

**INTERLOCAL AGREEMENT BETWEEN THE TOWN OF HIGHLAND PARK AND
THE
CITY OF UNIVERSITY PARK FOR A JOINT RADIO COMMUNICATIONS SYSTEM
FOR MUNICIPAL SERVICES**

This Agreement is made between the **TOWN OF HIGHLAND PARK, TEXAS**, a home-rule municipal corporation with the authorization of its governing body, (hereinafter referred to as “Highland Park” or the “Town” or the “Party”), and the **CITY OF UNIVERSITY PARK, TEXAS**, a home rule municipal corporation with the authorization of its governing body, (hereinafter referred to as “University Park” or the “City” or the “Party”), and collectively as the “Park Cities” or “Parties” as follows:

WITNESSETH

WHEREAS, Highland Park and University Park are political subdivisions within the State of Texas, and each is engaged in the provision of governmental services for the benefit of its citizens; and

WHEREAS, 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 to perform governmental functions and services as set forth in the Act; and

WHEREAS, the Park Cities is implementing a new 700-Megahertz radio system for providing radio communications in support of its governmental operations; and

WHEREAS, the City and Town have entered into The Cities of Garland and Mesquite and the City of University Park & Town of Highland Park Radio System Interlocal Agreement dated _____, 2019 (the “Garland/Mesquite/Park Cities 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 system being defined in the Garland/Mesquite/Park Cities Radio System ILA and being hereinafter referred to as the “GMRS System”), attached hereto as Exhibit A to this Agreement; and

WHEREAS, pursuant to the Garland/Mesquite/Park Cities 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 GMRS System (“Infrastructure Components”); and

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

WHEREAS, the Garland/Mesquite/Park Cities Radio System ILA and the Interlocal Radio System Usage Agreement are incorporated herein by reference; and

WHEREAS, to provide dependable/mission-critical voice radio service for each of the authorized users, Highland Park and University Park desire to enter into an Interlocal Agreement to provide a Joint Radio Communications System for Municipal Services (hereinafter referred to as the “Joint System”); and

WHEREAS, use of this Joint System will provide for system coverage for each of the Park Cities to ensure safe, effective and efficient communications, and benefit the greatest number of citizens both now and in the future; and

WHEREAS, this Agreement will provide the framework for administering the Joint System, and the costs associated with implementation, maintenance and operation of the Joint System distributed among Highland Park and University Park.

NOW, THEREFORE, Highland Park and University Park, for and in consideration of the mutual benefits and obligations set forth in this Agreement, the receipt and sufficiency of which are hereby affirmed, agree as follows:

The above findings are found to be true and correct and are incorporated fully into this Agreement by reference as if copied in their entirety.

1. ADMINISTRATION OF THE JOINT COMMUNICATIONS SYSTEM

1.01 GMRS Governance Board. Operation, administration and policy development of the GMRS System shall be the responsibility of the GMRS Governance Board as provided for Section 6.01 of the Garland/Mesquite/Park Cities Radio System ILA.

1.02 Governance of Park Cities Simulcast Cell. The Parties shall jointly own the Park Cities Simulcast Cell which includes all the components at each of the three water tower sites (Highland Park's Holland Water Tower Site and University Park's Fondren Water Tower Site and Northwest Highway Water Tower Site), ring microwave equipment at each of the dispatch sites, and the microwave equipment that supports the microwave link to the GMRS System. The link to the GMRS System has components at the Northwest Highway Water Tower Site and at the GMRS Forest Lane tower site. This link to the GMRS System would also be considered part of the Park Cities Simulcast Cell. Jointly owned software would include all the software and software licenses added to the GMRS System needed to support the shared components of the Park Cities Simulcast Cell. All equipment which encompasses the Park Cities Simulcast Cell is listed and described in the attached Exhibit B.

In that all the components comprise the Park Cities Simulcast Cell, the Park Cities Simulcast Cell cannot operate as designed without a single component listed at these sites. The City Manager and Town Administrator shall each appoint two representatives, and mutually select a 5th representative to serve as the Park Cities Governance Committee ("PCGC"), to represent respective municipality in making recommendations and considering requests regarding Joint System changes, upgrades, additional uses and any other aspects of the Park Cities Simulcast Cell to the City Manager and Town Administrator. The City Manager and Town Administrator shall be ad hoc members to the PCGC and the decisions made by the City Manager and Town Administrator shall be final. The PCGC will provide participation on the GMRS Technical Advisory Board (TAB) and any Highland Park and University Park member of the GMRS Governance Board shall be selected respectively from the PCGC.

1.03 GMRS Technical Advisory Board (TAB). The GMRS maintains a group of technical and advisory personnel consisting of the GMRS System owners and Infrastructure Participants whom are referred to as the Technical Advisory Board (hereinafter "the TAB") as provided for in Section 6.02 of the Garland/Mesquite/Park Cities Radio System ILA. The Park Cities shall assign four (4) members to represent the Park Cities on the TAB. Highland Park shall appoint two

representatives, selected by the Town Administrator, and University Park shall appoint two representatives, selected by the City Manager. Technical Standards for the operation of the Joint System shall be developed by the TAB and approved by agreement of the Governance Board. Once approved, these standards must be compatible with existing or new equipment owned and operated by the Parties and may not violate any of the terms of this Agreement or of any existing maintenance or hardware agreement in place to the benefit of the Parties.

2. II. FUTURE EXPANSION OF THIS AGREEMENT

2.01 Third parties to this Agreement. All third parties who are serviced by the respective radio systems of Highland Park and University Park at the time of signing of this Agreement may participate in the Joint System created by this Agreement. However, for purposes of this Agreement, including its intended operation and effect, the Parties specifically agree and contract that: (a) this Agreement only affects the Parties hereto, and is in no way intended by the Parties to benefit or otherwise affect any third person or entity not a party hereto, notwithstanding the fact that such third person or entity may be in a contractual relationship with Highland Park or University Park, either individually or collectively; and (b) the terms of this Agreement are not intended to release, either by contract or operation of law, any third person or entity from obligations owed by them to any of the Parties or to create any rights for the benefit of third parties, unless expressly provided herein. **2.02 Subscriber Participants on the Park Cities Simulcast Cell.** The Parties may allow other entities access to the Park Cities Simulcast Cell. Radios used on the Joint System subject to their meeting all the requirements specified herein (P25 Phase II, etc.). These users will pay user fees equal to that of a subscriber (non-infrastructure) participant on the GMRS System for each radio and for each talk group. Any user entities granted such access must first enter into an Interlocal Agreement or similar agreement with the Park Cities that identifies the usage requirements of the Park Cities Simulcast Cell prior to being granted access. Programming of these user radios shall be configured to only allow usage of the Park Cities Simulcast Cell. User radios shall not be allowed to roam onto other neighboring systems unless approved by the PCGC. The PCGC must approve such configuration prior to allowing the user radios to access the Park Cities Simulcast Cell. User fees shall be paid directly to the Parties who in turn will pay GMRS.

These user entities shall also maintain a support agreement on each of its individually-owned components, including dispatch consoles, mobile radio equipment, and portable radios, directly with the component's manufacturer. The manufacturer will invoice each user agency individually. The user entities' support agreement may elect to pay per repair or as part of a comprehensive maintenance agreement.

The Parties will pay these user fees to GMRS at the Park Cities Infrastructure Participant rates. Any fees above the Infrastructure Participant rate shall be directed to a fund maintained by the Parties that will be used to support Joint System maintenance costs and upgrades for the Park Cities Simulcast Cell.

3. OWNERSHIP INTERESTS OF THE PARTIES

3.01 Radio License Titling. Federal Communications Commission ("FCC") licenses for the Park Cities Simulcast Cell will be titled respectively to Highland Park and University Park. Highland Park shall hold three (3) 700 MHz system licenses and the University Park shall hold three (3) 700 MHz system licenses. All licensing shall be in accordance with FCC rules and regulations.

3.02 Hardware/Software. The Joint System is considered a "simulcast cell". The operation of all three sites working in conjunction is required to provide the level of coverage needed to fully support both parties. The Park Cities Simulcast equipment at the tower sites will be jointly owned by the Parties. This will include all fixed radio infrastructure components and microwave radio system components. The microwave link to the GMRS system is essential for both parties to operate and therefore is also considered shared equipment *and will be jointly owned by Highland Park and University Park*. Dispatch center equipment will be individually owned and maintained by the individual Parties. Highland Park has one dispatch center with four (4) dispatch consoles and associated radio resources. University Park has two (2) dispatch centers, one with three console positions and associated radio resources, and a back-up dispatch center with two dispatch console positions and radio resource equipment. Each entity will maintain its own dispatch console equipment, logging recorder equipment, Archiving Interface Server (AIS), back-up control station

equipment, and switch connections to the GMRS Master site All user radio equipment (mobiles, portables, and control stations) will be individually owned and maintained by each Party.

Park Cities user fees on the GMRS Master Site will be paid by the individual Parties to GMRS. Fees are based on the number of user radios and the number of talk groups operated by each party.

4. FINANCING AND INFRASTRUCTURE COST SHARING

4.01 Each Party incurring costs has the sole responsibility to make payment to Vendors providing equipment and services for the Joint System. In no event shall any Party be held liable for debts incurred by any other Party for expenditures made pursuant to this Agreement. The Parties shall share the costs for any additions and/or upgrades to the shared components. **4.02 Maintenance Agreements.** Both Parties will maintain a mutual support agreement with a manufacturer-approved qualified service provider to provide system infrastructure technical expertise and service. The cost of the support agreement and the daily cost of the Joint System infrastructure shared components will be shared equally between the Parties.

4.03 Shared Components. The Parties shall equally share all maintenance, service and upgrade (if required) costs for the Park Cities Infrastructure Components. The Parties agree that consistent with, and to the extent allowed by all laws governing purchases made by municipalities, each Party's respective maintenance agreement shall include coverage for all software, hardware and support systems which comprise the shared components of the Simulcast Cell. Each Party shall maintain comprehensive property insurance coverage for any portion of the Park Cities Simulcast Cell located within their respective city limits. Said insurance shall provide replacement cost "broad form" or "special form" property insurance insuring 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 Party that said Party will repair or replace the portion of Park Cities Infrastructure

Components in their city limits at their sole cost and expense in the event of any damage or loss to the Park Cities Infrastructure Components.

4.04 Individually-Owned Components. The Parties will maintain a separate support agreement on each of its individually-owned components including dispatch consoles, logging recorder system, Archiving Interface Server, back-up control station equipment, mobile radio equipment, and portable radios directly with the component's manufacturer. The manufacturer shall invoice each Party incurring individually. The Parties may elect to pay per repair or as part of a comprehensive maintenance agreement. Both Parties are responsible for the type of service they individually choose.

5. JOINT SYSTEM USE AND STANDARDS

5.01 Rules. To maintain an effective and safe system, the following rules shall apply:

a. Talk Groups. A talk group is comparable to a "channel" used on a conventional system. The term "talk group" shall mean a group of radio users in a common functional responsibility that transmit and talk among themselves. The number of talk groups that each Party to this Agreement may maintain shall not exceed fifteen percent (15%) of the total number of their respective subscriber units as hereinafter defined. The number of talk groups used by either Party shall be documented and provided to the Governance Board

b. Subscriber Units. Subscriber Units are individual radios. The number of radios permitted on the Joint System shall be documented and provided to the Governance Board.

c. Equipment. No Party shall purchase, install and/or use equipment on the Park Cities Simulcast Cell, unless such purchase, installation and/or use is approved by the PCGC. If at the time of signing of this Agreement, any Party hereto does not have fully type accepted equipment, such Party shall replace such nonconforming equipment with conforming equipment. All subscriber units shall be equipped with P-25 Phase II capabilities. Any subscriber units equipped only with P25 Phase I capabilities shall only be allowed on the Joint System if approved by the PCGC.

d. Patching. Cross connecting or patching of radio talk groups to talk groups or channels on other radio systems shall be done only as necessary for specific events or emergencies. Continuous patching to other systems or agencies shall require the prior written approval of the PCGC.

5.02 Joint System Priorities. The Parties agree that the priority of radio transmissions for the Joint System shall be, in descending order of priority, as follows:

- a. Emergency Activation
- b. Police/Fire/EMS
- c. General Government

6. ACQUISITION/DISPOSITION OF ASSETS

Except as otherwise provided herein, assets acquired under this Agreement by each Party must be acquired and disposed of in accordance with applicable law and the Parties' respective City or Town Charters. Proceeds for such assets shall be divided in accordance with the cost-sharing procedure in effect at the time the asset was acquired. For example, each Party may receive a percentage of the proceeds. The percentage received by each Party shall be based upon the amount of money paid by such Party, individually, after the initial investment identified in this Agreement. This amount would be proportionate to the total amount of money paid by the Parties after such initial investment. Each Party paying for assets to be acquired or making any type of payment pursuant to this Agreement shall make such payments from current revenues legally available to that respective Party.

7. SYSTEM MANAGEMENT AND OPERATION

All Park Cities Simulcast Cell management operations shall be performed by factory-trained and qualified personnel. Policies and procedures for specific management issues shall be pre-determined and approved by the PCGC and by the Interlocal Agreements with GMRS. The PCGC shall, in its sole discretion and in accordance with all applicable laws governing purchases by municipalities, select a vendor to provide day-to-day operation and management of the Park Cities Simulcast Cell. The PCGC shall make all decisions regarding matters other than the day-to-day operation and management of the Park Cities Simulcast Cell. System Management shall be considered a "shared component" and each entity shall equally share the costs equally of system management support.

8. TERM/TERMINATION OF THE AGREEMENT

8.01 The Initial Term of this Agreement is for ten (10) years from the Effective Date. Any Party may terminate this Agreement at any time for any reason or no reason by providing the other Party

with at least one (1) year written advanced written notice subject to and conditioned upon the following conditions:

- a. Upon termination, the terminating Party shall be entitled to seek an FCC license with the same frequencies which the Party had prior to the execution of this Agreement.
- b. Upon termination, Highland Park will receive three (3) 700Mhz radio frequency channels and University Park will receive three (3) 700Mhz radio frequency channels that were initially granted to support the Park Cities Simulcast Cell.
- c. If one Party desires to terminate this Agreement, Highland Park shall maintain ownership of the Prime Simulcast Site and all associated equipment at the Holland Water Tower Site. University Park shall maintain ownership of the Prime Simulcast Site at the Fondren Water Tower Site. The terminating Party shall reimburse the non-terminating party for its investment into the third simulcast site at Northwest Highway, including the microwave link to the GMRS Forest Lane Tower Site. The terminating Party shall also be responsible for all costs associated with FCC licensing, reconfiguration of microwave links, and the reconfiguration of any once-shared components still needed by the non-terminating Party. The terminating Party shall also be responsible for all costs associated with any technical assistance necessary to physically connect the non-terminating Party's trunked radio site(s) to the GMRS System or another system if needed.

9. RELEASE AND HOLD HARMLESS

To the extent allowed by law, each of the Parties does hereby waive all claims against, release, and hold harmless the other Party and its officials, officers, agents, attorneys, representatives, and employees, in both their public and private capacities, from any and all liability, claims, suits, demands, losses, damages, attorneys' fees, and costs, including all expenses of litigation or settlement, or causes of action which may arise by reason or injury to or death of any person or for loss of, damage to, or loss of use of any property arising out of or in connection with the acts or omissions of their respective officials, officers, agents, representatives, and employees related to or arising out of the performance of this Agreement. If a claim is filed, each Party shall be responsible for its proportionate share of liability. The Parties agree that each shall be liable only for damages related to or arising out of the intentional or negligent act or omission of its respective officials, officers, agents, representatives, and employees in the performance of this Agreement.

10. 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, and this Agreement shall not create any rights in parties not signatories hereto.

11. ASSIGNMENT AND SUBLETTING

The Parties shall not assign, sublet, subcontract or transfer any interest in the Agreement without the prior written consent of the other Parties. No assignment, delegation of duties or subcontract under this Agreement will be effective without the written consent of all Parties.

12. ENTIRE AGREEMENT

This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations and/or agreements, either written or oral about the subject matter hereof. This Agreement may be amended and modified only by written instrument signed by each Party.

13. NOTICES

Unless notified otherwise in writing in accordance with this section, all notices required to be given to any Party hereto shall be in writing and delivered in person or sent by certified mail, return receipt requested, to the respective Parties at the following addresses:

Highland Park Representative:

Mayor & Town Administrator

Copy – Director of Public Safety

Town of Highland Park

4700 Drexel Drive

Highland Park, TX 75205

University Park Representative:

Mayor & City Manager

Copy – Fire Chief & Police Chief

City of University Park

3800 University Blvd.

University Park, TX 75205

With a copy to:

Matthew C G. Boyle

Boyle & Lowry, LLP

4201 Wingren, Suite 108

Irving, Texas 75062

14. AUTHORITY TO SIGN – TOWN COUNCIL AND CITY COUNCIL AUTHORIZATION

The undersigned officers and/or agents of the Parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the Parties hereto. Highland Park has executed this Agreement pursuant to duly authorized action of the Town Council on _____. University Park has executed this Agreement pursuant to duly authorized action of the City Council on _____.

15. 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 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 remaining portions of the Agreement.

16. 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 is necessary, exclusive venue shall lie in Dallas County, Texas.

17. 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 more strictly against any Party.

18. REMEDIES

No right or remedy granted herein or reserved to the Parties is exclusive of any right or remedy granted by law or equity; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Agreement may be waived without the express written consent of all parties. 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 constitute a waiver thereof.

19. SUCCESSORS AND ASSIGNS

The Parties bind themselves, their respective successors and assigns, to the other Parties to this contract. References in this Agreement to Highland Park and University Park, whether individually or collectively, includes the successors and assigns of each of the respective Parties.

20. DISPUTE RESOLUTION

In the event of a dispute regarding any aspect of this Agreement, and the Park Cities Governance Committee is unable to agree on a resolution, then the issue shall be referred to a joint meeting of the Town Administrator and City Manager. If the matter continues to remain unresolved after this process, the Parties shall refer the matter to outside mediation for resolution prior to engaging in litigation.

21. GOVERNMENTAL FUNCTION

The Parties have determined by their execution of this Agreement that this Agreement and the obligations of the Parties contained herein are in discharge of a governmental function as set forth in the Interlocal Cooperation Act, and participation in this Agreement by one Party shall not be construed as creating any kind of agency relationship, partnership, or joint enterprise between the Parties.

22. 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.

23. DUPLICATE ORIGINAL DOCUMENTS

This Agreement will be executed in duplicate counterparts, each of which shall be deemed an original for all purposes.

EXECUTED this _____ day of _____, 2019.

TOWN OF HIGHLAND PARK, TEXAS

BY: _____

Bill Lindley

Town Administrator

APPROVED AS TO FORM:

Matthew Boyle, Town Attorney

EXECUTED this _____ day of _____, 2019.

CITY OF UNIVERSITY PARK, TEXAS

BY: _____

Robbie Corder

City Manager

APPROVED AS TO FORM:

Robert L. Dillard, III, City Attorney

ACKNOWLEDGMENTS

STATE OF TEXAS)

)

COUNTY OF DALLAS)

 This instrument was acknowledged before me on the _____ day of _____, 2019, by Bill Lindley, Town Administrator of the **TOWN OF HIGHLAND PARK, TEXAS**, a home-rule municipality, on behalf of such municipality.

Notary Public, State of Texas

STATE OF TEXAS)

)

COUNTY OF DALLAS)

 This instrument was acknowledged before me on the _____ day of _____, 2019, by Robbie Corder, City Manager, of the **CITY OF UNIVERSITY PARK, TEXAS**, a home-rule municipality, on behalf of such Municipality.

Notary Public, State of Texas