

THE STATE OF TEXAS §

KNOW ALL BY THESE PRESENTS

COUNTY OF JOHNSON §

COMMUNICATIONS SYSTEM AGREEMENT

This COMMUNICATIONS SYSTEM AGREEMENT (the "Agreement") is made and entered into by and between the Johnson County, Texas, a political subdivision of the State of Texas ("County") acting herein by and through its duly authorized Commissioners Court, and the City of Keene ("USER"), a municipal corporation, acting herein by and through its duly authorized City Council, individually referred to as a "Party," collectively referred to herein as the "Parties." The term County shall include all employees, directors, officials, agents, and authorized representatives of County. The term USER shall include all employees, directors, officials, agents, and authorized representatives of USER.

RECITALS

WHEREAS, this Agreement is made under the authority of Sections 791.001-791.029, 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, the City Fort Worth ("CFW") owns, operates, and maintains Trunked Voice Radio Systems for the purpose of providing Public Safety voice radio communications and is the sole licensee of the CFW Trunked Voice Radio Systems with all privileges and responsibilities thereof; and

WHEREAS, County has entered into a Communication System Agreement with the CFW whereby the CFW has granted County specific permission to operate its owned Motorola Solutions ASTRO® Site Repeater System, Console System or equipment attached and/or interfaced to the CFW Project 25 Master Site located at the Eagle Mountain Communications Site at 6869 Bowman Roberts Road, Fort Worth, Texas (the "System").

NOW THEREFORE, COUNTY and USER agree as follows:

1. **GRANT OF LICENSE**

COUNTY hereby grants the USER a non-exclusive specific permission to operate its radios on

County's owned Motorola Solutions ASTRO® Site Repeater System, Console System or equipment attached and/or interfaced to the City of Fort Worth Project 25 Master Site located at the Eagle Mountain Communications Site at 6869 Bowman Roberts Road, Fort Worth, Texas (the "System") in accordance 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. County and USER agree and understand that 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 as between County and USER 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. Termination or cessation of this Agreement between County and USER will not affect the continuation of any other agreement County may have with any other USER or Party.

3. **COMPENSATION**

USER shall remit payment to County in the amount and manner set forth in Exhibit A.

4. **LIABILITY**

Nothing in the performance of this Agreement shall impose any liability for claims against County or USER other than claims for which liability may be imposed by the Texas Tort Claims Act.

5. **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 County. 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 and be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors and subcontractors. USER acknowledges that the doctrine of *respondeat superior* shall not apply as between the County, its officers, agents, servants and employees, and USER, its officers, agents, employees, servants, contractors and subcontractors. USER further agrees that nothing herein shall be construed as the creation of a partnership or joint enterprise between County and USER.

6. NON-APPROPRIATION OF FUNDS

County 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.

7. RIGHT TO AUDIT

USER agrees that the County shall, 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 at no additional cost to the County. USER agrees that the County 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 County shall give USER reasonable advance notice of intended audits.

8. 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 County. Which such right shall be granted solely at the discretion of the County.

9. 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.

10. AMENDMENTS

No amendment to this Agreement shall be binding upon either Party hereto unless such amendment is set forth in writing, 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 County as confidential and shall not disclose any such information to a third party without the prior written approval of the County. USER shall store and maintain County information in a secure manner and shall not allow unauthorized users to access, modify, delete, or otherwise corrupt County information in any way. USER shall notify the County immediately if the security or integrity of County 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 or existing contractual obligations directly related to the subject matter of this Agreement.

14. 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 Johnson County, Texas or the United States District Court for the Northern District of Texas -Dallas 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.

15. SIGNATURE AUTHORITY

The person signing this agreement hereby warrants that he/she has the legal authority to execute this agreement on behalf of the 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.

16. ENTIRETY OF AGREEMENT

This written instrument, including all Exhibits attached hereto, contains the entire understanding and agreement between County 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. This Agreement may not be amended unless set forth in writing and signed by both parties.


EXECUTED IN MULTIPLE ORIGINALS on this the 26th day of January, 20 15.

COUNTY:

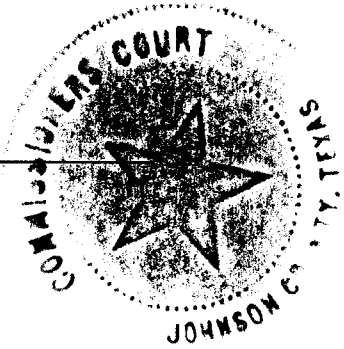
By: 
Roger Harmon, County Judge

Date: 1/26/15

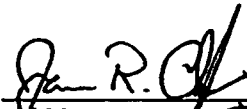
Attest:


Becky Williams, County Clerk
Ivey

Date: 1/26/15

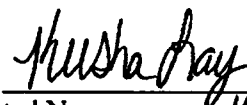


USER:

By: 
Printed Name: James Chapline
Title: Mayor

Date: 1-15-15

Attest:

By: 
Printed Name: Keisha Lay
City Secretary: City of Keene

Date: 1-15-15

EXHIBIT A

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 owned and operated by the County that are connected to the CFW master switch.

"Infrastructure Support Fee" shall mean the annual fee charged by CFW to offset any actual increased costs incurred by the City in the operation and maintenance of the radio systems. The annual Infrastructure Support Fee is billed per active subscriber radio ID, payable in advance on an annual basis for all active radio IDs issued to County at the time of the annual billing. Invoicing will occur when new radio IDs are issued on a pro-rata basis, and thereafter, at the beginning of each CFW fiscal year. There will be no refunds or credits for radios removed from service during the year billed.

"Interoperable Communications Plan" means the plan developed and established by CFW to enhance and simplify radio communications among all agencies utilizing the CFW public safety radio system or connecting its Site Repeater Systems or Console Systems to the CFW master switch.

"Master Site" shall mean the hardware and software provided by CFW as the core component of the Motorola Solutions ASTRO 25 radio communications system. All Site Repeater Systems must connect to the Master Site.

"Software Upgrade Agreement Fee" shall mean the annual fee charged by CFW to offset cost incurred by the City from Motorola Solutions for the maintenance of the Software Upgrade Agreement applicable to the County's Site Repeater Systems and Console Systems.

"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 owned and operated by the County to be connected to the CFW master switch.

"Subscriber Radio" shall mean a control station (desk top radio), mobile radio, or portable radio, which has a unique identification number and is programmed to operate on the CFW Trunked Voice Radio System.

"Talk Group" shall mean a specific group of subscriber units allowed to communicate privately within that group over shared infrastructure resources.

TERMS OF USE

1. The CFW shall provide and maintain the Motorola Solutions ASTRO 25 Master Site to which the County's Site Repeater Systems and Consoles System will connect. If the County increases its number of Site Repeater Systems or Console Systems, the County will incur all costs, if any, resulting from the expansion of capacity of the System and associated hardware and software required to accommodate the County's additions.
2. The CFW shall execute with Motorola Solutions a Software Upgrade Agreement for the System, every ASTRO 25 radio site connecting to the System, including those owned and operated by the County, and all other hardware such as Console Systems that would be affected by the software upgrades, including those owned and operated by the County. Unless the County is notified otherwise, the software for the System, all Site Repeater Systems and all Console Systems will be upgraded to the current level every two years. The County will provide all reasonable coordination necessary for the upgrade of its Site Repeater Systems and Console Systems.
3. The CFW shall provide radio IDs for all radios and dispatch consoles owned and operated by the County. County must provide written authorization to the CFW prior to the release of the County's radio IDs or any other information to a third party vendor or agency.
4. The acquisition, installation and maintenance of the County's Site Repeater Systems, and Console Systems are the responsibility of the County unless otherwise stated in this Agreement. The County will be responsible for managing infrastructure loading and demand of the County's Site Repeater Systems.
5. The County will be responsible for the acquisition, programming, and maintenance of all County radios and USER will be responsible for the acquisition, programming, and maintenance of all USER radios.
6. The County is the holder of the FCC (Federal Communications Commission) license(s) that the County's Site Repeater System uses for its operation. Any USER who operates a radio dispatch from a fixed location will need to obtain the appropriate FCC licenses.
7. The County is responsible for providing all leased circuits and associated hardware and software necessary to connect its Site Repeater Systems and Console Systems to the System. All costs associated with provision of connectivity will be borne by the County. Connectivity methods are limited to terrestrial facilities leased through a licensed carrier. Other connectivity methods, such as microwave, will require the prior approval of CFW and will result in additional costs to the County.
8. The CFW has made no guarantee, either express or implied, as to radio signal strength or a specific level of radio coverage in a particular location; and therefore, the County makes no guarantee to USER either express or implied, as to radio signal strength or a specific level of radio coverage in a particular location.
9. The County shall use due diligence in the maintenance and configuration of their subscriber radio equipment to ensure that no County radio causes a degradation to system operation. The CFW shall have the right to remove from operation any field radio unit or equipment owned by County that is operating on, attached and/or interfaced to the CFW infrastructure, if such equipment is found to cause interference or harm, to the system in any way. The CFW reserves the right to request that County

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 County. Furthermore, the CFW shall have the right to deactivate, without prior notification to or consent of County, any field radio suspected of causing interference, intentionally or unintentionally, to any other radios on the systems or the systems operation.

10. USER shall use due diligence in the maintenance and configuration of their subscriber radio equipment to ensure that no USER radio causes a degradation to system operation. The County shall have the right to remove from operation any field radio unit or equipment owned by USER that is operating on, attached and/or interfaced to the County infrastructure, if such equipment is found to cause interference or harm, to the system in any way. The County 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 County. The cost of such testing or repair will be the sole responsibility of USER. Furthermore, the County shall have the right to deactivate, without prior notification to or consent of USER, any field radio suspected of causing interference, intentionally or unintentionally, to any other radios on the systems or the systems operation.

11. The CFW will establish a coordinated Interoperable Communications Plan to apply to CFW and the users of its systems. County agrees to participate in the Plan and include the Plan's interoperable talk groups in the programming of its subscriber units and Console Systems.

12. Either County or CFW may terminate their Agreement for any reason, with or without cause, upon one hundred eighty (180) days written notice to the other Party. The CFW, in its sole discretion, shall have the right to deny County access to the radio infrastructure and/or the right to terminate their Agreement immediately if County fails to make full payment of invoiced system fees within thirty (30) days of the date payment is due. The CFW further reserves the right to terminate their Agreement immediately, or deny access to the County, upon notice of County misuse of the system.

13. Either County or USER may terminate this Agreement for any reason, with or without cause, upon one hundred eighty (180) days written notice to the other Party. The County, in its sole discretion, shall have the right to deny USER access to the radio infrastructure and/or the right to terminate this Agreement immediately if USER fails to make full payment of invoiced system fees within thirty (30) days of the date payment is due. The County further reserves the right to terminate this Agreement immediately, or deny access to the USER, upon notice of USER misuse of the system.

APPLICABLE FEES

14. Effective October 1, 2014, and each year thereafter as long as this Agreement is in effect, USER shall pay the County an Annual Subscriber Unit Fee in the amount of \$11.90 per month, per subscriber radio, payable in advance on an annual basis for all active radio IDs issued to USER at the time of the annual billing. Invoicing will occur when new Radio IDs are issued on a pro-rata basis, and thereafter, at the beginning of each County fiscal year (which is October 1). Further, at the beginning of each fiscal year of this Agreement, the County may increase the Annual Subscriber Unit Fee to offset any actual increased costs incurred by the County in the operation and maintenance of the System. There will be no refunds or credits for radios removed from service during the fiscal year.

15. County shall pay the CFW an Annual Software Upgrade Fee equal to the amount invoiced to the CFW by Motorola Solutions, Inc., or its successors, for the upgrade of the County's Site Repeater Systems, Consoles Systems and any other component subject to upgrade as a result of the upgrade of the System.

COMPLIANCE WITH LAWS

16. The County and 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, volunteers, or any individual operating USER subscriber radio equipment. Furthermore, the USER will be responsible for payment of any fines and penalties levied against the CFW or County as a result of improper or unlawful use of subscriber radio equipment owned by USER.

17. In order to comply with Federal, State, and Local Laws and/ or Mandates, the CFW, as the Licensee, may need to act on behalf of the County regarding possible modifications, reconfiguration, or exchange of owned subscriber radio equipment in order to meet these obligations. For as long as this agreement is in force, the County will allow the CFW to facilitate such activities on County's behalf as necessary.

18. In the instance where County subscriber radio equipment is to be replaced in order to be in compliance with Federal, State, and Local Laws and/or Mandates, title and ownership of such replacement subscriber radio equipment shall pass directly to County upon delivery of subscriber radio equipment to the County's site. The County shall provide the CFW, or its designee, with the subscriber radio equipment to be replaced, in good working order, as determined by the County or its designee. County shall be liable for payment of any fees associated with radios deemed to be not in proper working order. County shall be liable for payment of any fees associated with upgrades to subscriber radio equipment