

STATE OF TEXAS

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**INTER LOCAL COOPERATION AGREEMENT
FOR RADIO SYSTEM USE**

COUNTY OF COLLIN

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This Inter Local Cooperation Agreement ("Agreement") is made by and among the CITIES OF PLANO, TEXAS, AND ALLEN, TEXAS, both Texas home-rule municipalities (collectively hereinafter referred to as "Cities"), and the Collin County Community College District, a public community college established under Chapter 130 of the Texas Education Code, (hereinafter referred to as "Collin College") acting by and through their duly authorized representatives (the Cities and Collin College collectively referred to as "the Parties" or individually as "Party").

Recitals

WHEREAS, the Cities and Collin College are political subdivisions within the State of Texas, each of which engages in the provision of governmental services for the benefit of their citizens; and

WHEREAS, the Interlocal Cooperation Act under Chapter 791 of the Texas Government Code (the "Act") provides authority for local governments of the State of Texas to enter into Interlocal agreements with each other regarding governmental functions and services as set forth in the Act; and

WHEREAS, the Cities jointly own, operate, and maintain the radio communications system exclusive of the radios owned individually by each city (hereinafter referred to as "System") for the purpose of providing radio communications in support of its governmental operations; and

WHEREAS, Collin College wishes to use certain portions of the System for its governmental operations; and

WHEREAS, the use of the System in the provision of governmental services benefits the public health and welfare, promotes efficiency and effectiveness of local governments, and is of mutual concern to the contracting Parties; and

WHEREAS, any payments that the Parties are required to make hereunder, if any, shall be made from current, available revenue;

NOW, THEREFORE, the Cities and Collin College, for and in consideration of the and terms and conditions contained herein and other valuable consideration the receipt and sufficiency of which are hereby acknowledged the Parties agree as follows:

I. TERM

The term of this Agreement is for a period of five (5) years, beginning on the 1st day of _____, 2016, and ending on the ____ day of _____, 2021 ("Initial Term"). Thereafter the term of this Agreement shall automatically be renewed for successive terms of three (3) years each (each a "Renewal Term") , unless sooner terminated by any Party by providing to the other Parties written notice of termination at least 180 days before the end of the then current term. For purposes of this Agreement

“term” shall mean the Initial Term and any Renewal Term. This Agreement may be terminated at any time during the term of this Agreement in accordance with Section 4.02 or Article VI of this Agreement.

II. OBLIGATIONS OF COLLIN COLLEGE

Section 2.01 Collin College shall use the System in accordance with this Agreement to provide integration of communications by Collin College between its users on the System for governmental operations.

Section 2.02 When using the System, Collin College shall abide by all applicable federal and state laws and regulations, including any regulations of Cities specific to the System. When Collin College uses the System for interoperability with Talkgroups (hereinafter defined) other than those provided by this Agreement, Collin College will also abide by the user rules of those Talkgroups.

Section 2.03 Collin College must provide a written request to the Plano System Manager to activate radios (hereinafter referred to as “Subscriber Units”) on the System. Such request must include the model and serial number of the Subscriber Unit, the name of the user, and identifying Talkgroups required in the Subscriber Unit.

Section 2.04 Collin College is responsible for furnishing its own Subscriber Units, which must be compatible with the APCO P-25 Digital system, and for maintenance of the Subscriber Units. Collin College is responsible for all software and hardware required to program these Subscriber Units should it choose a different manufacturer than the Cities.

Section 2.05 Collin College shall use reasonable efforts to acquire equipment necessary to utilize the System in accordance with all applicable local, state, and federal law. In the event Collin College is unable to obtain equipment necessary to utilize the System prior to January 1, 2017, Collin College shall provide 15 days written notice to the Cities prior to that date. In the event Collin College provides said written notice to the Cities prior to January 1, 2017, this Agreement shall terminate automatically without further obligation of the Parties.

III. OBLIGATIONS OF CITIES

Section 3.01 The Cities agree to lease to Collin College three (3) Talkgroups, which are a primary level of communication for users on the System (hereinafter referred to as “Talkgroup”)--comparable to a channel on a conventional radio system, for the exclusive use of Collin College. Talkgroups will be established for Collin College by the Cities.

Section 3.02 The Cities will not activate radios on Collin College Talkgroups nor make changes to Collin College radios without first receiving authorization from the designated representative of Collin College, unless in the opinion of the Cities, such action is necessary to eliminate harmful interference, in which case the Cities shall provide written notice of any such change to Collin College.

Section 3.03 Cities are also responsible for:

- (1) Coordinating Talkgroups among System users;

- (2) Grouping of Talkgroups to allow transmitting and receiving on all associated Talkgroups as required by Collin College;
- (3) The operation, maintenance, and control of the System.

Article IV. FEES

Section 4.01 The fees assessed against Collin College and due annually for services and use of the System are as follows:

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|-----|--|---------|
| (1) | Lease radio airtime (per radio, per month) | \$ 8.56 |
| (2) | Lease Talkgroup (per Talkgroup, per month) | \$62.97 |
| (3) | Administrative and Technical fee (per month) | \$96.30 |

None of the charges listed above include the cost of maintenance of mobiles, portables, or control stations/points which, if incurred by the Cities, may be billed separately to Collin College.

Section 4.02 The Cities may increase the fees listed in Section 4.01 at the beginning of each fiscal year by an amount not to exceed seven percent (7%) of the previous year's fees. The Cities will provide 120 days' prior written notice to Collin College before increasing the fees. Notwithstanding any other provision of this Agreement, if the Cities provide written notice to Collin College of an increase to any of the fees referenced in this Article, Collin College may terminate this Agreement by providing to the Cities written notice to terminate within 90 days after receipt of the Cities written notice to increase the System fees.

Section 4.03 Based on the fees set out in this Article, the Cities will calculate the annual fee due based upon the total number of radios and Talkgroups and submit a written invoice to Collin College on or before October 1st of each year. This amount is subject to change when Collin College adds or deletes the number of radios and/or Talkgroups in service. Collin College must notify the Plano System Manager in writing of any addition or deletion of radios and/or Talkgroups by facsimile to 972-941-7945 or by sending an e-mail to the following address: Rongo@plano.gov, or such other email address as Cities or the City of Plano may designate. This notification need not be sent in accordance with the notice requirements under Article XI of this Agreement. The amount owed for annual fees for subsequent additions of radio/Talkgroups will be prorated for the fiscal year in which they are added, invoiced immediately, and amounts will be due within 30 days of receipt of the invoice for the addition(s). The amount owed for annual fees will be adjusted for deletions the next fiscal year. No refunds will be given for payments made for radios/Talkgroups deleted after annual payment until the next fiscal year.

Article V. PAYMENT DUE

Collin College agrees to pay the Cities the annual fees specified in Article IV within thirty (30) days after the receipt of the invoice. Should Collin College add radios or Talkgroups to the service within a term, Collin College agrees to pay the additional fee(s) due within thirty (30) days after receipt of the invoice. All payments for expenses incurred as a result of the performance of this Agreement shall be made only from current revenues legally available to each respective Party.

Article VI. TERMINATION

Termination of this Agreement may occur by any one or more of the following:

- (1) Any Party may terminate this Agreement at any time by giving one hundred and eighty (180) days prior written notice to the other Parties in which event Collin College shall pay all fees incurred through the effective date of termination; or
- (2) Upon written notice by the Cities if the Cities permanently discontinue the operation of its System in which event this Agreement shall terminate on the date of discontinuance without refund or any fees paid by Collin College prior to the date of such termination; or
- (3) Upon written notice by the Cities to Collin College if Collin College is in breach of this Agreement and such breach is not been cured within thirty (30) days after receipt of such notice.

Article VII. RELEASE AND HOLD HARMLESS

To the extent allowed by law, each Party does hereby waive all claims against and release the other Parties and its respective officers, agents, and employees from any and all liability, claims, suits, demands, losses, damages, attorney's fees, including all expenses of litigation or settlement, or causes of action which may arise by reason of injury to or death of any person or for loss of, damage to, or loss of use of any property arising out of or in connection with this Agreement. In the event that a claim is filed, each Party is responsible for its proportionate share of liability, if any.

Article VIII. IMMUNITY

In the execution of this Agreement, none of the Parties waive, nor shall be deemed hereby to have waived, their sovereign or governmental immunity or any legal or equitable defense to any form of liability. The Parties by entering into this Agreement do not create any obligations, express or implied, other than those set forth herein, and this Agreement shall not create any rights in third parties not signatories hereto.

Article IX. ASSIGNMENT

This Agreement may not be assigned by any Party without the consent of the other Parties.

Article X. ENTIRE AGREEMENT

This Agreement represents the entire agreement between the Cities and Collin College, and supersedes all prior negotiations, representations and/or agreements, either written or oral. The Parties may amend this Agreement only by written instrument signed by Collin College and the Cities.

Article XI. NOTICES

Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified

mail, return receipt requested, addressed to the party at the address set forth below or on the day actually received when sent by courier or otherwise hand delivered.

If intended for Collin County College, to:

Collin College Representative:
Vice President of Administrative Services/CFO
Collin Higher Education Center
3452 Spur 399
McKinney, Texas 75069

If intended for Plano, to:

Plano Representative:
Director, Public Safety
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

If intended for Allen, to:

Police Chief
City of Allen
205 W. McDermott
Allen, Texas 75013

With copy to:

City Manager
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

With copy to:

City Manager
City of Allen
305 Century Parkway
Allen, Texas 75013

City Attorney
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith
1800 Ross Tower
Dallas, Texas 75201

Article XII. AUTHORITY TO SIGN/CITY COUNCIL AUTHORIZATION

The undersigned officer and/or agents of the Parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the Parties hereto. Parties have executed this Agreement pursuant to duly authorized action of their respective governing bodies on the dates indicated below.

Article XIII. SEVERABILITY

The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held to be contrary to the law or contrary to any rule or regulation having the force and effect of the law, such decisions shall not affect the remaining portions of the Agreement. However, upon the occurrence of such event, either Party may terminate this Agreement by giving the other Party thirty (30) days written notice.

Article XIV. 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 Collin County, Texas, and, if legal action is necessary, exclusive venue shall lie in Collin County, Texas.

Article XV. INTERPRETATION OF AGREEMENT

Although this Agreement is drafted by the Cities, this is a negotiated document. Should any part of this Agreement be in dispute, the Parties agree that the Agreement shall not be construed more favorably for any Party.

Article XVI. REMEDIES

No right or remedy granted herein or reserved to the Parties is exclusive of any right or remedy granted by law or equity; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Agreement may be waived without the express written consent of the Parties. It is further agreed that one (1) or more instances of forbearance by any Party in the exercise of its respective rights under this Agreement shall in no way constitute a waiver thereof.

Article XVII. SUCCESSORS AND ASSIGNS

The terms and conditions of this Agreement are binding upon the successors and assigns of the Parties.

Article XVIII COUNTERPARTS

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

EXECUTED on the dates indicated below:

COLLIN COUNTY COMMUNITY COLLEGE DISTRICT

BY: _____
Dr. J. Robert Collins
Chair, Board of Trustees

CITY OF PLANO, TEXAS

BY: _____
Bruce D. Glasscock
City Manager

APPROVED AS TO FORM:

Paige Mims, City Attorney

CITY OF ALLEN, TEXAS

BY: _____
Peter H. Vargas, City Manager

APPROVED AS TO FORM:

Peter G. Smith, City Attorney

ACKNOWLEDGEMENTS

STATE OF TEXAS §
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COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2016, by Dr. J. Robert Collins, Chair, Board of Trustees of the **COLLIN COUNTY COMMUNITY COLLEGE DISTRICT**, a public community college established under Chapter 130 of the Texas Education Code.

Notary Public, State of Texas

STATE OF TEXAS §
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COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2016, by **BRUCE D. GLASSCOCK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of such municipal corporation.

Notary Public, State of Texas

STATE OF TEXAS

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COUNTY OF COLLIN

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This instrument was acknowledged before me on the _____ day of _____, 2016, by **PETER H. VARGAS**, City Manager of the **CITY OF ALLEN, TEXAS**, a home-rule municipality, on behalf of such Municipality.

Notary Public, State of Texas