select and with whom System Owners enter into a System Maintenance Agreement to provide ongoing repair, maintenance, and support (hardware and software) of the System. The term shall also refer to the vendor with whom the Park Cities enter into a System Maintenance Agreement to provide ongoing repair, maintenance, and support (hardware and software) of the System.

“Shared Components” means the components of the System that are jointly owned by Garland and Mesquite as more fully defined in the Garland/Mesquite Radio System ILA. The term shall also mean the components of the System that will be owned by System Owners (as set forth in the Garland/Mesquite Radio System ILA, but also used to support the operations of the Park Cities Simulcast Cell.

“Simulcast Cell” means a standalone multi-site trunked radio system that operates off the master site owned by System Owners.

“Subscriber Participant” means the various municipalities, school districts, and other third parties, other than Infrastructure Participants and the System Owner, that participate in the System by using services provided by the System and that own their own subscriber units (radios) or other subscriber components, which provide access to the System. Subscriber Participants are referred to in the Garland/Mesquite Radio System ILA as “Non-Infrastructure Participants” and all references in this Agreement to “Subscriber Participant” or “Subscriber Participants” shall mean “Non-Infrastructure Participant” or “Non-Infrastructure Participants” under the Garland/Mesquite Radio System ILA. Subscriber Participants shall pay Participant Fees in accordance with fee schedules established from time to time by the Governance Board.

“System” means a wide area, multi-site (“simulcast”) digital trunked radio system compliant with P-25 interoperability standards as more expressly defined in the Garland/Mesquite Radio System

ILA and shall include the Shared Components, the Non-Shared Components, and all Infrastructure Components including, without limitation, the Park Cities Infrastructure Components.

“System Maintenance Agreement” or **“SMA”** means that certain System Maintenance Agreement to be entered into between Garland (as Customer) and the Selected Maintenance Vendor relating to ongoing repair, maintenance, and support (hardware and software) of the Non-Shared Components of the System owned by Garland, Mesquite, Rowlett, as well as that for maintenance of the Park Cities Infrastructure Components.

“System Owner(s)” means, in the singular form, either Garland or Mesquite; in plural form, the term means both Garland and Mesquite collectively.

“Term” means the term of this Agreement as defined in Section 2.01.

II. TERM TERMINATION

2.01 Term. The initial term of this Agreement shall commence on the Effective Date and shall continue until and including September 30, 2026 (the “Initial Term”) in order to allow each Party the opportunity to recover its investment, unless terminated earlier as provided herein. Unless terminated earlier as provided herein, following the Initial Term, this Agreement shall automatically renew for successive terms of three (3) years beginning October 1, 2026 and continuing on October 1st of each third calendar year thereafter (each a “Renewal Term” and collectively the “Renewal Terms”) unless either Party terminates this Agreement by written notice to the other Party at least seven hundred and twenty (720) 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”.

2.02 Termination in Event of Non-Appropriation of Funds. As home rule municipalities in the State of Texas, each Party is subject to Article III, Section 52a of the Texas Constitution prohibiting unfunded debt. All expenditures to be made by each Party under the terms of this Agreement shall be subject to such Party’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 Parties 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 this Agreement for the next fiscal year. In the event the City (or Town) Council of any Party fails to appropriate funds in any fiscal year during the Term of this Agreement for the payment of all obligations of such Party under the terms of this Agreement for such fiscal year, such Party shall have the right to terminate this Agreement by giving the other Parties written notice of the non-appropriation of funds within five (5) days after such Party fails to appropriate the necessary funds. The termination of this Agreement because of any Party’s failure to obtain necessary appropriations or funding shall be effective as of the last day for which funds were appropriated.

2.03 Early Termination During Initial Term. Notwithstanding anything to the contrary herein, any Party may terminate this Agreement based on any other Party's Default prior to the end of the Initial Term or during any Renewal Term.

2.04 Effect of Termination of this Agreement Pursuant to Section 2.02. In the event a Party terminates this Agreement pursuant to Section 2.02, the terminating Party shall reimburse the non-terminating Parties, as well as any affected Infrastructure Participant for reasonable costs associated with reconfiguring the System as is necessary for the non-terminating Parties and all other Participants to continue to access, use, maintain and repair the System. The provisions of this Section 2.04 shall expressly survive the termination of this Agreement.

2.05 Effect of Termination of this Agreement at the end of the Initial Term or any Renewal Term pursuant to Section 2.01 above. In the event either Party terminates this Agreement at the end of the Initial Term or any Renewal Term pursuant to Section 2.01 above, the following provisions shall apply:

- (i) Prior to the date of termination, the terminating Party must pay any remaining financial obligations related to the System or its components including, without limitation, the Park Cities Infrastructure Components, incurred or accrued prior to the date of the termination;
- (ii) All the Park Cities Infrastructure Components of the System, if previously conveyed by Garland to the Park Cities, shall continue to be owned 100% by the Park Cities; and
- (iii) The provisions of this Section 2.05 shall expressly survive the termination of this Agreement.

2.06 Notice of Termination. No notice of termination of this Agreement shall be effective unless given in accordance with Section 7.07 below.

III. INTERLOCAL RADIO SYSTEM USAGE AGREEMENT

The Parties shall execute an Interlocal Radio System Usage Agreement with this Agreement, which may be amended from time to time, in the form attached hereto as **Exhibit A**, and fully incorporated herein by reference, which expressly sets forth the rights, duties, obligations, and responsibilities of the Park Cities as Infrastructure Participants of the System.

IV. PURCHASE AND INSTALLATION OF INFRASTRUCTURE COMPONENTS; MAINTENANCE

4.01 CSA for the Park Cities Infrastructure Components. The Parties acknowledge that the Park Cities have entered into a CSA with the Selected Vendor relating to the purchase of the hardware, software and all other components of the System to be located within the Park Cities and constituting the Park Cities Infrastructure Components of the System. System Owners shall

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comply with applicable competitive bidding laws and requirements and the Park Cities and System Owners expressly consent to cooperative purchasing.

4.02 The Park Cities Infrastructure Components. The Park Cities shall maintain title to the Park Cities Infrastructure Components as described in Exhibit C (the Itemized List of Infrastructure Components to be conveyed to the Park Cities upon receipt of reimbursement payments). The Park Cities will maintain the same hardware and software levels as needed to connect to the System Owners' master site. System Owners will maintain all of their infrastructure components during the term of this Agreement that are needed to support the Park Cities Simulcast Cell. This will include the master site and all associated components needed to support the systems connected by the Park Cities, Garland's Forest Lane Tower site that will be used to support the Park Cities Simulcast Cell's connection to the master site, and the microwave system that will also be used to support the connection of the Park Cities system.

4.03 Invoices from the Selected Vendor and Selected Maintenance Vendor for the Park Cities Infrastructure Components. The Park Cities will be responsible for all of the maintenance costs of the components of the Park Cities Simulcast Cell and components added to the System needed to support the Park Cities radio system operation. System Owners will be responsible for the maintenance costs and vendor support for the master site and all components supporting the connection of the Park Cities components to the System Owners' master site. The Park Cities' contributions to the maintenance costs of the System Owners' equipment used to support the Park Cities system would be included in the user fees the Park Cities pay to System Owners.

4.04 Disputed Invoices. If a Party disputes any amount appearing on an invoice from the Selected Vendor or Selected Maintenance Vendor, the Party disputing the invoice shall provide a written notice to Mesquite/Garland and the Selected Vendor or Selected Maintenance Vendor, as applicable, not later than thirty (30) days following receipt of the invoice, identifying the amount(s) disputed and the basis for the dispute. A Party disputing an amount on an invoice shall pay any undisputed amount as required by Section 4.04 above in accordance with the due date for such amount. If any amount that is disputed by a Party shall, in fact, be determined to be due, the Party disputing the amount shall be solely responsible for also paying any late fees and interest accrued on delinquent payments pursuant to the CSA or SMA, which amounts said Party shall pay directly to the Selected Vendor or Selected Maintenance Vendor, as applicable.

V. RIGHT OF ACCESS

5.01 License to Enter, Access, Ingress, Egress and Use the System.

(a) The Parties agree to reasonably cooperate with the Selected Vendor, the Selected Maintenance Vendor, and the other Parties with respect to the installation, operation, maintenance, repair, and use of the System, including the Park Cities Infrastructure Components, and agree to take such actions that are reasonable and necessary to ensure that the Selected Vendor is able to timely perform its obligations under the CSA, and the Selected Maintenance Vendor is able to timely perform its obligations under the SMA. For and in consideration of the sum of TEN AND

NO/100 DOLLARS (\$10.00) and other good and valuable consideration including, without limitation, the covenants and agreements of the Parties as more fully set forth herein, the receipt and sufficiency of which is hereby acknowledged and confessed, subject to the provisions of subpart (b) of this section, the Park Cities hereby grant licenses to both System Owners to enter and access the Park Cities' property including, without limitation, rights of ingress and egress over, across, upon and through the Park Cities' property to the extent reasonable and necessary for System Owners, either acting individually or collectively, to access and use the System, including the Park Cities Infrastructure Components, and further grant to the System Owners, subject to the provisions of subpart (b) of this section, rights of entry and access including, without limitation, rights of ingress and egress over, across, upon and through those portions of the Park Cities' facilities and property on which any component of the System is located for the purpose of installing, inspecting, testing, operating, maintaining, servicing, repairing, upgrading, and using the System, including the Park Cities Infrastructure Components. The Park Cities further agree to grant the Selected Vendor and the Selected Maintenance Vendor, their employees, agents, and subcontractors a license, subject to the provisions of subpart (b) of this section, to enter and access the Park Cities' property including, without limitation, rights of ingress and egress over, across, upon and through the Park Cities' facilities and property for the purpose of installing, inspecting, and testing the System including, without limitation, the Park Cities Infrastructure Components and, as long as the SMA is in effect, for the purpose of operating, maintaining, repairing, and upgrading the System including, without limitation, the Park Cities Infrastructure Components.

(b) Notwithstanding the foregoing, System Owners shall use reasonable efforts to provide prior notice to the Park Cities prior to the exercise of any right of ingress and egress over, across or upon the Park Cities' facilities or property by either of the System Owners, the Selected Vendor and the Selected Maintenance Vendor. The Park Cities may enforce reasonable and necessary security measures with respect to access to the Park Cities' property and facilities (including, without limitation, requirements that reasonable notice be given prior to such access) to the extent necessary to protect the Park Cities' property and facilities, the health and safety of employees, residents, citizens, and businesses, or to comply with applicable state and federal laws and regulations. In the event access to the Park Cities' facilities or property where any component of the System is located requires an escort or requires entry or access by an employee or representative of the Park Cities, the Park Cities shall provide, at the Park Cities' sole cost and expense, an employee or other authorized person to provide such escort, entry, and access within a reasonable time after request by either System Owner. The Parties specifically acknowledge that each Party is making substantial expenditures in connection with the purchase of the System in reliance on the licenses and rights of entry, access, ingress, egress and use of the System granted to System Owners as more fully set forth in this Article V. The Parties expressly agree that the licenses and rights of entry, access, ingress, egress and use of the System granted pursuant to this Article V are irrevocable and coupled with an interest and shall not be terminated during the Term of this Agreement.

5.02 Enforcement of Rights of Entry, Access, Ingress, Egress and Use of the System. The Parties acknowledge that the major components of the System are owned by System Owners and that the System was purchased and installed to provide emergency public safety services to System

Owners and all Participants of the System, and that it is critical that System Owners and all Participants of the System have continued and uninterrupted access to and use of the Park Cities Infrastructure Components. Notwithstanding anything contained in this Agreement to the contrary, the Parties acknowledge that the licenses, rights of entry, access, ingress, egress and use of the System including, without limitation, the Park Cities Infrastructure Components, granted pursuant to Section 5.01 above shall, in addition to all other remedies available herein or by law or in equity, be enforceable by injunction and/or specific performance. The Parties further agree that in the event the Park Cities unreasonably fail to allow or knowingly interfere with System Owners' rights of entry, access, ingress, egress or use of the System as more fully set forth in Section 5.01 above, System Owners, acting individually or collectively, shall have the right to enforce the licenses and rights of entry, access, ingress, egress and use of the System granted to System Owners pursuant to Section 5.01 above immediately without waiting the thirty (30) day period for such failure to rise to a Default under the terms of this Agreement.

5.03 Survival. All covenants, agreements, terms, provisions, obligations, rights and remedies of the Parties set forth in Article V of this Agreement shall expressly survive the termination of this Agreement.

VI. ADMINISTRATION AND OPERATION OF THE SYSTEM; THE PARK CITIES' RIGHT OF ACCESS FOR SYSTEM USE

6.01 Governance Board. The Garland/Mesquite Radio System ILA creates a governance board to operate and administer the System that is comprised of three (3) representatives from Mesquite and three representatives from Garland, each appointed by their respective City Managers, and one (1) representative for the remaining Infrastructure Participants, selected by the City Manager or Town Administrator of the municipality entitled to appoint a representative for that term (the "Governance Board"). The representatives appointed by the respective City Managers of System Owners shall serve as members on the Governance Board until such representative resigns in writing or is removed or replaced by the City Manager or the governing body of the city that appointed such representative. Each representative appointed by an Infrastructure Participant shall serve a one-year term and the position shall rotate between Infrastructure Participants annually. The first Infrastructure Participant member to serve on the Governance Board shall be a representative of the Infrastructure Participant with the largest citizen population at the time the members of the Governance Board are initially appointed. Each succeeding appointment of an Infrastructure Participant member to the Governance Board shall be a representative of the Infrastructure Participant with the largest citizen population at the time of the appointment that has not already appointed a representative to serve as a member on the Governance Board. If, at the time of any succeeding appointment to the Governance Board, all Infrastructure Participants have previously had representatives who have served as members of the Governance Board, the Infrastructure Participant with the largest citizen population will appoint a representative to serve on the Governance Board for the then current one-year term and after serving such one-year term, that Infrastructure Participant shall not be eligible to appoint a member to the Governance Board until all other Infrastructure Participants existing at the time of the appointment have appointed members to serve second one (1) year terms. This process for

appointing the Infrastructure Participant member to the Governance Board shall be repeated similarly for Infrastructure Participants appointing members to serve third, fourth and subsequent one (1) year terms on the Governance Board. The Park Cities, as Infrastructure Participants, shall be eligible to appoint one (1) representative to serve as a member of the Governance Board in accordance with the procedure set forth above. Each appointment by the Park Cities' Infrastructure Participant shall be for a one (1) year term. All members of the Governance Board shall serve at the pleasure of the City or Town appointing such member and may be removed from the Governance Board with or without cause at any time by action of the City Manager or Town Administrator of the City or Town appointing such member.

6.02 Technical Advisory Board. A Technical Advisory Board has been created and comprised of a group of technical personnel selected to advise the Governance Board (hereinafter "Technical Advisory Board"), in accordance with the terms and conditions of the Garland/Mesquite Radio System ILA. The Technical Advisory Board shall consist of two (2) representatives from each of the System Owners, appointed by the City Managers of each city, respectively. Every other Infrastructure Participant (including, without limitation, the Park Cities) may select up to two (2) persons to serve on the Technical Advisory Board. All members serving on the Technical Advisory Board shall serve until such member resigns in writing or is removed or replaced by the City Manager, Town Administrator, or the governing body of the city or Infrastructure Participant that appointed such representative. All members of the Technical Advisory Board shall serve at the pleasure of the city or town appointing such member and may be removed from the Technical Advisory Board with or without cause at any time by action of the City Manager or Town Administrator of the City or Town Infrastructure Participant appointing such member.

6.03 Covenant to Access and Use the System in Accordance with Procedures Established by Governance Board. The Park Cities grant to the Governance Board the right to establish rules, regulations, procedures and guidelines in connection with the operation, administration, access and use of the Park Cities Infrastructure Components. The Park Cities hereby covenant and agree to timely keep and perform all rules, regulations, procedures and guidelines established by the Governance Board in connection with the operation, administration, access to and use of the System.

6.04 Covenant to Timely Pay Participant Fees. The Park Cities covenant and agree to timely pay all Participant Fees as more fully set forth in the Interlocal Radio System Usage Agreement and as hereafter established by the Governance Board to System Owners at the addresses set forth in Section 7.07 below (or at such other address as System Owners may hereafter notify the Park Cities of in writing). The Governance Board shall establish Participant Fees based on generally accepted accounting principles and set at rates designed to cover costs of operation, maintenance, repair, replacements, upgrades, and administration of the System on a non-profit basis. The Park Cities shall have the right to inspect, at the Park Cities' expense and on reasonable notice and during normal business hours, the books and records of the Governance Board upon which Participant Fees are based. All such Participant Fees shall be due and payable on such dates as set forth in the Interlocal Radio System Usage Agreement or on such dates as established by the Governance Board. In the event there is a conflict between the payment dates set forth in the

Interlocal Radio System Usage Agreement and the payments dates now or hereafter established by the Governance Board, the dates established by the Governance Board shall control.

6.05 Right to Access and Use the System. Provided the Park Cities are not in Default of this Agreement, and further provided that no event exists which, but for notice, the lapse of time, or both, would constitute a Default by the Park Cities under the terms of this Agreement, the Park Cities shall have the right to access and use the System during the Term of this Agreement in accordance with the terms and conditions of this Agreement, the Interlocal Radio System Usage Agreement, and the rules, regulations, procedures and guidelines established by the Governance Board.

6.06 Right to Access and Use the Park Cities Infrastructure Components. During the Term, provided System Owners are not in Default of this Agreement, and further provided that no event exists which, but for notice, the lapse of time, or both, would constitute a Default by either System Owner under the terms of this Agreement, System Owners and all Participants shall have the right to access and use the Park Cities Infrastructure Components in accordance with the terms and conditions of this Agreement and the rules, regulations, procedures and guidelines established by the Governance Board. This would primarily include the use of the System Owners' Simulcast Cell or the Park Cities Simulcast Cell to extend coverage for first responders who may be providing mutual aid outside of the coverage area of their respective simulcast cell. The Technical Advisory Board will provide guidance in how user radios will be programmed as to minimize interference and/or disruption between System Owners' Simulcast Cell and Park Cities' Simulcast Cell authorized users.

6.07 Right to Access and Use the System Owners' Infrastructure Components. During the Term, provided neither of the Park Cities is in Default of this Agreement, and further provided that no event exists which, but for notice, the lapse of time, or both, would constitute a by Default by either of the Park Cities under the terms of this Agreement, System Owners and all Participants shall have the right to access and use the System Owners' Infrastructure Components in accordance with the terms and conditions of this Agreement and the rules, regulations, procedures and guidelines established by the Governance Board.

6.08 Park Cities Access to the System. The Park Cities will have the right to implement their system and connect it to the System, which includes the following items:

- A. Installation of a microwave radio system and all of its components in the equipment shelter of Garland's Forest Lane tower site that would include the equipment and antenna systems, and connection to primary and standby power systems (excluding UPS) owned by Garland. This will be used to support the microwave link to the Park Cities trunked simulcast cell and dispatch centers.
- B. The Park Cities will perform a structural analysis on the Forest Lane tower ("Tower") adding the additional microwave dish. In the event the structural analysis reports the Tower is loaded beyond 85%, the Park Cities at its own expense will pay the selected vendor to remediate the Tower to not exceed 85%.

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- C. Usage of the System Owners' microwave system for connection to the System Owners' master site. System Owners will have control over the microwave system configuration, which shall not unreasonably affect the Park Cities use.
- D. Connection of the Prime and Redundant Prime Simulcast Controllers to the System Owners' master site through the above-mentioned systems.
- E. Connection of nine (9) MCC7500 dispatch consoles to the master site.
- F. Connection of two (2) Archiving Interface Servers (AIS) to the master site.
- G. The Governance Board will manage data capabilities and how it is administered.
- H. Additional software licenses to the System Owners' master site as listed in the table below:

ENH: TRUNKED ENHANCED DATA	1
ADD: ASTRO 25 FDMA SITE LICENSE	3
ADD: P25 PHASE 2 TDMA TRKNG OP SITE LIC	3
ADD: PHASE 2 DYNAMIC TG ASGNMT SITE LIC	3
ADD: P25 PHASE 2 TDMA SW BASE RADIO LIC	15
ADD: PHASE 2 DYNAMIC CH BASE RADIO LIC	6
ENH: 500 ENHANCED TRUNKED DATA USER LICENSES	1
ADD: 500 RADIO ALIAS UPDATE LICENSES	1
ADD: 50 TALK GROUP TEXT LICENSES	1
ADD: MCC7500/MCC7100 CONSOLE GROUP TEXT LICENSES	9
ADD: PROVISIONING MANAGER	1
ADD: UNIFIED EVENT MANAGER (UEM)	1
ADD: EMAIL ALARM NOTIFICATIONS	1
ADD: ZONEWATCH GRID & CTRL	1
ADD: RADIO CONTROL MANAGER	1
ADD: ANTI-MALWARE DEF UPDATE LIC	11
MCAFFEE WINDOWS AV CLIENT	11
ADD : LOCATION ON PTT 500 USER LICENSE	1
ADD: ENHANCED DATA-P25 TRNK SITE	3
ADD: CLASSIC DATA-P25 TRNK SITE	3

6.09 Modifications to Forest Lane Tower. The Park Cities shall submit engineered plans and specifications to Garland prior to any modification of the Tower. For the purposes of this

Section 6.09, “modifications” shall mean any physical change or alteration made to the Tower, including but not limited to adding, removing, or replacing any equipment on the Tower. Garland shall review the engineered plans and determine whether or not the proposed modifications are necessary and acceptable. Garland shall have the sole discretion whether to approve the proposed modifications, and shall not unreasonably withhold said approval. Garland shall oversee implementation of any necessary and approved Tower modifications. To the extent allowed by law, the Park Cities agree to indemnify Garland for any damage or loss arising from the Park Cities’ modification of the Tower.

VII. PARTICIPANT FEE FUND; MISCELLANEOUS PROVISIONS

7.01 Participant Fee Fund. The Park Cities shall pay a reasonable fee to System Owners, as set by the attached Interlocal Radio System User Agreement, for the use of the System Owners’ master site and roaming onto the System Owners’ Simulcast Cell. All such fees for use of the System shall be remitted to Garland to be held in trust for the benefit of the System Owners. Such fees as set by the Governance Board shall be due and payable on such dates as set forth by the Governance Board.

7.02 Insurance on the Park Cities Infrastructure Components. In the event of any casualty or other damage or loss to the Park Cities Infrastructure Components, the Park Cities shall be solely responsible for and shall pay all costs and expenses of repairing and replacing all of the Park Cities Infrastructure Components. Prior to the date the risk of loss on the Park Cities Infrastructure Components is transferred to the Park Cities, the Park Cities shall secure replacement cost “broad form” or “special form” property insurance insuring the Park Cities Infrastructure Components or self-insure the Park Cities Infrastructure Components against damage and loss. Such insurance shall identify System Owners as joint loss payees with respect to the Park Cities Infrastructure Components. If this insurance provision is satisfied through a program of self-insurance, the execution of this Agreement shall constitute the agreement by the Park Cities that the Park Cities will repair or replace the Park Cities Infrastructure Components at their sole cost and expense in the event of any damage or loss to the Park Cities Infrastructure Components.

System Owners shall abide by the preceding clause reciprocally in regard to the Garland-owned master site and all components needed to support the Park Cities’ Simulcast Cell and dispatch centers.

7.03 Immunity. It is expressly understood and agreed that, in the execution of this Agreement, no Party waives, nor shall be deemed hereby to have waived, any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the Parties do not create any obligations, express or implied, other than those set forth herein.

7.04 Entire Agreement; Conflict. This Agreement, including the attached Interlocal Radio System Usage Agreement, represents the entire and integrated agreement between System Owners and the Park Cities, and supersedes all prior negotiations, representations or agreements, either written or oral, with regard to the subject matter hereof. This Agreement may be amended and

modified only by written instrument signed by all Parties. There are no oral agreements between the Parties. In the event of a conflict between the terms and conditions of this Agreement and the attached Interlocal Radio System Usage Agreement, but not including definitions expressly defined in either agreement, the terms and conditions of this Agreement shall control.

7.05 Notices. All notices required or permitted to be given to any Party hereto shall be in writing and shall be considered properly given if sent by United States electronically tracked certified mail, return receipt requested, in a postage paid envelope addressed to the respective Parties at the following addresses or by delivery of the notice in person to the intended addressee by hand delivery or by a nationally recognized courier service having the ability to track shipping and delivery of notices including but not limited to services such as Federal Express or United Parcel Service (UPS). Notices mailed by certified mail as set forth above shall be effective two (2) days after deposit in the United States mail. Notices given in any other manner shall be effective only when received by the addressee. For purposes of notice, the addresses of the Parties shall be as set forth below; Any Party shall have the right to change such Party's address for notice purposes by giving all other Parties at least thirty (30) days' prior written notice of such change of address in the manner set forth herein:

Notices to System Owners:

Garland Representative:

Chief Information Officer
City of Garland
1490 State Highway 66
Garland, Texas 75040
972-781-7205

With a copy to
City Attorney
City of Garland
200 North Fifth Street, 4th Floor
Garland, Texas 75040

Mesquite Representative:

Fire Chief
City of Mesquite
1515 N. Galloway
Mesquite, Texas 75149

With a copy to:
City Attorney

Notices to Park Cities:

Highland Park Representative:

Director of Public Safety
Town of Highland Park
4700 Drexel Drive
Highland Park, Texas 75205
214-559-9450

With a copy to:
Town Administrator
Town of Highland Park
4700 Drexel Drive
Highland Park, Texas 75205
and
Matthew C. G. Boyle-Town Attorney
4201 Wingren, Suite 108
Irving, Texas 75062

University Park Representative:

Mayor & City Manager
City of University Park
3800 University Blvd.
University Park, Texas 75205

With a copy to:
Police Chief, Fire Chief & City Attorney

City of Mesquite
11515 N. Galloway
Mesquite, Texas 75149

City of University Park
3800 University Blvd.
Mesquite, Texas 75205

7.06 Mutuality. Garland and Mesquite commit and agree that future Participants in the System will be allowed to participate under the same base terms as provided for herein so that no future Participant is provided access under materially different terms than those provided for herein.

VIII. AUTHORITY TO SIGN/GOVERNING BODIES AUTHORIZATION

The undersigned officer or agent of each of the Parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the Parties hereto. System Owners and the Park Cities are each executing this Agreement pursuant to duly authorized action by each of their respective Governing Bodies.

IX. SEVERABILITY

The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held to be invalid, unenforceable or contrary to the law or contrary to any rule or regulation having the force and effect of the law, such decisions shall not affect the validity, enforceability or legality of any of the remaining portions of the Agreement and the remaining provisions shall remain in full force and effect and shall be construed and enforced as if the invalid, unenforceable or illegal provision had never been included in the Agreement.

X. VENUE

This Agreement and any of its terms or provisions, as well as the rights and duties of the Parties hereto, shall be governed by the laws of the State of Texas. The Parties agree that this Agreement shall be enforceable in Dallas County, Texas, and, if legal action becomes necessary, exclusive venue shall lie in state courts of competent subject matter jurisdiction in Dallas County, Texas.

XI. INTERPRETATION OF AGREEMENT

This is a negotiated document. Should any part of this Agreement be in dispute, the Parties agree that the terms and provisions of this Agreement shall not be construed more favorably for or strictly against any Party.

XII. DEFAULT AND REMEDIES; WARRANTIES AND LIMITATION ON LIABILITY

12.01 Remedies for Default. In the event of a Default by any Party to this agreement, the following remedies shall be available (as applicable):

(a) The Parties shall have the right to enforce the provisions of Section 5.01 of this Agreement by injunction and/or specific performance as more fully set forth in Section 5.02 of this Agreement.

(a) Upon the occurrence of a Default by either System Owner, the Park Cities shall have the right to terminate this Agreement by written notice to the System Owners and shall further have the right to exercise any rights and remedies available to the Park Cities at common law, by statute, in equity or otherwise pursuant to the laws of the State of Texas.

(c) Upon the occurrence of a Default by the Park Cities, System Owners shall have the right to terminate this Agreement by written notice to the Park Cities and shall further have the right to exercise any rights and remedies available to System Owners at common law, by statute, in equity or otherwise pursuant to the laws of the State of Texas.

(d) In the event of a Default by any Party, the Defaulting party must pay any remaining financial obligations related to the System or its components including, without limitation, the Park Cities Infrastructure Components, incurred or accrued prior to the date of notice of termination by the non-Defaulting party.

(e) In the event of a Default by either Party, all the Park Cities Infrastructure Components of the System, if previously conveyed from System Owners to the Park Cities, shall continue to be owned 100% by the Park Cities. In the event of Default by either Party, the defaulting Party shall, within ninety (90) days after written demand, reimburse the non-defaulting Party and all Infrastructure Participants for reasonable costs associated with the reconfiguring of the System that are necessary for the non-defaulting Party and all Participants to continue to access, use, maintain and repair the System including, but not limited to, microwave realignment and licensing fees.

(f) The Dispute Resolution provisions of Section 22 of the Interlocal Radio System Usage Agreement shall apply to this Agreement for disputes not related to public safety. The Parties specifically agree that the provisions of Section 22 of the Interlocal Radio System Usage Agreement shall not apply if any delay in the resolution of the issue in dispute could adversely affect the public safety of the citizens of any Party. Notwithstanding any provision of this Section 12.02(f) to the contrary, the Parties acknowledge and agree that Section 22 of the Interlocal Radio System Usage Agreement shall not apply to disputes relating to Article V of this Agreement and the Parties further agree that any Party may institute a lawsuit or other proceeding to exercise the remedies available under Section 5.02 of this Agreement without first attempting to resolve the dispute by following the dispute resolution process set forth in Section 22 of the Interlocal Radio System Usage Agreement.

(g) The provisions of this Section 12.02 shall expressly survive the termination of this Agreement.

12.03 Remedies Cumulative. The Parties' rights and remedies under this Agreement are cumulative and are not exclusive of any other right or remedy provided by law. Each right and remedy of the Parties provided for in this Agreement or now or hereafter existing pursuant to the

laws of the State of Texas shall be cumulative and concurrent and shall be in addition to every other right or remedy provided for in this Agreement or now or hereafter existing pursuant to the laws of the State of Texas.

12.04 Disclaimer of Warranties. System Owners make no representations or warranties, either express or implied, as to the System or its components, and the Park Cities acknowledge that the use of the System is being provided to the Park Cities on an “AS-IS” “WHERE IS” basis with any and all latent and patent defects. System Owners expressly disclaim any warranty or representation as to the System’s coverage, quality, dependability, performance, continuation of service, non-infringement, merchantability, fitness for any purpose, or fitness for the uses intended by the Park Cities. The Park Cities assume the entire risk associated with the results and use of the System or its components by the Park Cities, their employees, agents, representatives, officials and all persons and entities using or accessing the System. Neither of the System Owners shall be liable to the Park Cities, their employees, agents, representatives, officials or to any other person or entity for any indirect, incidental, special or consequential damages whatsoever, including, but not limited to, damages for any loss of use, time, data, goodwill, revenue or profit, in any way related to or arising from this Agreement, the use, misuse or non-use of the System by the Park Cities, and/or any inadequacies of coverage, quality, dependability, performance, errors or interruption in service or partial or total failure of the System even if System Owners, individually or collectively, have been advised of the possibility of such damages. System Owners and their employees, agents, representatives and officials shall not be liable to the Park Cities, their employees, agents, representatives, officials or any other person or entity for personal injuries, death or property damage due to or arising from the use, misuse or non-use of the System by the Park Cities and/or arising from any inadequacies of coverage, quality, dependability, performance, errors or interruption in service or partial or total failure of the System. To the extent allowed by law, the Park Cities agree to hold System Owners and their employees, agents, representatives and officials harmless from and against all liability of any nature whatsoever for personal injuries, death or damage to tangible property caused by or arising from the use, misuse or non-use of the System by the Park Cities.

12.05 Limitation on Liability. Notwithstanding anything contained herein to the contrary, it is expressly understood and agreed by the Parties that the Park Cities and System Owners shall not be held liable for the acts or omissions of each other or for the acts or omissions of each other’s agents, representatives or employees in the performance of this Agreement, other than losses arising from the Park Cities’ modification of the Tower, as set forth in Section 6.09, *supra*.

12.06 Survival. All provisions of this Article XII shall expressly survive the expiration or termination of this Agreement.

XIII. WAIVER

No covenant or condition of this Agreement may be waived without the express written consent of the waiving Party. No failure by any Party to insist upon the strict or timely performance of

any covenant, duty, agreement, term or condition of this Agreement shall constitute a waiver of any such covenant, duty, agreement, term or condition. It is further agreed that one (1) or more instances of forbearance by any Party in the exercise of its respective rights under this Agreement shall in no way impair such right or constitute a waiver of such right or a waiver of any breach theretofore or thereafter occurring.

XIV. GOVERNMENTAL FUNCTION

The provision of police, fire and emergency medical services, the radio communications that are essential thereto and the work and services described herein in connection therewith, are essential to the public health and safety of the citizens of both Parties and are governmental functions and services pursuant to the Act that each Party is authorized to perform individually. Each Party agrees that all monetary obligations of such Party under the terms of this Agreement shall be made only from current revenues or other lawful funds appropriated and available for the performance of such obligations.

XV. NO PARTNERSHIP, JOINT VENTURE, AGENCY OR EMPLOYER/EMPLOYEE RELATIONSHIP

Nothing contained in this Agreement shall be deemed or construed by the Parties hereto, nor by any third party, as creating the relationship of partnership, joint venture, joint enterprise, agency or employer/employee relationship between the Parties and/or between any Party.

XVI. HEADINGS

The headings of this Agreement are for convenience of reference only and shall not affect in any manner any of the terms and conditions of this Agreement.

XVII. DUPLICATE ORIGINAL DOCUMENTS

This Agreement may be executed in any number of original, facsimile or electronically-scanned counterparts, each of which shall be considered an original and all of which shall be considered one and the same instrument. A digital or electronic signature shall be considered an original signature for all purposes.

XVIII. TIME IS OF THE ESSENCE

The Parties agree that time is of the essence in the performance of this Agreement.

XIX. SYSTEM OWNERS RADIO SYSTEM ILA WAIVER, RELEASE AND COVENANT NOT TO SUE

The Parties acknowledge that System Owners have entered into the Garland/Mesquite Radio System ILA (a copy of which has been provided to the Park Cities) regarding, inter alia, the installation, operation, administration, maintenance and implementation of the System and that

Interlocal Agreement Between the Cities of Garland and Mesquite and the Park Cities

pursuant to the Garland/Mesquite Radio System ILA, System Owners have certain rights to terminate the Garland/Mesquite Radio System ILA as more fully set forth in therein. The Parties expressly agree that this Agreement does not alter, affect, modify or amend the Garland/Mesquite Radio System ILA in any manner including, without limitation, either of the System Owners' right to terminate the Garland/Mesquite Radio System ILA. The Parties further agree that in the event either System Owner exercises its right to terminate the Garland/Mesquite Radio System ILA (under the terms and subject to the conditions set forth therein), (i) the System (as defined in this Agreement) and the Interlocal Radio System Usage Agreement shall no longer include any components of the System owned solely by Mesquite; (ii) upon such termination, neither Garland or the Park Cities shall have any rights to access or use the components of the System that are owned solely by Mesquite; and (iii) upon such termination, any access or use of the Shared Components of the System shall be limited to the rights of access and use, if any, that expressly survive the termination of the Garland/Mesquite Radio System ILA. **For and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, Garland and the Park Cities hereby voluntarily WAIVE, RELEASE AND FOREVER DISCHARGE Mesquite and its employees, agents, representatives, officials, attorneys and insurers, both individually and in their official capacities (hereinafter collectively the "Released Parties"), of and from any and all claims, demands, damages, liabilities, actions and causes of action of every kind and nature whether known or unknown, foreseen or unforeseen (collectively "Claims"), which Garland or the Park Cities, their employees, agents, representatives or officials have or may have against any one or more of the Released Parties arising from or relating to the termination by Mesquite of the Garland/Mesquite Radio System ILA provided Mesquite is not in default (as defined in the Garland/Mesquite Radio System ILA) of the Garland/Mesquite Radio System ILA [or no event has occurred which, but for notice, the lapse of time or both would constitute a "Default" by Mesquite under the terms of the Garland/Mesquite Radio System ILA] and such termination is in accordance with the terms and conditions set forth in the Garland/Mesquite Radio System ILA including, without limitation, any claims at law or in equity arising from or relating to any adverse effect on the use or operation of the System or any component of the System including but not limited to the Park Cities Infrastructure Components caused by or as a result of the termination by Mesquite of the Garland/Mesquite Radio System ILA. Garland and the Park Cities further covenant and agree not to institute any action, litigation or suit at law or in equity against Mesquite for any Claims arising out of or in any way relating to the termination of the Garland/Mesquite Radio System ILA provided Mesquite is not in "Default" (as defined in the Garland/Mesquite Radio System ILA) of the Garland/Mesquite Radio System ILA [or no event has occurred which, but for notice, the lapse of time or both would constitute a "Default" by Mesquite under the terms of the Garland/Mesquite Radio System ILA] and such termination is in accordance with the terms and provisions of the Garland/Mesquite Radio System ILA.**

[Remainder of page intentionally left blank; Signature page to follow]

EXECUTED this _____ day of _____, 2018.

CITY OF GARLAND, TEXAS
a Texas home-rule municipality

BY: _____
Bryan L. Bradford
City Manager

APPROVED AS TO FORM:

Stephen M. Hines, Sr. Asst. City Attorney

EXECUTED this _____ day of _____, 2018.

CITY OF MESQUITE, TEXAS,
a Texas home-rule municipality

BY: _____
Cliff Keheley, City Manager

APPROVED AS TO FORM:

Ileana N. Fernandez, Sr. Asst. City Attorney

EXECUTED this _____ day of _____, 2018.

CITY OF UNIVERSITY PARK, TEXAS
a Texas home-rule municipality

BY: _____
Robert Corder, City Manager

APPROVED AS TO FORM:

Robert L. Dillard, III, City Attorney

EXECUTED this _____ day of _____, 2018.

CITY OF HIGHLAND PARK, TEXAS
a Texas home-rule municipality

BY: _____
Bill Lindley, Town Administrator

APPROVED AS TO FORM:

Matthew Boyle, Town Attorney

EXHIBIT “A”

Interlocal Radio System Usage Agreement
(to be executed by System Owners and the Park Cities concurrently with this Agreement)

Exhibit “B”

(Each Party’s itemized Infrastructure Costs (to be executed by the Parties and attached after design review by the selected vendor))

EXHIBIT “C”

(None)