

RESOLUTION NO. 29-2015

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 DESIGN, PURCHASE AND MAINTENANCE OF A PROJECT 25 (P25) RADIO SYSTEM THAT IS COMPLIANT WITH THE ASSOCIATION OF PUBLIC SAFETY COMMUNICATIONS OFFICIALS – INTERNATIONAL (APCO) P25 INTEROPERABILITY STANDARDS.

WHEREAS, the City of Mesquite (Mesquite) and the City of Garland (Garland) have determined that it would be advantageous and beneficial to their respective citizens to implement a combined wide-area, multi-site, digital-trunked simulcast radio system that is compliant with the Association of Public Safety Communications Officials - International (APCO) Project 25 (P25) interoperability standards (P25 Radio System); and

WHEREAS, Mesquite and Garland seek approval to enter into an interlocal agreement to provide a P25 Radio System for municipal services that is essential and necessary to provide vital governmental services and will provide radio coverage for both cities and their respective users; and

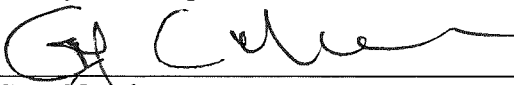
WHEREAS, the provision of police, fire and emergency medical services, the radio communications that are essential thereto and the work and services described in the interlocal agreement attached hereto, are essential to the public health and safety of the citizens of both Mesquite and Garland and are governmental functions and services pursuant to the Interlocal Cooperation Act, Texas Government Code, Chapter 791 that both Mesquite and Garland are authorized to perform individually; and

WHEREAS, the proposed P25 Radio System will provide Mesquite and Garland with effective and efficient communications that will benefit the greatest number of citizens both now and in the future.

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

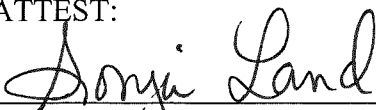
SECTION 1. That the City Manager is hereby authorized to execute the Interlocal Agreement with the City of Garland, attached hereto as Exhibit “A” and made a part hereof for all purposes, for the design, purchase and maintenance of a P25 Radio System.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 15th day of June, 2015.



Greg Noschese
Mayor Pro Tem

ATTEST:



Sonja Land
City Secretary

APPROVED:



B.J. Smith
City Attorney

EXHIBIT "A"

**Interlocal Agreement
Between the Cities of Mesquite and Garland
P25 Radio System**

**THE CITY OF GARLAND AND THE
CITY OF MESQUITE RADIO SYSTEM INTERLOCAL AGREEMENT**

This Interlocal Agreement (this "Agreement") is entered into as of the Effective Date between the **CITY OF GARLAND**, a Texas home-rule municipality with the authorization of its governing body, (hereinafter referred to as "Garland"), and the **CITY OF MESQUITE**, a Texas home-rule municipality with the authorization of its governing body, (hereinafter referred to as "Mesquite"). Both Garland and Mesquite are Texas home rule municipalities operating under the authority of their respective governing bodies and are hereafter sometimes referred to collectively as "the Cities" or the "Parties" or individually as a "City" or a "Party".

WITNESSETH

WHEREAS, Garland and Mesquite 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 for the purpose of performing governmental functions and services as set forth in the Act; and

WHEREAS, Garland and Mesquite are local governments as that term is defined in the Act and this Agreement is being entered into pursuant to and under the authority of the Act; and

WHEREAS, municipalities own and operate radio systems for the purpose of providing radio communications in support of their governmental operations; and

WHEREAS, each City has investigated and determined that it would be advantageous and beneficial to the citizens within its respective municipality to implement a combined wide area, multi-site digital trunked simulcast radio system that is compliant with P-25 interoperability standards; and

WHEREAS, in order to provide dependable/mission-critical radio service for use by each of the Cities and their respective users, Garland and Mesquite desire to enter into this Agreement to provide a radio system for municipal services for system coverage for use by the Cities and their respective users, which radio system coverage is essential and a necessary component of providing certain vital governmental services by each City, including, without limitation, police, fire, emergency medical, and public works protection provided by each City to ensure safe, effective, and efficient communications, and benefit the greatest number of citizens both now and in the future; and

WHEREAS, the Cities desire to enter this Agreement for the purpose of memorializing the agreement of the Cities regarding the System that will include the purchase, installation, implementation, maintenance, operation, management, and use of the System.

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

I. DEFINITIONS

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 either of Garland's or Mesquite's City Hall Offices are closed for business.

Interlocal Agreement Between the City of Garland and the City of Mesquite

“Communication System Agreement” or **“CSA”** means that certain Communication System Agreement to be entered into between Garland (as Buyer) and the Selected Vendor (as Seller) relating to the purchase and installation of the Shared Components of the System.

“Effective Date” means the later of the dates this Agreement is approved by the governing bodies of both Cities and signed by the authorized representatives of each City.

“FCC” means the Federal Communications Commission.

“FCC Licenses” means the radio communications licenses granted by the FCC to Garland and Mesquite, respectively.

“Governance Board” means the administrative governing body tasked with the operation and administration of the System and being more particularly described in Section 6.01 below.

“Infrastructure Components” means the equipment, materials, hardware, firmware, structures, and other items composing a portion of the System that are located within the municipal boundaries of Infrastructure Participants.

“Infrastructure Participants” means municipalities, whether one or more, other than Garland and Mesquite, 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.

“Joint Phase III Consultant”, “Joint Phase III Consulting Agreement” and **“Joint Phase III Consulting Services”** shall have the meanings set forth in Section 3.03 of this Agreement.

“Non-Infrastructure Participants” means municipalities, whether one or more, that participate in the System by using services provided by the System but that do not own Infrastructure Components of the System located within their respective municipalities.

“Non-Shared Components” means the equipment, materials, hardware, firmware, structures, and other items comprising a portion of the System that are purchased by each of the respective Cities individually and are not Shared Components. These Non-Shared Components shall be itemized in detail by an addendum executed by both Cities and attached to this Agreement, and incorporated by reference as Exhibit A, after design review by the Selected Vendor.

“Non-Shared Costs” means the expenses to be incurred by the respective Cities relating to Non-Shared Components and any other expenses that are not Shared Costs. These Non-Shared Costs shall be itemized in detail by an addendum executed by both Cities and attached to this Agreement, and incorporated by reference as Exhibit B, after design review by the Selected Vendor.

“Participant Agreement” means an interlocal agreement executed between a Participant and either (i) both Parties; or (ii) one Party with the written consent of the other Party. A Participant Agreement shall expressly set forth all rights, duties, obligations, and responsibilities of the Participant relating to the Participant’s use of the System.

“Participant” means an Infrastructure Participant or Non-Infrastructure Participant and **“Participants”** collectively means all Infrastructure Participants and Non-Infrastructure Participants.

“Participant Fee Fund” means the fund consisting of Participant Fees and being more particularly described in Section 9.07 of this Agreement.

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

“RCC” means RCC Consulting, Inc., a Delaware Corporation.

Interlocal Agreement Between the City of Garland and the City of Mesquite

“**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, 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 both Parties agree to purchase the Shared Components of the System and each Party individually agrees to purchase its Non-Shared Components of the System.

“**Selected Maintenance Vendor**” means the vendor both Parties agree will provide ongoing repair, maintenance, and support (hardware and software) of the Shared Components of the System.

“**Separate Phase III Consulting Agreement**” shall have the meaning set forth in Section 3.03 of this Agreement.

“**Shared Components**” means the equipment, materials, hardware, firmware, structures, and other items comprising a portion of the System whose ownership is shared by the Parties. These Shared Components shall be itemized in detail by an addendum executed by both Cities and attached to this Agreement, and incorporated by reference as Exhibit C, after design review by the Selected Vendor.

“**Shared Costs**” means those costs relating to the purchase, installation, operation, repair, maintenance, and upgrade of the Shared Components of the System including, but not limited to, all amounts to be paid pursuant to the SMA relating to repair and maintenance of the Shared Components of the System. Shared Costs shall also include out of pocket costs incurred by Garland prior to the Effective Date of the CSA relating to the preparation and advertising of the RFP, and costs related to negotiating and preparing the CSA, including reasonable legal fees, if any, for outside counsel incurred by Garland on behalf of both Cities. These Shared Costs shall be itemized in detail by an addendum executed by both Cities and attached to this Agreement, and incorporated by reference as Exhibit D, after design review by the Selected Vendor.

“**System**” means a wide area, multi-site (“simulcast”) digital trunked radio system compliant with P-25 interoperability standards as more expressly defined in the CSA and shall include the Shared Components and Non-Shared 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 Shared Components of the System.

“**Technical Advisory Board**” means the group of technical personnel selected to advise the Governance Board and being more particularly described in Section 6.04 below.

“**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 each 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, both Parties are subject to Article III, Section 52a of the Texas Constitution prohibiting unfunded debt. All

expenditures to be made by each City under the terms of this Agreement shall be subject to such City'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 Party 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 City's next fiscal year. In the event the City Council of either City fails to appropriate funds in any fiscal year during the Term of this Agreement for the payment of all obligations of such City under the terms of this Agreement for such fiscal year, such Party shall have the right to terminate this Agreement by giving the other Party written notice of the non-appropriation of funds within five (5) days after such City fails to appropriate the necessary funds. The termination of this Agreement as a result of either 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, either Party may terminate this Agreement without cause prior to the end of the Initial Term subject to the following:

- (i) The termination date must fall on September 30th of the year of termination; and
- (ii) The Party desiring to terminate this Agreement must give the other Party at least seven hundred and twenty (720) days prior written notice of termination of this Agreement.

2.04 Effect of Termination of this Agreement Pursuant to Sections 2.02 or 2.03 above. In the event either Party terminates this Agreement pursuant to Section 2.02 or 2.03 above, the following provisions shall apply:

- (i) The Party terminating this Agreement shall not be entitled to reimbursement from the non-terminating Party for expenditures related to the purchase, installation, maintenance, or repair of the System paid by the terminating Party prior to the date of termination; provided, however, the terminating Party shall continue to own its undivided 50% interest in the Shared Components of the System and shall continue to be entitled to its proportionate share of the net proceeds from the sale of any Shared Components as more fully set forth in Article X of this Agreement;
- (ii) Prior to the date of termination, the terminating Party must pay any remaining financial obligations related to its share of Shared Costs incurred or accrued prior to the date of the termination;
- (iii) Prior to the date of termination, the Party terminating this Agreement shall reimburse the non-terminating Party and all Infrastructure Participants for reasonable costs associated with the reconfiguring of the System that are necessary for the non-terminating Party to continue to access, use, maintain, and repair the Shared Components of the System, such as microwave realignment and licensing fees;
- (iv) Garland will receive the ten (10) 700 Mhz radio frequency channels from the System registered in the name of the City of Garland and Mesquite will receive the six (6) 700 Mhz radio frequency channels from the System registered in the name of the City of Mesquite;
- (v) All Non-Shared Components of the System shall continue to be owned 100% by the Party that purchased such Non-Shared Component;
- (vi) All Infrastructure Components shall continue to be owned as more fully set forth in the Participant Agreement(s) between one or more of the Parties and Infrastructure Participant(s);
- (vii) Both the terminating Party and the non-terminating Party shall have the right after termination of this Agreement to continue to access, use, maintain, repair, and upgrade the Shared Components (but not the Non-Shared Components) located on property owned or leased by the other Party

without compensation to or interference by such other Party, it being understood, acknowledged, and agreed by both Parties that, because of (1) the critical function of the System as originally designed and installed relative to providing communication across jurisdictional lines during events in which public safety mutual aid is provided between or among the Parties for the benefit of the Party receiving the assistance from the other Party; and (2) the need to provide system redundancy to better ensure continued operation of the System in the event one or more of the Shared Components of the System is temporarily non-operational, the continued use by each Party of the Shared Components located on property owned, leased, or licensed by the other Party serves the public purpose of both the terminating Party and the non-terminating Party; and

(viii) 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) The Party terminating this Agreement shall not be entitled to reimbursement from the non-terminating Party for expenditures related to the purchase, installation, maintenance or repair of the System paid by the terminating Party prior to the date of termination; provided, however, the terminating Party shall continue to own its undivided 50% interest in the Shared Components of the System and shall continue to be entitled to its proportionate share of the net proceeds from the sale of any Shared Components as more fully set forth in Article X of this Agreement;
- (ii) Prior to the date of termination, the terminating Party must pay any remaining financial obligations related to its share of Shared Costs incurred or accrued prior to the date of the termination;
- (iii) Garland will receive the ten (10) 700 Mhz radio frequency channels from the System registered in the name of the City of Garland and Mesquite will receive the six (6) 700 Mhz radio frequency channels from the System registered in the name of the City of Mesquite;
- (iv) All Non-Shared Components of the System shall continue to be owned 100% by the Party that purchased such Non-Shared Component;
- (v) All Infrastructure Components shall continue to be owned as more fully set forth in the Participant Agreement(s) between one or more of the Parties and Infrastructure Participant(s);
- (vi) Unless both Parties agree in writing to discontinue the use of the Shared Components of the System, both the terminating Party and the non-terminating Party shall have the right after termination of this Agreement and for so long as the other Party continues to use the Shared Components of the System, to continue to access, use, maintain, repair, and upgrade the Shared Components (but not the Non-Shared Components) located on property owned or leased by the other Party without compensation to or interference by such other Party, it being understood, acknowledged, and agreed by both Parties that, because of (1) the critical function of the System as originally designed and installed relative to providing communication across jurisdictional lines during events in which public safety mutual aid is provided between or among the Parties for the benefit of the Party receiving the assistance from the other Party; and (2) the need to provide system redundancy to better ensure continued operation of the System in the event one or more of the Shared Components of the System is temporarily non-operational, the continued use by each Party of the Shared Components located on property owned, leased, or licensed by the other Party serves the public purpose of both the terminating Party and the non-terminating Party; and
- (vii) The provisions of this Section 2.05 shall expressly survive the termination of this Agreement.

Interlocal Agreement Between the City of Garland and the City of Mesquite

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

III. CONSULTING SERVICES FOR PURCHASE, IMPLEMENTATION, INSTALLATION, TESTING, EVALUATION AND ACCEPTANCE OF THE SYSTEM

3.01 Phase I. Each City individually retained the services of RCC to review, evaluate, and make a recommendation regarding a potential upgrade and expansion of its public safety radio communications and operations systems ("Phase I") and in connection therewith, each City entered into a separate agreement with RCC regarding the services to be provided to each City in connection with Phase I (each a "Phase I Consulting Agreement"). The Parties agree that all costs and expenses incurred by each City pursuant to the Phase I Consulting Agreement entered into between each City and RCC shall be borne solely by the City entering into each respective Phase I Consulting Agreement.

3.02 Phase II. Based on findings made in connection with studies conducted by RCC in connection with Phase I, RCC recommended that both Cities' radio communications systems be upgraded and expanded and further recommended a combined wide area, multi-site digital trunked simulcast radio system for both Cities that is compliant with P-25 interoperability standards. Both Cities determined that the purchase and implementation of a combined wide area, multi-site digital trunked radio system compliant with P-25 interoperability standards ("Phase II") would result in significant efficiencies and savings in both human and financial resources for both Cities and would allow for a higher level of coordination of public safety services within both Cities resulting in enhanced safety of residents and other inhabitants of each of the Cities. Both Cities further determined that: (i) it would be prudent to obtain independent professional consulting and engineering support to assist the Cities in connection with Phase II to ensure that the System ultimately purchased and implemented would adequately meet the needs of both Cities both now and in the future; and (ii) by agreeing to use the same consultants and combining the work to be provided into a single combined project, duplicative efforts of such consultants could be reduced resulting in significant costs savings to both Cities. Accordingly, the Cities agreed to retain the consulting services of RCC to assist both Cities in connection with Phase II. The services to be provided by RCC in connection with Phase II include the development of detailed configuration requirements for the System and assisting the Cities with the preparation of the RFP, the evaluation of vendor proposals in response to the RFP, the evaluation of best and final offers, final vendor selection, and providing technical and engineering support to the Cities in connection with contract negotiations to purchase the System. In order to implement Phase II, Garland entered into an agreement with RCC to perform and provide the Phase II consulting services generally described herein and more specifically described in such agreement (the "Phase II Consulting Agreement"). The scope of work to be performed by RCC pursuant to the Phase II Consulting Agreement substantially benefits both Cities. Accordingly, the Cities have agreed to share in the costs, fees and expenses incurred in connection with the Phase II Consulting Agreement, with Mesquite to pay 27.5% up to a maximum of \$105,992.54 and Garland to pay the remaining 72.5% up to a maximum of \$279,434.87. Garland represents that it has paid RCC in full for all costs, fees and expenses incurred to date for services provided by RCC pursuant to the Phase II Consulting Agreement. Mesquite hereby agrees to reimburse Garland for Mesquite's portion of such costs, fees and expenses incurred to date to Garland within thirty (30) days after the Effective Date of this Agreement. Garland agrees that it shall not agree to any change orders in connection with the Phase II Consulting Agreement without the prior written consent of Mesquite.

3.03. Phase III Consulting Agreement. The Cities are nearing the completion of Phase II and desire to retain the services of a consultant acceptable to both Parties (herein the "Joint Phase III Consultant") to provide day to day project support in connection with the implementation and installation of the new System including, without limitation, assisting the Cities with the detailed System design review, System staging, FCC licensing, installation of the System equipment, System testing, performance evaluation, System acceptance and System cutover planning ("Phase III"). Both Parties will participate in the selection of the Joint Phase III Consultant and with negotiating the terms and conditions of any consulting agreement to be entered into with the Joint Phase III Consultant (the "Joint Phase III Consulting Agreement"). Garland agrees to provide a true and correct copy of any proposed Joint Phase III Consulting Agreement to Mesquite prior to the execution of such agreement. The Joint Phase III Consulting Agreement shall not exceed the maximum amount of \$500,000.00 and shall be subject to the review and approval of

both Garland and Mesquite. If both Parties approve of the Joint Phase III Consultant and the Joint Phase III Consulting Agreement on or before December 31, 2015, Garland shall sign the Joint Phase III Consulting Agreement setting forth the consulting services to be provided to both Parties in connection with Phase III (the "Joint Phase III Consulting Services"). In the event a Joint Phase III Consulting Agreement is approved by both Parties and signed by Garland, Garland agrees that it will not agree to any change orders or amend or modify such agreement without the prior written consent of Mesquite. At any time prior to the selection by both Parties of a Joint Phase III Consultant or prior to the approval by both Parties of the Joint Phase III Consulting Agreement, either or both Parties may notify the other Party that such Party intends to enter into a separate agreement with a consultant selected solely by such Party to provide Phase III consulting services only to such Party (each a "Separate Phase III Consulting Agreement"). In the event either Party notifies the other Party of its intent to enter into a Separate Phase III Consulting Agreement, the other Party will discontinue any efforts to negotiate or execute a Joint Phase III Consulting Agreement.

3.04 Payment of Joint Phase III Consulting Services. Provided both Parties approve of a Joint Phase III Consultant and both Parties approve of the terms of a Joint Phase III Consulting Agreement, the Parties will share in the costs, fees, and expenses of the Joint Phase III Consulting Services as follows:

- (i) Mesquite will pay 100% of the costs, fees and expenses incurred in connection with Joint Phase III Consulting Services provided in connection with the Non-Shared Components owned by Mesquite, subject, however to the maximum amount to be paid by Mesquite as more fully set forth in Section 3.05 below;
- (ii) Mesquite will pay 50% of the costs, fees and expenses incurred in connection with Joint Phase III Consulting Services provided in connection with the Shared Components, subject, however to the maximum amount to be paid by Mesquite as more fully set forth in Section 3.05 below;
- (iii) Garland will pay 100% of the costs, fees and expenses incurred in connection with Joint Phase III Consulting Services provided in connection with the Non-Shared Components owned by Garland, subject, however to the maximum amount to be paid by Garland as more fully set forth in Section 3.05 below; and
- (iv) Garland will pay 50% of the costs, fees and expenses incurred in connection with Joint Phase III Consulting Services provided in connection with the Shared Components, subject, however, to the maximum amount to be paid by Garland as more fully set forth in Section 3.05 below.

3.05 Limitation on Joint Phase III Consulting Services. Notwithstanding anything contained herein to the contrary, the Parties agree that the maximum collective amount of all costs, fees and expenses to be paid by the Parties in connection with Joint Phase III Consulting Services [including, without limitation, costs, fees, and expenses incurred in connection with both Non-Shared Components and Shared Components, but excluding any attorney's fees paid by either Party] shall be the sum of FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00).

3.06 Invoices for Payment of Joint Phase III Consulting Services. Garland agrees to make payments to the Joint Phase III Consultant in accordance with the payment and other terms of the Joint Phase III Consulting Agreement, subject to above Section 3.05. Mesquite shall reimburse Garland the percentages more fully set forth in Section 3.04 above, subject to the limitations set forth in Section 3.05. Such reimbursement shall be made by Mesquite to Garland within thirty (30) days following receipt of an invoice from Garland specifically describing by line item all costs, fees, and expenses charged and further containing sufficient information to identify whether each such cost, fee, or expense was incurred in connection with a Non-Shared Component owned by Garland, a Non-Shared Component owned by Mesquite, or a Shared Component. Garland shall further provide with such invoice evidence of the amount(s) paid by Garland to the Joint Phase III Consultant in connection with the invoice, together with a copy of the Joint Phase III Consultant's invoice to Garland, and any supporting documentation received by Garland from the Joint Phase III Consultant in support of such invoice. With each invoice presented to Mesquite,

Garland shall include a statement reflecting the collective amount paid to date by Garland and Mesquite for purposes of calculating the maximum amount to be paid for Joint Phase III Consulting Services pursuant to Section 3.05 above.

3.07 Payment of Separate Phase III Consulting Agreement. Each Party entering into a Separate Phase III Consulting Agreement shall be solely responsible for all costs, fees, and expenses incurred in connection with such agreement.

IV. PURCHASE AND INSTALLATION OF THE SYSTEM

4.01 RFP. Garland issued the RFP and received proposals from various vendors with respect to the purchase, installation, maintenance, and repair of the System. Both Parties shall have the option to participate in reviewing the proposals received in response to the RFP, in negotiating the best and final offer, and in selecting the Selected Vendor.

4.02 CSA for Shared Components. Both Parties will participate in negotiating the terms and conditions of the CSA. Garland agrees to provide a true and correct copy of the CSA to Mesquite prior to execution of the CSA. The CSA shall be subject to the review and approval of the governing bodies of both Garland and Mesquite. If the City Councils of both Cities approve of the terms of the CSA, Garland agrees to sign the CSA as "Buyer." If the governing bodies of both Garland and Mesquite have not approved the terms and conditions of the CSA on or before December 31, 2015, either Party may terminate this Agreement by written notice to the other Party in which event neither Party hereto shall have any further rights or obligations hereunder except for those that specifically survive the termination of this Agreement. Garland agrees that it shall not agree to any change order in connection with the CSA or amend or modify the CSA or SMA without the prior written consent of Mesquite.

4.03 Non-Shared Components. The Parties acknowledge that each Party will enter into separate purchase agreements with the Selected Vendor relating to the purchase by each Party of hardware, software and all other components of the System to be located within each Party's respective municipality and constituting Non-Shared Components of the System.

4.04 Invoices from the Selected Vendor and Selected Maintenance Vendor; Payments to Garland. The Cities understand and acknowledge that the Selected Vendor will be sending invoices with respect to the Shared Components to Garland as Buyer under the CSA and the Selected Maintenance Vendor will be sending invoices with respect to the Shared Components to Garland as Customer under the SMA. Garland agrees to deliver copies of each invoice received pursuant to the CSA and the SMA to Mesquite not later than three (3) business days following receipt of such invoice, together with any documentation received by Garland from the Selected Vendor or Selected Maintenance Vendor, as applicable, supporting such invoice. Garland shall timely pay all invoices to the Selected Vendor pursuant to the provisions of the CSA and to the Selected Maintenance Vendor pursuant to the provisions of the SMA (as applicable). Mesquite shall reimburse Garland for Mesquite's portion of Shared Costs in the percentage set forth in Section 8.05 with respect to invoices received pursuant to the CSA and in the percentage set forth in Section 9.02 with respect to invoices received pursuant to the SMA (after application of funds in the Participant Fee Fund as more fully set forth in Section 9.02 below) within thirty (30) days following receipt by Mesquite of: (i) an invoice from Garland requesting payment by Mesquite of Mesquite's portion of the Shared Costs reflected on such invoice (such invoice to include a statement of the amount of funds in the Participant Fee Fund, if any, to be applied to the payment of such invoice in accordance with Section 9.02 below); and (ii) evidence of the payment by Garland of such invoice to the Selected Vendor or Selected Maintenance Vendor, as applicable.

4.05 Disputed Invoices. If either City disputes any amount appearing on an invoice from the Selected Vendor or Selected Maintenance Vendor, the City disputing the invoice shall provide a written notice to the other City and the Selected Vendor or Selected Maintenance Vendor, as applicable, not later than ten (10) days following receipt of the invoice, identifying the amount(s) disputed and the basis for the dispute. A City 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 City shall, in fact, be determined to be due, the City 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 City 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. Both Cities agree to reasonably cooperate with the Selected Vendor, the Selected Maintenance Vendor and the other City with respect to the installation, operation, maintenance, repair, and use of the System 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, each City hereby grants to the other City a license to enter and access the property of the granting City including, without limitation, rights of ingress and egress over, across, upon and through the property of the granting City to the extent reasonable and necessary for the non-granting City to access and use the System and further grants to the non-granting City the right to enter and access including, without limitation, rights of ingress and egress over, across, upon and through those portions of the granting City's 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. Both Cities further agree to grant the Selected Vendor and the Selected Maintenance Vendor, their employees, agents, and subcontractors a license to enter and access including, without limitation, rights of ingress and egress over, across, upon and through such City's facilities and property for the purpose of installing, inspecting, and testing the System and, as long as the SMA is in effect, for the purpose of operating, maintaining, repairing, and upgrading the System. Notwithstanding the foregoing, each City may enforce reasonable and necessary security measures with respect to access to the City's respective property and facilities (including, without limitation, requirements that reasonable notice be given prior to such access) to the extent necessary to protect the City's property and facilities, the health and safety of the City's employees, residents, citizens, and businesses, or to comply with applicable state and federal laws and regulations. In the event access to a City's 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 other City, the City on whose property the component of the System is located shall provide, at said City's sole cost and expense, an employee or other authorized person to provide such escort, entry, and access within a reasonable time after request by the other City. In the event this Agreement is terminated pursuant to Sections 2.02, 2.03 or 19.02 of this Agreement, the provisions of this Article V and expressly the licenses and rights of entry, access, ingress, egress and use of the System granted pursuant to this Article V shall expressly survive such termination provided, however, the license, rights of entry, and rights of access, ingress, egress and use of the System granted herein shall be limited in the event of such termination solely to the Shared Components of the System and to facilities and property where Shared Components of the System are located. 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 such Party 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 and shall not be terminated during any period when the provisions of this Article V expressly survive the termination of this Agreement.

5.02 Enforcement of Rights of Entry, Access, Ingress, Egress and Use of the System. The Parties acknowledge that the System is being purchased by the Parties to provide emergency public safety services to the Cities' residents and that it is critical to both Parties to have continued and uninterrupted access to and use of the components of the System located in both Party's jurisdictions. 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 granted to each Party 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 either Party fails to allow or interferes with the other Party's rights of entry, access, ingress, egress

or use of the System as more fully set forth in Section 5.01 above, the other Party shall have the right to enforce its license and rights of entry, access, ingress, egress and use of the System granted to such Party pursuant to Section 5.01 above immediately without waiting the ninety (90) day period for such failure to rise to a Default under the terms of this Agreement. The provisions of this Section 5.02 shall expressly survive the termination of this Agreement.

VI. ADMINISTRATION AND OPERATION OF THE SYSTEM

6.01 Governance Board. A Governance Board shall be established for the purpose of administering and operating the System. Operating procedures and administrative development of the System shall be the responsibility of the Governance Board. The Governance Board shall be comprised of three (3) representatives from each City, appointed by the respective City Manager of each City, and one (1) representative from an Infrastructure Participant, appointed by the City Manager of such Infrastructure Participant (hereinafter the "Governance Board"). The representatives appointed by the respective City Managers of each City 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. All members of the Governance Board shall serve at the pleasure of the City 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 the governing body of the City appointing such member.

6.02 Adoption of Bylaws and Rules of the Governance Board. Subject to Section 6.03(i) below, the Governance Board shall adopt bylaws and rules governing its meetings and the conduct of business by the Governance Board no later than the earlier of: (i) the date the CSA is executed; or (ii) December 31, 2015.

6.03 Authority of the Governance Board. The Governance Board shall be authorized to:

- (i) Adopt bylaws and rules governing the meetings of the Governance Board and the conduct of business by the Governance Board subject to the following:
 - (1) a quorum of the Governance Board for the purpose of holding meetings and the transaction of business, including voting on any matters considered by the Governance Board, shall be five (5) members;
 - (2) the approval of any matter considered by the Governance Board shall require the affirmative vote of four (4) members of the Governance Board;
 - (3) no meeting of the Governance Board shall be held unless all members of the Governance Board have been given at least five (5) days prior written notice of the time and date of such meeting; and

- (4) the bylaws and rules of the Governance Board shall provide that members of the Governance Board shall serve at the pleasure of the City appointing such members to the Governance Board and may be removed from the Governance Board with or without cause at any time by action of the City Manager or the governing body of the City appointing such members.
- (ii) Adopt procedures relating to the operation and use of the System and the maintenance and repair of the Shared Components of the System;
- (iii) Establish the amount of Participant Fees to be paid by Infrastructure Participants and Non-Infrastructure Participants;
- (iv) Approve change orders or amendments to the CSA or SMA that do not require public funding and make recommendations to the respective Parties' governmental bodies of change orders or amendments to the CSA or SMA that require public funding;
- (v) Prepare and recommend an annual budget to the Parties on or before April 1st of each year relating to the operation, maintenance, and repair of the Shared Components for the next fiscal year;
- (vi) Make decisions regarding the operation and administration of the System that do not require public funding and make recommendations to the respective Parties' governmental bodies of System changes, upgrades, expenditures and other additional uses of the System that require public funding. Payment of public funds pursuant to the terms and obligations of this Agreement must be approved by the governing bodies or their designees of each of the Parties as required by their respective City Charters and ordinances; and
- (vii) Perform such other tasks and duties as the governing bodies of the Cities may from time to time mutually agree shall be performed by the Governance Board.

6.04 Technical Advisory Board. There shall be established a Technical Advisory Board comprised of a group of technical personnel selected to advise the Governance Board (hereinafter "Technical Advisory Board"). The Technical Advisory Board shall consist of two (2) representatives from each City, appointed by the respective City Managers of each City. Infrastructure Participants may also select up to two (2) persons to serve on the Technical Advisory Board provided, however, all representatives of Infrastructure Participants serving on the Technical Advisory Board shall have no authority to make any motions or to vote on any matter. All members representing the Parties and Infrastructure Participants on the Technical Advisory Board shall serve on the Technical Advisory Board until such member resigns in writing or is removed or replaced by the City Manager 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 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 the governing body of the City appointing such member.

6.05 Authority of the Technical Advisory Board. The Technical Advisory Board shall be authorized to:

- (i) Adopt bylaw and rules governing the meetings of the Technical Advisory Board subject to the following:
 - (1) a quorum of the Technical Advisory Board for the purpose of holding meetings and the transaction of business including voting on any matters considered by the Technical Advisory Board shall be three (3) voting members;
 - (2) the approval of any matter considered by the Technical Advisory Board shall require the affirmative vote of three (3) voting members of the Technical Advisory Board;

- (3) all matters receiving the affirmative vote of three (3) voting members of the Technical Advisory Board and all matters resulting in a tie vote by the members of the Technical Advisory Board shall be presented to the Governance Board for review and consideration provided, however, the Governance Board shall be advised of whether the matter was approved or resulted in a tie vote by the Technical Advisory Board; and
- (4) the bylaws and rules of the Technical Advisory Board shall provide that members of the Technical Advisory Board shall serve at the pleasure of the City appointing such members to the Technical Advisory Board and may be removed from the Technical Advisory Board with or without cause at any time by action of the City Manager or the governing body of the City appointing such members.
- (ii) Make recommendations to the Governance Board regarding technical standards for the operation of the System;
- (iii) Make recommendations to the Governance Board regarding the adoption or amendment of procedures relating to the operation and use of the System;
- (iv) Make recommendations to the Governance Board regarding maintenance, repair, and upgrades of the Shared Components of the System; and
- (v) Perform such other tasks as may from time to time be assigned by the Governance Board.

6.06 Limitations on Technical Advisory Board. Recommendations by the Technical Advisory Board shall not be effective unless and until approved by the Governance Board. All standards recommended by the Technical Advisory Board and approved by the Governance Board must be compatible with existing equipment of the System and may not violate any of the terms of this Agreement, any SMA or any other existing maintenance or hardware agreement.

6.07 Right to Access and Use System. Each City shall have the right to access and use the System in accordance with this Agreement and the procedures established by the Governance Board provided such City is not in Default of this Agreement. At no time shall the Governance Board be authorized to adopt any rule or procedure that conflicts with the terms or conditions of this Agreement, or prevents, hinders, obstructs, impedes, or inhibits a City from accessing or using the System as long as the City is not in Default of this Agreement.

VII. FUTURE USE OF SYSTEM BY PARTICIPANTS

All third parties who are serviced by the respective radio systems of Garland and Mesquite at the time of signing of this Agreement are eligible to participate as Participants in the System created by this Agreement provided (i) such third party executes and delivers a Participant Agreement to Garland or Mesquite; and (ii) such third party's participation in the System and the Participant Agreement executed by such third party has been approved by the Governance Board and the City Councils of both Garland and Mesquite. However, for purposes of this Agreement, including its intended operation and effect, the Parties specifically agree and contract that: (1) 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 Garland or Mesquite, either individually or collectively; and (2) 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 such third party to either of the Parties or to create any rights for the benefit of third parties, unless expressly provided herein.

VIII. OWNERSHIP INTERESTS OF THE PARTIES

8.01 Radio License Registration. Ten (10) FCC Licenses for the System will be registered to and held by Garland and six (6) FCC Licenses will be registered to and held by Mesquite. All licensing shall be in accordance

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with FCC standards. The Parties agree that during the Term of this Agreement, both Parties shall be jointly authorized to use the FCC Licenses registered to both Parties for the purpose of communicating through the System without compensation to the other Party.

8.02 Shared Components. Shared Components shall be jointly owned by the Parties in the following undivided interests:

Garland: 50% undivided interest; and
Mesquite: 50% undivided interest.

Nothing herein shall be construed as (i) granting a Party any interest in real property owned by the other Party or an Infrastructure Participant merely because a component of the System is located on or attached to the real property of a Party or Infrastructure Participant; or (ii) granting a Party an ownership interest in personal property paid entirely for and owned by the other Party or an Infrastructure Participant merely because said personal property constitutes a component of the System or the cost for operation, maintenance, or repair of the personal property constitutes a Shared Cost.

8.03 Non-Shared Components. Each Non-Shared Component shall be owned 100% by the Party paying for the purchase of such Non-Shared Component.

8.04 Infrastructure Components. The ownership of Infrastructure Components shall be determined as set forth in Participant Agreements entered into by one or both of the Parties with Infrastructure Participants.

8.05 Division of Shared Costs in Connection with Purchase and Installation of Shared Components. The Parties agree that the Shared Costs in connection with the purchase and installation of the Shared Components shall be allocated as follows:

Garland: 50%; and
Mesquite: 50%.

Each Party agrees to pay its share of the Shared Costs in connection with the purchase and installation of Shared Components in a timely manner in accordance with Section 4.04 above.

8.06 Payment of Non-Shared Costs in Connection with Purchase and Installation of Non-Shared Components. Each Party incurring costs with respect to the purchase and installation of Non-Shared Components has the sole responsibility to make payment to vendors providing equipment, services or facilities relating to the purchase and installation of such Party's respective Non-Shared Components of the System. Each Party agrees to pay all such Non-Shared Costs in a timely manner directly to the vendors with whom such Party contracts to provide such equipment, services or facilities. In no event shall either Party be held liable for debts incurred by the other Party in connection with any Non-Shared Costs owed by the other Party or as a result of expenditures made pursuant to this Agreement

IX. SYSTEM MAINTENANCE

9.01 Maintenance Agreement for Shared Components. Provided both Parties agree to a Selected Maintenance Vendor prior to the expiration of the warranty period on the Shared Components under the terms of the CSA, Garland will enter into a SMA with the Selected Maintenance Vendor to maintain the Shared Components of the System for a period of years agreed to by both Parties after acceptance of the System under the terms of the CSA and to provide infrastructure technical expertise and guidance to Mesquite and Garland personnel as well as repair and service of the Shared Components when the failure of the Shared Components is beyond the capabilities of the Garland Radio Shop. Garland and Mesquite will participate in the negotiation of the terms and conditions of the SMA. Garland agrees to provide a true and correct copy of the SMA to Mesquite prior to execution of the SMA. The SMA shall be subject to the review and approval of the governing bodies of both Parties and shall be entered into prior to the expiration of the warranty period on the Shared Components under the terms of the CMA. If the

governing bodies of both Parties do not approve of the form of the SMA before the expiration of the warranty period on the Shared Components under the terms of the CSA, either Party may enter into a separate maintenance agreement covering the Shared Components at such Party's sole cost and expense. The costs associated with the SMA and the daily cost of the operation, maintenance, and repair of the Shared Components of the System will be shared between Garland and Mesquite in the percentages and as more fully set forth below. The SMA shall be itemized in detail in an Addendum executed by the Parties and attached to this Agreement after design review by the Selected Vendor.

9.02 Division of Shared Costs in Connection with Operation and Maintenance of the Shared Components. The Parties agree that the Shared Costs in connection with the operation, maintenance, repair, and upgrades of the Shared Components of the System shall be allocated as follows:

Garland: 50%; and
Mesquite: 50%,

provided, however, all sums due under the terms of the SMA and all other costs and expenses incurred to operate, maintain, repair, and upgrade the Shared Components of the System shall be paid first out of the sums, if any, then existing in the Participant Fee Fund (less any operating reserve to be retained in the Participant Fee Fund in the amount approved by the Governance Board) with any remainder to be paid by the Parties in accordance with the percentages set forth in this Section 9.02.

9.03 Approval of Shared Costs in Connection with the Operation and Maintenance of the Shared Components. The Governance Board, after taking into consideration the recommendation of the Technical Advisory Board, will adopt procedures governing the operation and maintenance of the Shared Components of the System. All costs and expenses incurred to operate, maintain, repair, and upgrade the Shared Components shall be subject to review and approval of the Governance Board, provided, however, if any such expenditure is not covered by the SMA, such expenditure shall be subject to the prior approval of the governing bodies of the Parties or their designees.

9.04 Payment of Shared Costs in Connection with the Operation and Maintenance of the Shared Components. Shared Costs payable pursuant to the SMA shall be paid in accordance with Section 4.04 of this Agreement. Each Party agrees to pay any other Shared Costs in connection with the operation, maintenance, repair and upgrade of the Shared Components of the System which have been approved in accordance with the terms of this Agreement within thirty (30) days after being presented with an invoice by the other Party evidencing such other Party's payment of such invoice and sufficiently describing such Shared Costs. Any Shared Costs payable pursuant to this Section 9.04 shall first be credited with any funds then available in the Participant Fee Fund (less any operating reserve to be retained in the Participant Fee Fund in the amount approved by the Governance Board) as more fully set forth in Section 9.02 above.

9.05 Operation and Maintenance of Non-Shared Components. All costs and expenses of operating, maintaining, repairing and upgrading the Non-Shared Components shall be borne entirely by the Party that owns the Non-Shared Component. Each Party will be responsible for administering separate maintenance agreement(s) with vendor(s) or municipalities for the Non-Shared Components owned by each Party respectively. The Parties agree that, to the extent allowed by state law governing purchases made by municipalities, each Party shall pay their respective maintenance agreement, including the costs of mobile and portable radios, directly to such vendor or municipality with whom such Party has contracted for such services. The vendor or municipality will invoice each City separately. Each City may elect to pay per repair or enter into a comprehensive maintenance agreement with their selected vendor(s) or municipalities with respect to the Non-Shared Components of the System owned by such City.

9.06 Operation and Maintenance of Infrastructure Components. All costs and expenses of operating, maintaining, repairing and upgrading the Infrastructure Components shall be covered in Participant Agreements.

9.07 Participant Fee Fund. The Parties agree that there will be Infrastructure Participants and Non-Infrastructure Participants who receive beneficial use of the System although not a party, or 3rd party beneficiary, to this Agreement. The Parties agree to charge such Participants a reasonable fee, as set by the Governance Board, for this use and such fees shall be remitted to Garland to be held in trust for the benefit of both Parties to this Agreement. Garland shall establish an FDIC insured dedicated bank account designated solely for the purpose for collecting deposits of Participant Fees and paying costs and expenses in connection with the operation, maintenance, repair and upgrades of the Shared Components of the System (the “Participant Fee Fund”). Garland hereby covenants and agrees to deposit all Participant Fees received by Garland into the Participant Fee Fund. Garland further agrees that it shall not commingle any Participant Fees with any other Garland funds or bank accounts. Mesquite shall have the right at all times during the term of this Agreement to inspect and audit all deposits, checks and other records relating in any way to the Participant Fees and the Participant Fee Fund. Participant Fees shall be used only to pay expenses associated with the operation, maintenance, repair, and upgrade of the Shared Components of the System. If this Agreement is terminated by Garland for any reason other than a Default by Mesquite including, without limitation, if this Agreement is terminated by Garland pursuant to Sections 2.01, 2.02 or 2.03 of this Agreement, all funds in the Participant Fee Fund shall be transferred to Mesquite. Any funds in the Participant Fee Fund at the termination of this Agreement at the end of the Initial Term or any Renewal Term shall be divided with ½ to be paid to Mesquite and ½ to be retained by Garland. The provisions of this Section 9.07 shall expressly survive the expiration or termination of this Agreement.

9.08 Infrastructure Participants. All municipalities owning Infrastructure Components located within the municipality’s boundaries, such as a tower with communications repeaters and backhaul infrastructure connected to the System are considered to be Infrastructure Participants. The participation of all Infrastructure Participants will require approval by the Governance Board and the City Councils of both Cities. In addition, all Infrastructure Participants will be required to meet the minimum System requirements for site hardening, vendor maintenance agreements and reliability as defined by the Governance Board.

9.09 Additional Participants. The cities of Garland and Mesquite reserve the right to seek additional Participants from other local governments and political subdivisions of the State of Texas provided, however, no local government or political subdivision may participate in the System unless: (i) such local government or political subdivision has executed and delivered a Participant Agreement to Garland or Mesquite; and (ii) the participation in the System by such local government or political subdivision and the Participant Agreement executed by such local government and political subdivision has been approved by the Governance Board and the City Councils of Garland and Mesquite. The fees from all Participants including those Participants existing as of the execution date of this Agreement, and any additional Participants will be held in the Participant Fee Fund and used to support the operation, maintenance, repair, and upgrade of the Shared Components of the System.

9.10 Insurance on the Shared Components. In the event of any casualty or other damage or loss to the Shared Components, each Party shall be solely responsible for and shall pay all costs and expenses of repairing and replacing all Shared Components located within each Party’s respective jurisdiction. Prior to the date the risk of loss on the Shared Components is transferred to the Parties, each Party shall secure replacement cost “broad form” or “special form” property insurance insuring the Shared Components in such Party’s jurisdiction or self-insure the Shared Components located within each Party’s jurisdiction against damage and loss. Such insurance shall identify the other Party as a joint loss payee with respect to the Shared Components. If this insurance provision is satisfied through a program of self-insurance, the execution of this Agreement shall constitute the agreement by each self-insuring Party that such Party will repair or replace the Shared Components located within its jurisdiction at its sole cost and expense in the event of any damage or loss to the Shared Components within its jurisdiction.

9.11 Insurance on Non-Shared Components. In the event of any casualty or other damage or loss to the Non-Shared Components, each Party shall be solely responsible for and shall pay all costs and expenses of repairing and replacing all Non-Shared Components owned by such Party. Prior to the date risk of loss to the Non-Shared Components is transferred to each Party respectively, each Party shall secure replacement cost “broad form” or “special form” property insurance insuring the Non-Shared Components owned by such Party or self-insure the Non-Shared Components owned by such Party against damage and loss. If this insurance provision is satisfied through a program of self-insurance, the execution of this Agreement shall constitute the agreement by each self-

insuring Party that such Party will repair or replace the Non-Shared Components owned by such Party at its sole cost and expense in the event of any damage or loss to the Non-Shared Components owned by such Party. Notwithstanding any other provision within this Agreement to the contrary, in the event of any casualty or other damage or loss to the Non-Shared Components, the Party owning such Non-Shared Components is under no obligation to repair or replace the Non-Shared Components where the failure to repair or replace such Non-Shared Components does not adversely affect the quality, efficiency, cost, or use of the System by any other Participant.

9.12 Right to Audit. Each Party agrees that representatives of the other Party shall have access to and the right to review, audit, examine, and copy any and all documents related to all expenditures made by the other Party in connection with the purchase, installation, operation, maintenance, repair and upgrade of the Shared Components of the System. All such audits shall occur after reasonable notice and during normal business hours at the offices of the Party whose records are being audited. The cost of the audit shall be borne by the Party conducting the audit. The provisions of this Section 9.12 shall expressly survive the expiration or termination of this Agreement.

X. ACQUISITION/DISPOSITION OF THE SYSTEM

Components of the System acquired under this Agreement by each Party must be acquired and disposed of in accordance with applicable law and the Parties' respective City Charters. Each Party's undivided interest in the Shared Components may not be assigned, transferred, sold, or otherwise disposed of without the prior written consent of the other Party, such consent to be within the sole discretion of the consenting Party. Any sale of a Party's undivided interest in the Shared Components shall be subject to this Agreement and the written agreement by the purchaser of such interest to assume and agree to perform all of the terms, provisions, and obligations to be performed by the selling Party under the terms of this Agreement. In the event of the collective sale of both Parties' undivided interests in the Shared Components (which sale shall require the consent of both Parties), the proceeds of the sale (after deducting reasonable expenses agreed to by the Parties incurred in connection with the sale) shall be divided fifty percent (50%) to Garland and fifty percent (50%) to Mesquite. Each Party paying for assets to be acquired or making any type of payment pursuant to this Agreement shall make such payments from current funds legally available to that respective Party. The provisions of this Article X shall expressly survive the expiration or termination of this Agreement.

XI. 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.

XII. ASSIGNMENT AND SUBLETTING

Neither Party shall assign, sublet, subcontract, or transfer any interest in this Agreement without the prior written consent of the other Party, which consent may be withheld in the sole discretion of the other Party. No assignment, delegation of duties or subcontract under this Agreement will be effective without the written consent of both Parties.

XIII. ENTIRE AGREEMENT

This Agreement represents the entire and integrated agreement between Garland and Mesquite 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 both Parties. There are no oral agreements between the Parties.

XIV. 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 if and when received by the addressee. For purposes of notice, the addresses of the Parties shall be as set forth below; provided, however, that any Party shall have the right to change such Party's address for notice purposes by giving the other Party at least thirty (30) days prior written notice of such change of address in the manner set forth herein:

Notices to Garland:

Garland Representative:

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

With a copy to:

City Manager
City of Garland
200 N Fifth Street
Garland, Texas 75040

With a copy to:

City Attorney
City of Garland
200 N Fifth Street
Garland, Texas 75040

Notices to Mesquite:

Mesquite Representative:

Fire Chief
Mesquite Fire Department
1515 North Galloway Ave.
Mesquite, TX 75149
(972) 216-6267

With a copy to:

City Manager
City of Mesquite
1515 N. Galloway
Mesquite, Texas 75149

With a copy to:

City Attorney
City of Mesquite
1515 North Galloway Ave.
Mesquite, Texas 75149

XV. AUTHORITY TO SIGN/CITY COUNCIL AUTHORIZATION

The undersigned officer 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. Both Garland and Mesquite are executing this Agreement pursuant to duly authorized action of their respective City Councils.

XVI. 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.

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XVII. 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 state courts of competent subject matter jurisdiction in Dallas County, Texas.

XVIII. 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.

XIX. DEFAULT AND REMEDIES LIMITATION ON LIABILITY

19.01 Default. A Party shall be in default of this Agreement if such Party fails 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 ninety (90) days after written notice by the non-defaulting Party to the defaulting Party (a "Default").

19.02 Remedies. Both 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. Additionally, upon the occurrence of a Default, the non-defaulting Party shall have the right to terminate this Agreement by written notice to the defaulting Party and shall further have the right to exercise any rights and remedies available to such Party at common law, by statute, in equity or otherwise pursuant to the laws of the State of Texas.

19.03 Effect of Termination of this Agreement Pursuant to Section 19.02. In the event either Party terminates this Agreement pursuant to Section 19.02 above, the following provisions shall apply:

- (i) The defaulting Party shall not be entitled to reimbursement from the non-defaulting Party for expenditures related to the purchase, installation, maintenance, or repair of the System paid by the defaulting Party prior to the date of termination; provided, however, the defaulting Party shall continue to own its undivided 50% interest in the Shared Components and shall continue to be entitled to its proportionate share of the net proceeds from the sale of any Shared Components as more fully set forth in Article X of this Agreement;
- (ii) The defaulting Party shall continue to be responsible for all financial obligations related to its share of Shared Costs incurred or accrued prior to the date of the termination;
- (iii) The defaulting Party shall, within thirty (30) days after written demand by the non-defaulting Party, 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 to continue to access, use, maintain, and repair the Shared Components of the System, such as microwave realignment and licensing fees;
- (iv) Garland will receive the ten (10) 700 Mhz radio frequency channels from the System registered in the name of the City of Garland and Mesquite will receive the six (6) 700 Mhz radio frequency channels from the System registered in the name of the City of Mesquite;
- (v) All Non-Shared Components of the System shall continue to be owned 100% by the Party that purchased such Non-Shared Component;

- (vi) Infrastructure Components shall continue to be owned as more fully set forth in the Participant Agreement(s) between one or more of the Parties and the Infrastructure Participant(s); and
- (vii) The non-defaulting Party shall have the right after termination of this Agreement to continue to access, use, maintain, repair and upgrade the Shared Components (but not the Non-Shared Components) of the System located on property owned or leased by the defaulting Party without compensation to or interference by the defaulting Party, it being understood, acknowledged, and agreed by the Cities that, because of (1) the critical function of the System as originally designed and installed relative to providing communication across jurisdictional lines during events in which public safety mutual aid is provided between or among the Cities and (ii) the need to provide system redundancy to better ensure continued operation of the System in the event one or more of the Shared Components is temporarily non-operational, the continued use by the non-defaulting Party of the Shared Components located on property owned, leased, or licensed by the defaulting Party serves the public purpose of the defaulting Party.

19.04 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.

19.05 Limitation on Liability. Notwithstanding anything contained herein to the contrary, it is expressly understood and agreed by the Parties that neither Party shall be held liable for the acts or omissions of the other Party or for the acts or omissions of the other Party's agents, representatives or employees in the performance of this Agreement.

19.06 Survival. All provisions of this Article XIX shall expressly survive the expiration or termination of this Agreement.

XX. 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.

XXI. SUCCESSORS AND ASSIGNS

Each Party binds itself and its successors and assigns to the other Party to this contract. References in this Agreement to Garland and Mesquite whether individually or collectively, includes the successors and assigns of each of the respective Parties.

XXII. 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.

**XXIII. 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.

XXIV. 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.

XXV. 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.

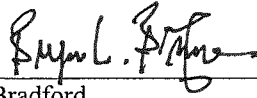
XVI. TIME IS OF THE ESSENCE

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

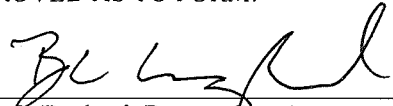
[Remainder of page intentionally left blank; Signature page to follow]

EXECUTED this 7 day of JULY, 2015.

CITY OF GARLAND, TEXAS


BY: 
Bryan Bradford
City Manager

APPROVED AS TO FORM:


Brian C. England, Deputy City Attorney

EXECUTED this 18 day of June, 2015.

**CITY OF MESQUITE,
a Texas home rule municipality**

BY: 
Ted Barron
City Manager

APPROVED AS TO FORM:

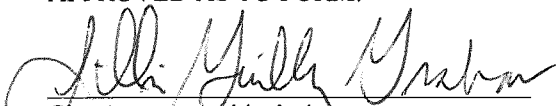

City Attorney or his designee

EXHIBIT "A"

Itemization of Non-Shared Components

(to be executed by the Parties and attached after design review by the Selected Vendor)

EXHIBIT "B"

Itemization of Non-Shared Costs

(to be executed by the Parties and attached after design review by the Selected Vendor)

EXHIBIT "C"

Itemization of Shared Components

(to be executed by the Parties and attached after design review by the Selected Vendor)

EXHIBIT "D"

Itemization of Shared Costs

(to be executed by the Parties and attached after design review by the Selected Vendor)