

RESOLUTION NO. 24-2015

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERLOCAL AGREEMENT WITH THE CITY OF GARLAND FOR THE CONSTRUCTION AND OPERATION OF A COLLABORATIVE ADAPTIVE SENSING OF ATMOSPHERE RADAR HOST SITE.

WHEREAS, North Central Texas Council of Governments (NCTCOG) approached the City of Mesquite (Mesquite) as being a desirable location for the placement of a Collaborative Adaptive Sensing of Atmosphere (CASA) radar host site; and

WHEREAS, the data from the CASA radar system provides detailed and enhanced weather warning products from the National Weather Service; and

WHEREAS, the Mesquite Municipal Airport has been identified as the ideal location for the CASA radar host site; and

WHEREAS, the City of Garland (Garland) proposed a partnership that would support the installation of a CASA radar in Mesquite that would support this regional public safety project; and

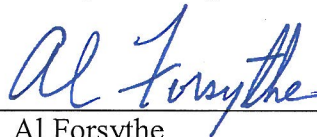
WHEREAS, Mesquite will coordinate the installation, construction and maintenance of the site including any bidding of work, solicitation of funds, interaction with radar or equipment vendors and construction of a tower including providing power and data connectivity to the site; and

WHEREAS, Garland will reimburse Mesquite for the construction and installation costs incurred by Mesquite for the CASA radar site not to exceed \$50,000.00.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

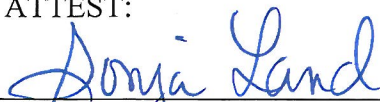
SECTION 1. That the City Manager is hereby authorized to execute the Interlocal Agreement with the City of Garland, attached hereto as Exhibit "A" and made a part thereof, for the construction and operation of a Collaborative Adaptive Sensing of Atmosphere (CASA) radar host site.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 18th day of May, 2015.



Al Forsythe
Mayor Pro Tem

ATTEST:



Sonja Land
City Secretary

APPROVED:



B. J. Smith
City Attorney

**INTERLOCAL AGREEMENT BETWEEN THE CITY OF
MESQUITE, TEXAS AND THE CITY OF GARLAND, TEXAS
FOR CONSTRUCTION AND OPERATION OF
COLLABORATIVE ADAPTIVE SENSING OF ATMOSPHERE
("CASA") RADAR HOST SITE**

This Interlocal Agreement is made and entered into this 18th day of May, 2015, by and between the CITY OF GARLAND, TEXAS, a Texas home rule municipality ("GARLAND") and the CITY OF MESQUITE, TEXAS, a Texas home rule municipality ("MESQUITE") in consideration of the mutual covenants and stipulations herein after set out as follows:

WHEREAS, CASA is the Engineering Research Center for Collaborative Adaptive Sensing of the Atmosphere at the University of Massachusetts, which is a National Science Foundation Engineering Research Center, with the University of Massachusetts, Amherst, MA as the lead University and the Board of Regents of the University of Oklahoma, Norman, OK, The Board of Governors of the Colorado State University System, by and through Colorado State University, Fort Collins, CO, and the University of Puerto Rico-Mayaguez, Mayaguez, Puerto Rico as Core Institutions, (hereinafter "CASA"); and

WHEREAS, NCTCOG is a regional planning commission that serves the 16-county region of North Central Texas, which is centered around the two urban centers of Dallas and Fort Worth; and

WHEREAS, The North Texas area is susceptible to severe weather events such as flash flooding, severe storms and tornadoes throughout the year; and

WHEREAS, MESQUITE is a local government that wishes to host a CASA Radar Tower Site provided through CASA (or its collaborators) within its jurisdiction; and

WHEREAS, GARLAND desires to cooperate with MESQUITE and utilize the benefits of the CASA Radar and to participate in the funding of the CASA Radar Tower Site.

NOW, THEREFORE, the parties hereby agree as follows:

ARTICLE I - SCOPE OF SERVICES AND OBLIGATIONS

A. SERVICES TO BE PERFORMED BY MESQUITE

1. MESQUITE will perform services and actions as described in the Collaborative Adaptive Sensing Of Atmosphere (“CASA”) Radars Site Host Agreement Between The North Central Texas Council of Governments (NCTCOG) and MESQUITE entered into on or about May 18th, 2015 (**hereafter the “MESQUITE–NCTCOG AGREEMENT”**).
2. MESQUITE will serve as contract manager and operator of the local CASA Radar Tower Site.
3. MESQUITE will act as the intermediary between GARLAND AND NCTCOG.
4. MESQUITE will coordinate the installation, construction and maintenance of the site including any bidding of work, solicitation of funds, interaction with radar or equipment vendors, and construction of tower, providing power and data connectivity to the site, in liaison with the CASA research group and providing updates to GARLAND.
5. MESQUITE will not be providing any direct data access to GARLAND; however, data may be accessed through the NCTCOG which would require an agreement with NCTCOG.
6. MESQUITE will make available to GARLAND all records pertaining to the management and operation of the CASA Radar Tower Site during reasonable hours and at reasonable times. Records shall be maintained at the CITY OF MESQUITE OFFICE OF EMERGENCY MANAGEMENT and copies made available at no additional cost.
7. Except in the case of a termination under Section 3.2 of the **MESQUITE–NCTCOG AGREEMENT**, attached hereto as Exhibit “A”, which was not occasioned by the act, omission or fault of MESQUITE, should MESQUITE terminate this Agreement during the initial term or at any time during the first or second renewal term, or fail to agree to renew this Agreement for a first or second renewal term, MESQUITE shall refund to GARLAND all amounts paid by GARLAND to MESQUITE to reimburse GARLAND for construction and installation costs under this Agreement. MESQUITE’S failure to operate the CASA Radar Tower Site during the initial term or any renewal term of this Agreement, regardless of its actual termination of the Agreement, shall be deemed a termination of the Agreement by MESQUITE entitling GARLAND to reimbursement by MESQUITE of the costs of construction and installation paid by GARLAND.

B. OBLIGATIONS OF GARLAND

1. GARLAND may also, with permission from MESQUITE, assist in additional or other activities in the installation and operation of the site.
2. GARLAND will reimburse MESQUITE the portion of the **construction and installation costs**. Said fee shall be paid by GARLAND to MESQUITE out of current revenues.
3. GARLAND'S portion shall cover the installation and construction costs incurred by MESQUITE for construction and installation of the CASA Radio Tower Site, not to exceed \$50,000.00.

ARTICLE II - COMPLAINTS AND/OR LEVEL OF SERVICE; AMENDMENTS

- A. Any complaints regarding the level of service provided by MESQUITE to GARLAND shall be directed to the City Manager of MESQUITE who, in either case, shall take appropriate action as indicated. This provision does not limit the statutory and constitutional rights of the parties to seek the relief to which either party might be entitled by law or equity.
- B. This Agreement shall be amended only through written agreement duly authorized by both MESQUITE and GARLAND City Councils.

ARTICLE III. - FORCE MAJEURE

- A. If by reason of force majeure either party hereto shall be rendered unable wholly or in part, to carry out the obligations under this agreement, then such party shall give notice and full details of such force majeure in writing to the other party. The duties of the party giving such notice, so far as it is affected by such force majeure, shall be suspended during the continuance of the inability then claimed, as herein after provided, but not a longer period, and any such-party shall endeavor to remove or overcome such inability with all reasonable dispatch.
- B. The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts, other industrial disturbances, acts of public enemy, orders of any kind of the government of the United States, or the State of Texas, or any civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or other causes not reasonably within the control of the party claiming such inability.
- C. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having difficulty, and that the above requirements that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or acceding to the demands of the demands of the opposing

party or parties which such settlement is unfavorable to it in the judgment of the party having the difficulty.

- D. It is specifically expected and provided, however, that in no event shall any force majeure relieve GARLAND of its obligation to make payments as required under Article I of this Agreement or from its obligations to MESQUITE.

ARTICLE IV. - TERM

- A. The initial term of this Agreement will be one year from the Effective Date with the ability to renew in one (1) year increments upon the agreement of the parties. Either party may terminate its participation under this Agreement upon sixty (60) days advance written notice to the other party.
- B. It is hereby agreed that either of the parties hereto may terminate this Agreement upon giving written notice sixty (60) days prior to the date of termination. Duties to make payment for services performed shall survive the termination of this Agreement and shall not expire until the resolution and disposition of any claims made or liability incurred or potentially incurred by MESQUITE as a result of this Agreement.

ARTICLE V. - VESTED RIGHTS

Any payments made by GARLAND shall be solely for services performed or costs incurred under the provisions of the Agreement and GARLAND shall not accrue any vested rights to any facilities, equipment or real or personal property of MESQUITE. It is further understood that this Agreement is contingent upon an agreement between MESQUITE and NCTCOG. In the event of the termination of the agreement between MESQUITE and NCTCOG then, except for the rights to reimbursement arising under the circumstances provided for herein, GARLAND shall have no vested rights to claims against MESQUITE whatsoever. MESQUITE makes no warranties or guarantees of the reliability or availability of data accumulated or assimilated by the CASA Radar Tower Site.

ARTICLE VI. - NOTICES

Notice from one Party to another Party regarding this Agreement shall be in writing and shall be delivered to the addresses shown below:

If to GARLAND:

City of Garland
Attn: City Manager
200 N. 5th Street, 4th floor
Garland, Texas 75040

If to MESQUITE: City of Mesquite

Attn: Ted Barron
City Manager
1515 N. Galloway Ave.
Mesquite, TX 75149

The above contact information may be modified without requiring an amendment to the Agreement.

ARTICLE VII. - AUTHORITY TO ENTER AGREEMENT AND EFFECTIVE DATE

This Agreement shall become effective after each of the parties hereto have passed, approved such orders or actions as are necessary to authorize the governing body or executive officer of the governing body to enter into this Agreement and authorizing its execution and attestation by their respective officers. **The Effective Date of this Agreement shall be the date set forth at the beginning of this Agreement.**

ARTICLE VIII. - VENUE

Venue for any action arising out of this Agreement shall be in DALLAS COUNTY, TEXAS if in State Court, or in the Northern District of Texas, Dallas Division if in Federal Court.

ARTICLE IX - MULTIPLE COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

ARTICLE X - SEVERABILITY

In the event that one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability of this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein, but shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.

For the faithful performance of the terms of this Agreement, the parties hereto in their capacities as stated, execute this contract and affix their signatures.

CITY OF MESQUITE

Scott Kane 5.20.15
CITY MANAGER Date

Attest: *Sonji Land*
City Secretary

CITY OF GARLAND, TEXAS

Ray L. P. [Signature] 5.27.15
CITY MANAGER Date

Attest: *Kelene [Signature]*
City Secretary

