

**INTERLOCAL AGREEMENT
FOR THE USE OF EMERGENCY SERVICES EQUIPMENT BY
THE WILLIAMSON COUNTY EMERGENCY SERVICES DISTRICT NO. 7**

THE STATE OF TEXAS

COUNTY OF WILLIAMSON

KNOW ALL BY THESE PRESENTS:

This Interlocal Agreement (the "Agreement") is made and entered into by and between WILLIAMSON COUNTY ("County"), and the WILLIAMSON COUNTY ESD NO. 7 ("ESD"), both of which are local governments and both of which are political subdivisions of the State of Texas (both being collectively referred to herein as the "Parties").

WITNESSETH:

WHEREAS, the Texas Interlocal Cooperation Act, V.T.C.A., Government Code, Chapter 791, Section 791.011(a) and Section 791.011(c)(2) provides that local governments may contract with other local governments to perform governmental functions and services that each party to the contract is authorized to perform individually; and

WHEREAS, County wishes to provide, and ESD wishes to receive assistance in procuring twenty (20) P25 digital subscriber units (mobile and portable radios) (the "Radios"); and

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

SECTION 1
AGREEMENT OF THE PARTIES

- A. The Parties understand and agree that the intent of this Agreement is to provide a "one time" lease package in order to assist the ESD in its procurement and operation of the Radios, and at this time, the County does not intend to provide any future recurring annual equipment lease/purchase assistance programs to the City or any other entity.
- B. The Parties agree and understand that this program is a lease with an option to purchase agreement.
- C. The ESD hereby acknowledges and understands that any financial assistance provided by the County under this Agreement shall not be considered a loan, grant, or gift. Furthermore, the County shall receive just compensation under this Agreement in exchange for its agreement to assist the City in its procurement and operation of the Radios.

- D. The ESD understands that the Radios and any radio equipment financed and leased by the County to the ESD shall remain the property of the County until the lease term expires and the ESD exercises its option to purchase the Radios.
- E. The ESD acknowledges and agrees that all amounts that become due to the County under this Agreement shall be paid in full regardless of any issues relating to the Radios' operability, serviceability and/or damage.
- F. The Radios shall be covered by an initial three (3) year warranty from Motorola. The County may or may not, at its sole discretion, purchase extended service warranties from Motorola at the end of the initial three (3) warranty period.
- G. **THE ESD ACKNOWLEDGES AND AGREES THAT THE COUNTY HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (A) THE NATURE, QUALITY OR CONDITION OF THE RADIOS; (B) THE SUITABILITY OF THE RADIOS FOR ANY AND ALL OF THE ESD'S ACTIVITIES AND USES; (C) THE COMPLIANCE OF OR BY THE RADIOS OR THEIR OPERATION WITH ANY LAWS, RULES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, INCLUDING, WITHOUT LIMITATION, THE FEDERAL COMMUNICATIONS COMMISSION (FCC); (D) THE FITNESS FOR A PARTICULAR PURPOSE OF THE RADIOS; OR (E) ANY OTHER MATTER WITH RESPECT TO THE RADIOS. THE ESD ACKNOWLEDGES THAT THE ONLY WARRANTIES, IF ANY, THAT MAY COVER THE RADIOS SHALL BE WARRANTIES PROVIDED BY THE MANUFACTURER OF THE RADIOS. THE ESD FURTHER ACKNOWLEDGES AND AGREES THAT HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE RADIOS, THE ESD IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE RADIOS, INFORMATION PROVIDED BY THE MANUFACTURER OF THE RADIOS AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY THE COUNTY. THE ESD FURTHER ACKNOWLEDGES AND AGREES THAT THE USE AND OPERATION OF THE RADIOS AS PROVIDED FOR HEREIN IS MADE ON AN "AS IS, "WITH ALL FAULTS" BASIS. THE ESD ACKNOWLEDGES AND AGREES THAT THE PROVISIONS OF THIS PARAGRAPH WERE A MATERIAL FACTOR IN THE DETERMINATION OF THE AMOUNT OF THE COMPENSATION THAT IS TO BE PAID TO THE COUNTY. THE TERMS OF THIS PARAGRAPH WILL SURVIVE ANY TERMINATION OF THIS AGREEMENT.**
- H. The ESD agrees that, if any cost for damage, loss, repair or replacement of the Radios is not covered by a warranty that is provided by the manufacturer of the Radios or insurance, the City shall solely bear the entire amount of such cost.
- I. The ESD acknowledges that the County or the County's contracted service provider shall provide template design and programming of the Radios, as well as basic installation, servicing and maintenance of the Radios throughout the term of this Agreement. Furthermore, the Parties hereto agree and understand that all repairs, replacement, installations, de-installations, template design, programming, services and maintenance of the Radios shall only be provided by or coordinated through the County.

- A. The ESD agrees to not "sub-let", loan or issue the Radios to any other agency or person.
- B. The Parties agree and understand that the County will not guarantee scheduled replacement of any of the Radios leased under this Agreement. The intent of this program is to provide immediate digital capabilities in a "one-time" offering. In the future, if changes in technology require radio replacements in order to meet the needs of the ESD, or if the ESD should require replacement of the Radios due to years of wear and tear, the ESD must replace the Radios at its own expense.
- C. The ESD shall be solely responsible for all accessories and advanced installation costs relating to the Radios.
- D. At all times during the term of this Agreement, the ESD must receive dispatching services from the Williamson County Emergency Communications Department.

SECTION 2 **PAYMENT TERMS**

- A. The entire lease/purchase price to ESD for the Radios shall be \$93,343.32 (plus accrued interest as set forth below) (the "Purchase Price").
- B. The ESD shall pay the Purchase Price by tendering annual payments to the County in the following amounts:

Fiscal Year (FY) 2009:	\$27,000.00*
FY 2010 – 2012:	\$17,000.00*
FY 2013:	\$15,343.32*

*Each payment shall bear interest at the rate of 3.5%.

- C. The first annual payment shall be due on or before January 31, 2009. Following the initial annual payment, the City shall thereafter tender its annual payments to the County on or before January 31st of each year.
- D. Upon the condition that the ESD pays the County the entire Purchase Price and any and all amounts that otherwise become due hereunder, the County shall assign, transfer, grant and deliver unto the ESD any and all rights of ownership that the County may have in the Radios. If the ESD fails to pay the entire Purchase Price or any other amounts that otherwise become due hereunder, the County shall have no obligation to assign, transfer, grant or deliver unto the ESD any of its rights of ownership in the Radios.

SECTION 3
TERM AND TERMINATION

- A. **Term.** The term of this Agreement shall commence upon the complete execution hereof and shall continue thereafter in full force and effect for seven (7) years, unless terminated earlier by either party in accordance with the terms of this Agreement.
- B. **Termination for Cause.** If either party commits an Event of Breach (a breach of any of the covenants, terms and/or conditions of this Agreement), the non-breaching party shall deliver written notice of such Event of Breach to the breaching party. Such notice must specify the nature of the Event of Breach and inform the breaching party that unless the Event of Breach is cured within ten (10) business days of receipt of the notice, additional steps may be taken to terminate this Agreement. If the breaching party begins a good faith attempt to cure the Event of Breach within ten (10) business days, then and in that instance, the ten (10) business day period may be extended by the non-breaching party, so long as the breaching party continues to prosecute a cure diligently to completion and continues to make a good faith attempt to cure the Event of Breach. If, in the opinion of the non-breaching party, the breaching party does not cure the breach within ten (10) business days or otherwise fails to make any diligent attempt to correct the Event of Breach, the breaching party shall be deemed to be in breach and the non-breaching party may, in addition to seeking any remedies available hereunder and/or under the law, terminate this Agreement.
1. Termination due to ESD'S Breach. Upon termination of this Agreement by the County for breach by the ESD, the ESD shall, at ESD'S sole expense and within 24 hours after the ESD'S receipt of the County's notice of termination, return to the County all Radios and full payment of all fees that are due as of the date of the termination.
 2. Termination due to County's Breach. Upon termination of this Agreement by the ESD for breach by the County, the County shall be obligated to pick up, at the sole expense of the County, all of the Radios within 24 hours after the County's receipt of the ESD' notice of termination.

SECTION 4
MISCELLANEOUS PROVISIONS

1. **Cooperation of the Parties.** The Parties each agree to cooperate with each other as may be reasonable necessary to carry out the intent of this Agreement, including but not limited to the execution of such further documents as may be reasonably necessary.
2. **Severability.** If any provision of this Agreement is illegal, invalid, or unenforceable, under present or future laws, it is the intent of the Parties that the remainder of this Agreement not be affected, and, in lieu of each illegal, invalid, or unenforceable provision, that a provision be added to this Agreement which is legal, valid, and

enforceable and is as similar in terms to the illegal, invalid, or unenforceable provision as is possible.

3. **Waiver.** Any failure by a party to insist upon performance by the other party of any material provision of this Agreement will not be deemed a waiver of any other provision, and such party may at any time thereafter insist upon performance of any and all of the provisions of this Agreement.
4. **Venue and Governing Law.** Each party to this Agreement hereby agrees and acknowledges that venue and jurisdiction of any suit, right, or cause of action arising out of or in connection with this Agreement shall lie exclusively in Williamson County, Texas. Furthermore, this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, excluding, however, its choice of law rules.
5. **No Third Party Beneficiaries.** This Agreement is for the sole and exclusive benefit of the Parties hereto and nothing in this Agreement, express or implied, is intended to confer or shall be construed as conferring upon any other person any rights, remedies or any other type of types of benefits.
6. **Gender, Number and Headings.** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The headings and section numbers are for convenience only and shall not be considered in interpreting or construing this Agreement.
7. **Relationship of the Parties.** Each party to this Agreement, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever.
8. **No Waiver of Immunities.** Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to the Parties, their past or present officers, employees, or agents, or to create any legal rights or claim on behalf of any third party. Neither party waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.
9. **Assignment.** No party to this Agreement may assign, sublet, or transfer its interest in or obligations under this Agreement without the prior written consent of all Parties to this Agreement.
10. **Force Majeure.** If the party obligated to perform is prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of said party, the other party shall grant such party relief from the performance of this Agreement. The burden of proof for the need of such relief shall rest upon the party obligated to perform. To obtain release

based on force majeure, the party obligated to perform shall file a written request with the other party.

11. **Entire Agreement.** This Agreement represents the entire understanding between the Parties hereto and supersedes all prior negotiations, representations, or agreements, either oral or written. This Agreement may be amended only by written instrument signed by each party to this Agreement. NO OFFICIAL, EMPLOYEE, AGENT, OR REPRESENTATIVE OF THE COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND THIS Agreement, EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE WILLIAMSON COUNTY COMMISSIONERS COURT.

Executed this 23rd day of September, 2008.

WILLIAMSON COUNTY

By: [Signature]
Printed Name: Dan A. Gattis
Title: County Judge

Reviewed as to form:

Hal Hawes
Assistant County Attorney

James Gilger
Contract Management Auditor

WILLIAMSON COUNTY ESD NO. 7

By: [Signature]
Printed Name: Lee Roy Knauth
Title: President