COMMUNICATIONS SYSTEM AGREEMENT

CATEGORY 1 – GOVERNMENT ENTITY

This **COMMUNICATIONS SYSTEM AGREEMENT** (the **"Agreement"**) is made and entered into by and between the **Cities of Plano and Allen ("Cities" or "City" when referred to individually)** acting herein by and through its duly authorized City Manager, and **City of Murphy ("USER"),** acting herein by and through its duly authorized City Manager, individually referred to as a "Party," collectively referred to herein as the "Parties." Plano and Allen shall include all employees, directors, officers, agents, and authorized representatives of Plano and Allen, respectively. **USER** shall include all employees, directors, officers, agents, and authorized representatives of **USER**.

RECITALS

WHEREAS, this Agreement is made under the authority of Sections 791.001-791.029, Texas Government Code; and

WHEREAS, each governing body, in performing governmental functions or is paying for the performance of governmental functions hereunder, shall make that performance or those payments from current revenues legally available to that party; and

WHEREAS, each governing body finds that the subject of this Agreement is necessary for the benefit of the public and each has the legal authority to perform and to provide the governmental function or service which is the subject matter of this Agreement; and

WHEREAS, each governing body finds that the performance of this Agreement is in the common interest of all parties and that the division of costs fairly compensates the performing party for the services or functions under this Agreement; and

WHEREAS, the **Cities** jointly own, operate, and maintain the radio communications system exclusive of the radios owned individually by each city (herein referred to as Joint Radio System) for the purpose of providing Public Safety voice radio and data communications and are the sole license holders of the Joint Radio Systems with all privileges and responsibilities thereof.

NOW THEREFORE, the **Cities** and **USER** agree as follows:

1. GRANT OF LICENSE

The **Cities** hereby grants the **USER** specific permission to operate **USER's** owned or leased field radio equipment or equipment attached and/or interfaced to the Joint Radio System infrastructure in accordance with the specific details and requirements for use as set forth in **"Exhibit A, Terms of Use,"** which is attached hereto, incorporated herein, and made a part of this Agreement for all purposes. Failure to comply with these specific details and requirements may result in the immediate withdrawal of the specified permissions.

2. TERM

This Agreement shall begin upon the last day executed by all authorized Parties ("Execution Date") and shall continue in full force and effect for a period of one year (the "Initial Term"). After the Initial Term, this Agreement shall automatically renew for successive one-year terms for nine additional years unless otherwise terminated in accordance with the provisions set forth herein and in **"Exhibit A"**.

3. COMPENSATION

USER shall remit payment to the City of Plano in the amount and manner set forth in **"Exhibit A"**.

4. LIABILITY

Each party agrees to be liable for any damages or losses that may be caused by its own negligence, omission or intentional misconduct. For purposes of this section, the term party shall include employees, directors, officers, agents, authorized representatives, subcontractors, consultants, and volunteers of the respective party. Nothing in the performance of this Agreement shall impose any liability for claims against either party other than for claims for which the Texas Tort Claims Act may impose liability.

5. INDEPENDENT ENTITY

It is expressly understood and agreed that **USER** shall operate as an independent entity as to all rights and privileges granted herein, and not as an agent, representative or employee of the **Cities**. Subject to and in accordance with the conditions and provisions of this Agreement, **USER** shall have the exclusive right to control the details of its operations and activities and be solely responsible for the acts and omissions of its employees, directors, officers, agents, authorized representatives, subcontractors, and consultants. **USER** acknowledges that the doctrine of *respondeat superior* shall not apply between the **Cities**, its employees, directors, officers, agents, and authorized representatives, and **USER** and its employees, directors, officers, agents, authorized representatives, subcontractors, and consultants. **USER** further agrees that nothing herein shall be construed as the creation of a partnership or joint enterprise between the **Cities** and **USER**.

6. HOLD HARMLESS

Each party agrees to hold harmless the other party and its respective officials, officers, agents, employees, in both their public and private capacities, 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 or injury to or death of any person or for loss of, damage to, or loss of use of any property arising out of or in connection with this Agreement. In the event that a claim is filed, each party shall be responsible for its proportionate share of liability.

7. NON-APPROPRIATION OF FUNDS

The **Cities** and **USER** will use best efforts to appropriate sufficient funds to support obligations under this Agreement. However, in the event that sufficient funds are not appropriated by either party's governing body, and, as a result, that party is unable to fulfill its obligations under this Agreement, that party (i) shall promptly notify the other parties in writing and (ii) may terminate this Agreement, effective as of the last day for which sufficient funds have been appropriated, without further obligation for payment.

8. RIGHT TO AUDIT

USER agrees that the **Cities** shall, at no additional cost to the **Cities**, during and until the expiration of three (3) years after termination of this Agreement, have access to and the right to examine, at reasonable times, any directly pertinent books, documents, papers, records, and communications of the **USER** involving transactions relating to this Agreement. **USER** agrees that the **Cities** shall have access during normal working hours to all necessary **USER** facilities and shall be provided adequate and appropriate workspace in order to conduct audits in compliance with the provisions of this section. The **Cities** shall give **USER** reasonable advance notice of intended audits.

9. ASSIGNMENT

USER shall not have the right to assign or subcontract any of its duties, obligations or rights under this Agreement without the prior written consent of the **Cities**. Which such right shall be granted solely at the discretion of the **Cities**. Any assignment in violation of this provision shall be void.

10. NO WAIVER

The failure of either party to insist upon the performance of any provision or condition of this Agreement or to exercise any right granted herein shall not constitute a waiver of that party's right to insist upon appropriate performance or to assert any such right on any future occasion.

11. GOVERNMENTAL POWERS/IMMUNITIES

It is understood and agreed that by execution of this Agreement, that neither **Cities** nor **USER** waives or surrender any of its governmental powers or immunities.

12. AMENDMENTS

No amendment to this Agreement shall be binding upon either party hereto unless such amendment is set forth in writing, dated subsequent to the date of this Agreement, and signed by all parties.

13. SEVERABILITY

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

14. TERMINATION

Should circumstances other than those set forth in Exhibit A or otherwise provided in this agreement exist that require one or more Parties to terminate this Agreement, then such termination shall be with the following conditions:

This Agreement may be terminated upon one (1) year advanced written notice from the Party seeking termination to the other Party. The Party terminating this Agreement shall reimburse the remaining Party for reconfiguring of the system, such as microwave realignment and licensing fees. Notwithstanding the foregoing, no obligations herein shall require the City to levy a tax or create a sinking fund.

15. CONFIDENTIAL INFORMATION

To the extent permitted by law, **USER** and its officers, agents and employees, agrees that it shall treat all information provided to it by the **Cities** as confidential ("City Information") and shall not disclose any such information to a third party without the prior written approval of the **Cities**, unless such disclosure is required by law, rule, regulation, court order, in which event **USER** shall notify the **Cities** in writing of such requirement in sufficient time to allow the **Cities** to seek injunctive or other relief to prevent such disclosure. **USER** shall store and maintain City Information in a secure manner and shall not allow unauthorized users to access, modify, delete or otherwise corrupt City Information in any way. **USER** shall notify the **Cities** immediately if the security or integrity of any City Information has been compromised or is believed to have been compromised.

16. FORCE MAJEURE

The parties shall exercise their best efforts to meet their respective duties and obligations hereunder, but shall not be held liable for any delay in or omission of performance due to force majeure or other causes beyond their reasonable control, including, but not limited to, compliance with any state or federal law or regulation, acts of God, acts of omission, fires, strikes, lockouts, national disasters, wars, riots, material or labor restrictions, transportation problems, existing contractual obligations directly related to the subject matter of this Agreement, or declaration of a state of disaster or emergency by the federal, state, county, or City government in accordance with applicable law.

17. NOTICES.

Notices required pursuant to the provisions of this Agreement shall be conclusively determined to have been delivered when (1) hand-delivered to the other party, its agents, employees, servants or representatives, (2) delivered by facsimile with electronic confirmation of the transmission (Fax numbers: Plano 972-941-5088; Murphy 972-468-4213), or (3) received by the other party by United States Mail, registered, return receipt requested, addressed as follows:

City of Plano	City of Allen	City of Murphy
Attn: Office of the CIO	Attn: IT Director	Attn: Police Chief
1117 E. 15th Street	305 Century Parkway	206 N. Murphy Road
Plano, Texas 75074	Allen, TX 75013	Murphy, TX 75094

18. GOVERNING LAW / VENUE

This Agreement shall be construed in accordance with the laws of the State of Texas. Venue for any action brought on the basis of this Agreement shall lie exclusively in state courts located in Collin County, Texas or the United States District Court for the Eastern District of Texas. In any such action, each party shall pay its own attorneys' fees, court costs and other expenses incurred as a result of the action.

19. SIGNATURE AUTHORITY

The person signing this Agreement hereby warrants that he or she has the legal authority to execute this Agreement on behalf of his or her respective party, and that such binding authority has been granted by proper order, resolution, ordinance or other authorization of the entity. The other party is fully entitled to rely on this warranty and representation in entering into this Agreement.

20. ENTIRETY OF AGREEMENT

This written instrument, including all Exhibits attached hereto, contains the entire understanding and agreement between the **Cities** and **USER** as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with this Agreement. Any previously executed Communication System Agreement (ILA) between the parties shall be terminated simultaneously with the final execution of this Agreement by both parties.

21. COUNTERPARTS.

This Agreement may be executed in one or more counterparts and each counterpart shall, for all purposes, be deemed an original, but all such counterparts shall together constitute one and the same instrument.

22. COOPERATIVE MANAGEMENT AND DISPUTE RESOLUTION

Problems may arise in the programming of subscriber radios, consoles, and consolettes; and managing microwave paths and undue RF interference; as well as in unexpected areas.

The Plano Radio Division, acting as the operating arm of the Joint Radio System's simulcast system, will fully participate in the resolution of any connectivity issues that may arise during the life of this Agreement. This participation includes the initial implementation of connectivity and

integration of the two networks. The Parties will rely on internal staff, contractors, and vendors, as required, to ensure full functionality of the Joint Radio System's simulcast system platform.

A party will promptly notify the others of any performance concern, problem, or information indicating a possible problem for the Joint Radio System's simulcast system. A party will provide the other parties, and their representatives and experts, with escorted access to any site, location or piece of equipment or infrastructure (where applicable) for an inspection and evaluation of a problem or issue facing the party's simulcast system or simulcast cell. Each party will provide the others with any information or data it may have, including from a radio-system-management server or similar server related to the issue. The parties will promptly exchange with one another their information, reports, results of any inspection or evaluation, expert analyses or recommendations, and proposals for avoiding, improving, or fixing any problem. The Plano Radio Division phone and email contact information shall be provided to **USER** as a first point of contact in order to address such pressing issues. The Plano Radio Division shall also be provided relevant phone and email information in order to respond and coordinate as needed. The parties will use their best efforts to solve a problem quickly. The Plano Radio Division shall respond within one-hour to any report of a system-wide infrastructure outage or priority-restore items at dispatch centers or fire station alerting systems.

In the event of a dispute regarding any aspect of this agreement, the dispute shall be discussed first amongst an assigned Technical Committee designee of **USER**, the City of Plano and the City of Allen in an attempt to seek an informal resolution within five business days of all parties being made aware of such dispute. If an agreement on a solution remains unresolved, then the dispute shall be referred to a joint meeting of representative City and **USER** management of each of the Parties within a reasonable period of time from the initial meeting. If the dispute continues to remain unresolved after this process, the Parties shall refer the dispute to outside non-binding mediation for resolution prior to engaging in litigation. All Parties shall share equally in the costs of a certified mediator and each Party shall be responsible for their own attorney fees.

[Signature Page Follows]

EXECUTED IN MULTIPLE ORIGINALS on this the ___ day of _____, 20____.

CITY OF PLANO, TEXAS

BY: _____
Mark D. Israelson
City Manager

APPROVED AS TO FORM:

_____
Paige Mims, CITY ATTORNEY

CITY OF ALLEN, TEXAS

BY: _____
Eric Ellwanger
Acting City Manager

APPROVED AS TO FORM:

_____
Peter G. Smith, CITY ATTORNEY

CITY OF MURPHY, TEXAS

By: _____
Michael Castro
City Manager

APPROVED AS TO FORM:

_____
for Wm. Andrew Messer, CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me on the _____ day of _____, 2019, by **MARK D. ISRAELSON**, City Manager of the **CITY OF PLANO, TEXAS,** a home-rule municipality, on behalf of such corporation.

_____
Notary Public, State of Texas

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me on the _____ day of _____, 2019, by **ERIC ELLWANGER**, Acting City Manager, of the **CITY OF ALLEN, TEXAS,** a home-rule municipality, on behalf of such Municipality.

_____
Notary Public, State of Texas

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me on the 3rd day of July, 2019, by **MICHAEL CASTRO**, City Manager, of the **CITY OF MURPHY, TEXAS,** a home-rule municipality, on behalf of such Municipality.

ALICIA LECHUGA MUNOZ
Notary Public, State of Texas
Comm. Expires 09-18-2020
Notary ID 129129619

Alicia Lechuga Munoz
Notary Public, State of Texas

EXHIBIT A

CATEGORY 1, TERMS OF USE

The Terms of Use are set forth below:

TERMS OF USE

1. The installation and maintenance of the Radio System infrastructure equipment is the responsibility of the City of Plano Radio Division unless otherwise stated in this Agreement.

2. The City of Plano Radio Division is the holder of the FCC (Federal Communications Commission) license(s) that the Joint Radio System uses for its operation. This Agreement shall not be construed or interpreted to grant, convey, or otherwise provide **USER** with any rights whatsoever to the Plano Radio Division FCC license(s) or to the Radio Frequency spectrum used by the Joint Radio System.

3. The City of Plano Radio Division makes no guarantee, either express or implied, as to radio signal strength or a specific level of radio coverage in a particular location. The **USER** is responsible for conducting appropriate and applicable in-building and geographical coverage testing to determine the expected radio coverage level for **USER**'s equipment.

4. **USER** will be responsible for the acquisition of all equipment and ensuring the proper programing and maintenance of all equipment that **USER** will be utilizing in connection with the Joint Radio System infrastructure, including, but not limited to, Subscriber Radios, consoles, and special equipment.

5. In order to ensure hardware and software compatibility with the Joint Radio System infrastructure, all Subscriber Radios and consoles intended for use by **USER** on the Joint Radio System shall be compliant with Project 25 Phase II standards established by the Telecommunications Industry Association. The use of unauthorized radios on the Joint Radio System may result in suspended operation of the radios and/or termination of the Agreement.

The City of Plano operates a radio shop for the mutual benefit of all users of the Joint Radio System. The radio shop provides day-to-day system administration as well as centralized shipping and receiving for all mobile and portable repairs. When radios return from repair, the radio shop verifies their operation and programs the unit as required. To ensure optimum interoperability of thousands of radios on this network, infrastructure owners on this joint radio system are expected to have their radio programming done exclusively by the City of Plano Radio Shop. The radio shop offers a drive-up service to assist in troubleshooting radio issues in vehicles in addition to the functions outline in Item 23 of this ILA.

The radio shop is generally open Monday-Friday 7:30 a.m. to 4 p.m. If service is required after hours, the on-call technician will respond. After hours responses shall be limited to service affecting system-wide infrastructure or priority-restore items at dispatch centers, fire station alerting, at the sole discretion of the Plano Radio Manager. Mobile and portable service is not available after hours or weekends.

6. **USER** agrees to exclusively utilize antennas specifically approved by the radio manufacturer for use with the specific models of **USER**'s radios. The use of short, broad spectrum, or "stubby," antennas is not recommended. **USER** shall be solely liable for coverage gaps in the event **USER** utilizes short broad spectrum or stubby antennas or other antennas not approved by the manufacturer for use with the specific models of **USER**'s radios.

7. No antenna gain greater than 3 DB will be allowed for mobiles and consolettes.

8. **USER** shall use due diligence in the maintenance and configuration of its Subscriber Radio equipment to ensure that no **USER** radio or console causes a degradation to the Joint Radio System operation. The City of Plano Radio Division shall have the right to remove from operation any field radio unit or equipment owned or leased by **USER** that is operating on, attached and/or interfaced to the Joint Radio System infrastructure, if the Plano Radio Division determines in its sole reasonable discretion that such equipment is causing interference or harm to the Joint Radio System in any way. The Plano Radio Division reserves the right to request that **USER** operated field radio units or equipment operating on, attached and/or interfaced to the infrastructure be tested for proper operation and/or repaired by the Plano Radio Division or an authorized radio repair facility approved by the Plano Radio Division. Any costs incurred for such testing or repair that are not covered by payment of the Infrastructure Support Fee of the will be the sole responsibility of **USER.** Furthermore, the Plano Radio Division shall have the right to deactivate, without prior notification to or consent of **USER,** any field radio or other **USER** equipment suspected of causing interference, intentionally or unintentionally, to any other radios on the Joint Radio System or to the Radio System's overall operation.

9. **USER**'s radios may be used for voice and data radio communications over the Joint Radio System infrastructure in accordance with the terms and conditions of this Agreement for as long as this Agreement remains in effect.

10. The Plano Radio Division will be responsible for managing infrastructure loading and demand. The City of Plano Radio Division reserves the right, without notice to incumbent users, to enter into a similar agreement with other entities or to deny the addition of new Subscriber Radio equipment to any user of the Joint Radio System. The Plano Radio Division shall have discretion in determining whether to allow additional users or radios based on the Joint Radio System's Coordination Committee determination of whether such addition to the Joint Radio System can be made without adversely impacting the Radio System. The City of Plano agrees to not enter into a similar agreement with other entities or allow additional users or radios from other entities if it is reasonably calculated to result in the future denial of a reasonable request by **USER** to add new Subscriber Radio equipment.

11. **USER** is prohibited from utilizing telephone interconnect on the Joint Radio System. This prohibition shall include, but is not limited to, connecting to either the PSTN (Public Switched Telephone Network) or **USER**'s internal phone system(s) through a console patch into the Joint Radio System or to any Subscriber Radio on the Radio System.

12. Due to the radio infrastructure resource allocations required by "Private Call," **USER** is not permitted to utilize "Private Call" on the Joint Radio System.

13. **USER's** utilization of data communications on the Joint Radio System will be limited to the Radio System's over-the-air programming ("OTAP") or over-the-air rekeying ("OTAR") functions. Performance of data communications over the Joint Radio System is not guaranteed. For programming changes involving more than ten Subscriber Radios, **USER** agrees to coordinate with the Plano Radio Division prior to executing changes to minimize impact on other users and the Radio System.

14. The use of OTAR in association with Subscriber Radio encryption is prohibited without prior approval of the Plano Radio Division. Administration of encryption keys will be performed exclusively by the Plano Radio Division. **USER** may utilize and administer other encryption methods as required.

15. The Plano Radio Division will provide **USER** with an Advanced System Key (ASK) for use with the **USER's** Subscriber Radios only. The ASK will expire annually, and **USER** shall be responsible for requesting a new ASK 30 days prior to expiration, if one is required. **USER** will be responsible for safeguarding the security of the ASK to prevent theft and/or loss. **USER** agrees to notify the Plano Radio Division immediately upon the theft or loss of the ASK.

16. The Plano Radio Division will assign the **USER** Talk Group IDs unique to **USER** operation. All Talk Group names shall include a prefix unique to the **USER's** agency. No other agency will be authorized to use **USER** Talk Groups without the express written permission of **USER,** and a copy of such permission must be on file with the Plano Radio Division before such use may occur. The Plano Radio Division reserves the right to require certain Talk Group IDs to be programmed in **USER** radios. Additionally, the Plano Radio Division shall have the right to limit the number of Talk Group IDs to be used by **USER** and to disable Talk Groups IDs as it deems appropriate. The Plano Radio Division will provide no less than 20 Talk Group IDs to **USER**.

17. The Plano Radio Division has established a coordinated Interoperable Communications Plan to apply to Joint Radio System and the users of its Radio System. **USER** agrees to participate in the Plan and include the Plan's interoperable Talk Groups in the programming of its Subscriber Radios and Console Systems.

18. Roaming to other systems or the use of **USER**'s Talk Groups on other trunked systems that are interconnected to the Joint Radio System is prohibited without prior approval by the Plano Radio Division. Roaming to other trunked systems will be limited to the Joint Radio System's interoperable Talk Groups, although this capability may be terminated by the Plano Radio Division if its use is determined to result in performance degradation to either the Joint Radio System or the interconnected trunked system.

19. **USER** may utilize a Network Management Console (NMC) to manage its own environment. **USER** is responsible for acquiring and maintaining, at **USER**'s sole cost, all components required to connect the NMC to the Joint Radio System. The **USER's** NMC must be partitioned in a manner to limit access to **USER**'s own environment only and to prevent **USER** from viewing, accessing, or making any changes to equipment that is not owned or leased by **USER**. The **USER** must ensure the NMC is located in a secure area. USB ports on the NMC must be deactivated except during maintenance activity. All security patches related to operating systems and other associated

software must be maintained at current manufacturer-tested levels. No other software applications may be utilized by the NMC.

20. The Plano Radio Division generally maintains aliases for units operating on the Joint Radio System. If the **USER** has acquired the capability to modify its aliases, it may administer and maintain its own subscriber unit aliases. From that point, **USER** will be responsible for administering and maintaining its own subscriber unit aliases, and the Plano Radio Division will no longer administer and maintain the **USER's** subscriber unit aliases.

21. USB ports on the **USER's** Console Systems must be deactivated except during maintenance activity. All security patches related to operating systems and other associated software must be maintained at current manufacturer-tested levels. If required, all connectivity between the Console Systems and the Joint Radio System is the responsibility of the **USER**, including software, hardware and carrier services. Associated costs will be incurred by the **USER**. Unless otherwise approved by the Plano Radio Division, connectivity will be achieved through local terrestrial circuit facilities. The use of other connectivity methods, including, but not limited to, microwave or fiber, must be approved by the Plano Radio Division. **USER** may incur additional costs from the Plano Radio Division for other connectivity methods.

22. As applicable, the Plano Radio Division shall execute with Motorola Solutions a System Upgrade Agreement for the Console Systems and Site Repeater Systems that would be affected by the software upgrades, including those owned (or leased) and operated by the **USER**. Unless the **USER** is notified otherwise by the Plano Radio Division, the software for the Joint Radio System, all Site Repeater Systems and all Console Systems will be upgraded to the current level every two years. The **USER** will provide all reasonable coordination necessary for the upgrade of its Console Systems. **USER** acknowledges that reductions in functionality may occur during the upgrade process.

APPLICABLE FEES; TERMINATION; REFUNDS

23. **USER** shall pay the Plano Radio Division an annual Infrastructure Support Fee, per Subscriber Radio or console. This fee is payable in advance on an annual basis for all active radio IDs and consoles issued to **USER** at the time of the annual billing. Invoicing will occur on a pro-rata basis when new Radio IDs are issued or consoles added, and thereafter, at the beginning of each fiscal year. There will be no refunds or credits for radios or consoles removed from service during the fiscal year, however, the annual Infrastructure Support Fee paid for a radio or console that becomes permanently out of service during the year may be applied to the replacement radio or console.

24. Infrastructure Subscribers shall pay the City of Plano (Radio Division) an annual Infrastructure Support Fee in the amount of $32.00 per Radio or console per month and a $1.00 per radio/month network access fee for a total of $33.00 per month per month per radio/console. The monthly per Subscriber Radio support covers access to the primary master site in Plano and the back-up site in Allen, radio programming services by the City of Plano Radio Division, and the following City of Plano Radio Division services cited in the table below.

Radio Installation & Patching	Shipping & Receiving Devices
Loaner Program	Service & Repair
FCC License Management	Solution Engineering (Consultation)
Encryption & Key Management	Talk Group Assignment
Network Problem Resolution	Service Center
Network Upgrade Management	Tower Operation & Maintenance
Radio Monitoring	On-Call Support (7x24x365)

25. The Plano Radio Division shall have the right to increase any applicable fees under this Agreement each fiscal year to offset any increased costs incurred by the Plano Radio Division in the operation or maintenance of the Joint Radio System. Any increase in applicable fees will be effective at the beginning of the next Plano Radio Division fiscal year. The Plano Radio Division shall provide **USER** with 120 days' written notice of any intended fee increase, **provided, however**, that this notice period may be less than 120 days if Motorola Solutions provides the Plano Radio Division with less than 90 days' notice of an increase in the System Upgrade Agreement Fee and such reduced notice period shall not impact **USER**'s obligation to pay the increased fee. If the amount of increase in fees is more than a ten percent (10%) increase per console/radio as compared to the prior fiscal year, **USER** may elect to terminate this agreement by providing not less than thirty (30) days written notice prior to the start of the next billing cycle. In the event **USER** terminates this agreement due to an increase in fees that exceeds ten percent (10%) per console/radio as compared to the prior fiscal year, **USER** shall not be obligated to reimburse the remaining Party for reconfiguring of the system, such as microwave realignment and licensing fees. Notwithstanding the foregoing, no obligations herein shall require the City to levy a tax or create a sinking fund.

TERM

26. Either **USER** or the Plano Radio Division may terminate this Agreement for any reason, with or without cause, upon one (1) year written notice to the other party. If **USER** terminates, there will be no refunds or credits for any fee. If the Plano Radio Division terminates, the Plano Radio Division will issue a refund to the **USER** of all fees, pro-rated to the end of the current fiscal year. The Plano Radio Division, in its sole discretion, shall have the right to deny **USER** access to the radio infrastructure and/or the right to terminate the Agreement immediately if **USER** fails to make full payment of invoiced system fees within thirty (30) days of the date payment is due, unless **USER** has disputed the invoiced system fees. If **USER** has disputed the invoiced system fees but paid the undisputed portion of the invoiced system fees, the Plano Radio Division will continue to allow access to the radio infrastructure until resolution of the disputed invoice is complete and a reasonable time thereafter. By paying the undisputed portion of invoiced fees, **USER** is not waiving any claims, privileges, or rights to the disputed portion of the invoiced fees. The Plano Radio Division further reserves the right to terminate this Agreement, or deny access to the **USER**, upon notice of **USER** misuse of the Joint Radio System. In the event that the Plano Radio Division denies access to **USER** for an alleged misuse of the Joint Radio System, the Plano Radio Division shall immediately provide **USER** with written notice of the alleged misuse of the system and shall allow **USER** thirty (30) days to correct the default prior to terminating this Agreement. Notwithstanding the foregoing, the Plano Radio Division, in its sole discretion, reserves the right to immediately deny access to the **USER** if such action is required to prevent the spread of a security breach or threatened security breach or due to an emergency, operational issue, or other

critical incident between the Master Switches and the **USER's** environment. The Plano Radio Division will use best efforts to restore access to the **USER** as soon as possible, once the security breach, emergency, operational issue, or critical incident is resolved.

ADMINISTRATION OF THE JOINT COMMUNICATIONS SYSTEM

27. **Coordinating Committee.** Operation, administration and policy development of the Joint Radio System shall be the responsibility of the Joint Radio System Coordinating Committee, comprised of one (1) Designee from each City, appointed by the respective City Manager of Plano, Allen, and Murphy (hereinafter "Coordinating Committee"). Additional ex-officio members may be selected by the City Managers to serve on the Coordinating Committee and to assist the Committee, but shall have no voting authority.

28. The Coordinating Committee's duties will be to make recommendations to the respective Parties' governmental bodies of system changes, upgrades, additional uses and any other aspects of the Joint Radio System. The governing bodies or the designee of each of the Parties as required by their respective City Charters and ordinances must approve payment of monies, pursuant to the terms and obligations of this Agreement. Administrative decisions may be made by the Coordinating Committee.

29. The Coordinating Committee quarterly meeting schedule will be established by the appointed representative from each Party to the Joint Communications System Agreement.

30. **Technical Committee.** A committee of technical personnel shall be selected to advise the Coordinating Committee (hereinafter "Technical Committee"). The Coordinating Committee members shall be able to appoint up to four (4) persons to serve on the Technical Committee. The schedule for the Technical Committee will be set by the Coordinating Committee.

31. Technical Standards based on the most current microwave radio system technology, for the operation of the Joint Radio System shall be developed by the Technical Committee and approved by mutual agreement of the Coordinating Committee. Once approved, these standards must be compatible with existing equipment and may not violate any of the terms of this Agreement or of any existing maintenance or hardware agreement.

32. End User Group consists of both infrastructure and radio subscribers on the Joint System Radio Network. This group shall consist of a representative from each currently subscribing entity on the Joint System Radio Network. This group will receive regular updates on Joint System Network operations, including upgrades, technical direction and technology changes to the network.

COMPLIANCE WITH LAWS

33. The **USER** shall comply with all current and future Federal, State, and Local laws, Ordinances, and Mandates, including Federal Communications Commission rules and regulations regarding proper use of radio communications equipment. The **USER** will also comply with the guidelines, or procedures set out in this Agreement. Furthermore, the **USER** is responsible for enforcing such compliance by its employees, directors, officers, agents, authorized representatives,

subcontractors, and consultants for **USER** Subscriber Radio equipment. Furthermore, the **USER** will be responsible for payment of any fines and penalties levied against the Plano Radio Division (as the license holder) as a result of improper or unlawful use of Subscriber Radio equipment owned or leased by **USER.**

34. In order to comply with Federal, State, and Local Laws and/ or Mandates, the Plano Radio Division, as the license holder, may need to act on behalf of the **USER** regarding possible modifications, reconfiguration, or exchange of Subscriber Radio equipment in order to meet these obligations. For as long as this Agreement is in force, the **USER** will allow the Plano Radio Division to facilitate such activities on **USER's** behalf as necessary.

35. In the instance where **USER** Subscriber Radio equipment is to be replaced in order to be in compliance with Federal, State, and Local Laws and/or Mandates, title and ownership of such replacement Subscriber Radio equipment shall, upon delivery of Subscriber Radio equipment to the **USER's** site, pass directly to the owner of the equipment that is being replaced. The **USER** shall provide the Plano Radio Division, or its designee, with the serial number(s) and radio IDs of Subscriber Radio equipment to be replaced, as well as the serial number(s) of the new radio equipment. **USER** shall be liable for payment of any fees associated with radios deemed to be not in proper working order. **USER** shall be liable for payment of any fees associated with upgrades to Subscriber Radio equipment.

DEFINITIONS

36. The following definitions shall have the meanings set forth below and apply to this Agreement:

"Console System" shall mean all hardware and software associated with any dispatch console or set of consoles operated by the **USER** that are connected to the Joint Radio System Master Switches.

"Joint Radio System Coordinating Committee" ("Coordinating Committee") shall mean that group of individuals tasked with maintaining and administering the Joint Radio System infrastructure and selecting a Technical Committee. The Coordinating Committee shall determine and may periodically adjust the number of members and the method for selecting members for each classification of users with a goal of ensuring that the Technical Committee reflects the full range of user types.

"Infrastructure Support Fee" shall mean the annual fee charged by the Plano Radio Division to offset costs incurred in the operation and maintenance of the Joint Radio System.

"Interoperable Communications Plan" (the "Plan") means the plan developed and established by the Plano Radio Division and the Coordinating Committee to facilitate, enhance and simplify radio communications among all agencies utilizing the Joint Radio System or connecting their Subscriber Radio or Console Systems to the Joint Radio System Master Switches.

"Master Switch" shall mean the primary processing and network infrastructure to which all Console Systems and Site Repeater Systems must connect in order to operate on the Joint Radio

System. The primary Master Switch is currently located at the Plano Radio Division facility and the back-up facility in Allen.

"Over The Air Rekeying" ("OTAR") shall mean the management and support of Subscriber Radio encryption keys via over-the-air, radio channel transmission.

"Over the Air Programming" ("OTAP") shall mean the method of implementing programming changes to Subscriber Radios using the over-the-air data capabilities of the Joint Radio System.

"Private Call" shall mean a feature that reserves channel resources specifically for conversations between two Subscriber Radios.

"Site Repeater System" shall mean the base stations, shelter, tower and all site-specific hardware and software infrastructure associated with the provision of a radio site connected to the Joint Radio System Master Switches.

"Subscriber Radio" shall mean a radio that has a unique identification number and is programmed to operate on the Joint Radio System. The term shall include, but not be limited to, control stations (desk top radios), consoles, mobile radios, and portable radios.

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

"Technical Committee" A committee consisting of representative(s) from each entity utilizing the Plano and Allen Joint Radio System. This group will function as advisers to the Coordinating Committee regarding technology, new Subscribers, microwave network capacity planning, communication plan, and tasks assigned by the Coordinating Committee.

"End User Group" A group consisting of currently subscribing entities on the Joint System Radio Network that shall receive regular updates on Joint System Network operations, including upgrades, technical direction and technology changes to the network.

[End of Document]