

STATE OF TEXAS

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COUNTY OF FORT BEND

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**INTERLOCAL AGREEMENT BETWEEN
FORT BEND COUNTY AND FAIRCHILDS VOLUNTEER FIRE DEPARTMENT**

This Interlocal Agreement ("Agreement") entered into by and between **Fort Bend County, Texas**, a body corporate and politic, acting herein by and through its Commissioners Court ("County"), and **Fairchilds Volunteer Fire Department** duly organized and chartered in the State of Texas existing under the laws of the State of Texas ("Fire Department").

Fairchild

WITNESSETH:

THAT WHEREAS, the **County** has a trunked 800 Megahertz Public Safety Radio System and is duly licensed by the Federal Communications Commission ("FCC") for operation of same; and

WHEREAS, the **County** desires to accommodate additional Radio Units on its Radio System under a **County** managed and controlled plan of such system; and

WHEREAS, the **County** desires to accommodate the **Fire Department's** Radio Units on a maintenance plan contracted by the **County** with a private vendor; and

WHEREAS, the **Fire Department** desires to use **County's** Radio System to communicate among its various Radio Units on a Primary Dispatch System; and

WHEREAS, the governing body of **County** has duly authorized this Agreement; and

WHEREAS, the governing body of **Fire Department** has duly authorized this Agreement; and

WHEREAS, this Agreement is made pursuant to the TEX. GOV. CODE § 791.001 et seq, the Interlocal Cooperation Act (Vernon 1993);

NOW THEREFORE, for and in consideration of the mutual promises, obligations, and benefits hereinafter set forth, the **County** and **Fire Department** hereby agree as follows:

I.

DEFINITIONS

1.01 "Primary Dispatch System" – A communications system upon which the **Fire Department**, its agents, employees or assigns rely primarily when it desires to or attempts the engagement of radio communications or radio transmissions of energy among its radio units.

1.02 "Priority Access" – An assigned level of system access which determines the choice of access to the radio system between two or more units seeking use simultaneously.

1.03 "Radio System" – A trunked 800 Megahertz Public Safety Radio System owned by the **County**, and licensed by the FCC, that enables the engagement of radio communications or radio transmissions of energy via radio units in accordance with technical specifications.

1.04 "Radio Unit" – Mobile, stationary or portable radio communication units communicating among themselves at certain air wave frequencies.

1.05 "Systems Code Identification Number" – An identification number that allows radio units to gain access to the Radio System thereby enabling the radio units to communicate among themselves at certain air wave frequencies.

II.

OBLIGATIONS OF COUNTY

2.01 The **County** agrees that during the term of this Agreement it shall:

- (a) Allow the **Fire Department** to have access to its Radio System to engage in radio communications among its Radio Units as a Primary Dispatch System.

(b) Provide to the **Fire Department** a Systems Code Identification Number that will access the **County's** Radio System, thereby providing a Primary Dispatch System for the **Fire Department's** Radio Units, up to a maximum of 20 units. The **Fire Department** shall advise the **County**, in writing, of the number of units it will have on the system. Any decision to include the **Fire Department's** Radio Units must be made contemporaneously and be attached as **Fire Department's** Exhibit "A" to this Agreement and be incorporated herein for all purposes subject to any terms of cancellation herein.

(c) Allow the **Fire Department** to cover the Radio Units described in **Fire Department's** Exhibit "A" under a **County** controlled maintenance agreement with a private vendor. Any decision to place any Radio Units by the **Fire Department** under the **County's** maintenance agreement must be made contemporaneously and the list of units to be maintained be attached as **Fire Department's** Exhibit "B" and be incorporated herein for all purposes.

(d) Observe and abide by all applicable statutes, laws, rules and regulations, including but not limited to those of the FCC.

(e) In the event the **Fire Department** notifies the **County** pursuant to paragraph 3(b) below that any one or more of its Radio Units listed herein have become lost or stolen, the **County** will take any reasonable steps necessary to prevent such lost or stolen Radio Units from gaining access to the Radio System and will attempt to disable the lost or stolen unit.

(f) Provide for the same level of Priority Access for the **Fire Department** as for the **County**. All maintenance fees (at the published contract rate) are to be included in the regular billing statement. **County** has sole authority to negotiate the **County's** maintenance contract with the vendor.

The **County** reserves the right to determine and approve equipment to be used on the radio system. **County** will provide a written list of approved equipment as Exhibit "D" to this document. All equipment must be purchased new or with written approval of the radio system manager. The **County** reserves the right to change or modify this list at any time with written notification to the subscriber.

III. **OBLIGATIONS OF FIRE DEPARTMENT**

3.01 The **Fire Department** agrees that during the term of this Agreement it shall:

(a) Assume responsibility for providing the **County** with a list of each and every Radio Unit to be used in the **County's** Radio System, including model number and serial number to be attached to this agreement as **Fire Department's** Exhibit "A" and incorporated herein for all purposes. Furthermore, should the **Fire Department** desire to increase or decrease the number of Radio Units listed in paragraph 2.01(b) above, that have access to the Radio System, the **Fire Department** shall notify the **County**, in writing, at least ten days in advance of the effective date of the change. The **Fire Department** may not increase the number of Units above the maximum number stated in 2.01(b) above.

(b) In the event that any one or more of the Radio Units listed in paragraph 2(b) becomes lost or stolen, the **Fire Department** agrees to notify the **County** of same within twenty-four hours that the **Fire Department** knows or has reason to know that such Radio Unit or Units have become lost or stolen.

(c) Use the System Code Identification Number described herein to access the **County's** Radio System as a Primary Dispatch System.

(d) Assume responsibility for providing the **County** with a list of each and every Radio Unit to be included in the maintenance agreement to be attached as **Fire Department's** Exhibit "B". The **County** assumes no obligation regarding which units are to be on the maintenance agreement other than those listed in **Fire Department's** Exhibit "B".

(e) To observe and abide by all applicable statutes, laws, rules and regulations, including but not limited to those of the FCC.

(f) Recognize that applicable FCC and other statutes, laws, rules and regulations may change from time to time and that accordingly the **County**, in its sole discretion, has the right without liability to modify this Agreement to comply with any such changes subject to the other terms of this Agreement.

(g) The **County** will not consider for approval any Agreement not complete and including all required documentation.

IV. ASSIGNABILITY

4.01 This Agreement is for the benefit of the **Fire Department**, its officers, agents, contractors and employees, quasi-governmental agencies (example: Volunteer Fire Department) and it shall not be assigned in whole or in part by the **Fire Department** to any third party without prior written consent of the **County**. If requested in writing, the billing can be itemized to reflect different agencies or departments.

V. PAYMENT OF FEES

5.01 The **Fire Department** shall pay the **County** the sum of NINE DOLLARS AND 50/100 CENTS (\$9.50) per month per Radio Unit for system access, a sum of THIRTY DOLLARS AND NO/CENTS (\$30.00) per radio for initial programming, and a sum of TWENTY FIVE DOLLARS AND NO/CENTS (\$25.00) for reprogramming, excluding programming changes needed as a result of repairs to the radio unit. Programming charges will be billed immediately following completion of services by the **County**. All maintenance fees (at the published contract rate) for the Radio Units listed in **Fire Department's** Exhibit "B" are to be included in the regular billing statement. The contract rate is attached as **County's** Exhibit "C" and is attached herein for all purposes. The contract rate is negotiated with the vendor solely by the **County** and will change with each new maintenance contract rate agreement. Any increase or decrease shall be effective immediately and the new contract rate will be controlling as to all parties for the term of this contract. The **County** shall invoice **Fire Department** for air time and service contract fees quarterly, on or about the 15th day of March, June, September and December. The **Fire Department** shall pay the **County** by the tenth day of the month following receipt of invoice.

5.02 The **Fire Department** shall make any payments due and payable to the **County** under this Agreement out of its current revenues.

5.03 The **County** will invoice air time for the three months prior and including the month of the bill, prorating charges for radios added during those months as follows:

Radios added during the 1st and 15th day of a given month will be charged air time for the entire month. Radios added after the 15th day of a given month will not be charged air time for that month and air time will be charged beginning with the following month

5.04 The **County** will invoice service contract fees for the three months succeeding the month of the bill.

5.05 In the event the **Fire Department** elects to increase its number of Units per § 3.01(a) above, it shall increase its monthly payment to reflect such increase. The increase in the number of units shall be reflected pro rata in the next monthly payment following the month of the increase in units.

5.06 Any decrease in the number of units shall be reflected in the **Fire Department's** payments in the same manner as described above for increases in the number of units.

5.07 If the Radio System is substantially unavailable to the **Fire Department** during any billing period, the **County** shall approve a reasonable adjustment of the fee provided for by this section.

VI. REVISION OF FEES

6.01 The **County** may at any time revise the monthly service fees set forth herein by giving the **Fire Department** written notice of the amounts of increase at least ninety (90) days in advance of the date on which the

increased fees are to become effective. The **Fire Department** fee increases will be tied to the **Fire Department's** pro rata share of the increases in cost of operation, system expansion or enhancement. Written documentation will be provided upon request to the **Fire Department** explaining the increase. All fees will be reasonable and nondiscriminatory among all users.

VII. TERM AND TERMINATION

7.01 The terms of this Agreement shall commence upon signature of County and end on **September 30, 2013**, or upon thirty (30) days written notice from either party.

7.02 This Agreement shall terminate immediately if all or substantially all of the licenses or other necessary authorizations held by either the **County** or the **Fire Department** are revoked by the FCC or any successor agency.

7.03 The **Fire Department** shall pay the **County** in the manner provided for in V above, for any accrued charges in the event of termination pursuant to this section.

VIII. NOTICE

8.01 Any and all notices or communications required or permitted under this Agreement shall in writing and delivered in person or mailed, certified mail, return receipt requested, or may be transmitted by fax as follows:

To County: Fort Bend County
Attention: County Judge
301 Jackson, 7th Floor
Richmond, Texas 77469
Fax No. (281) 341-8609

To Fire Department: Fairchilds Volunteer Fire Department
8715 Fairchilds Road
Richmond, Texas 77469
Attn: Fire Chief

8.02 Either party may change its notice address in accordance with this section.

8.03 Any notice hereunder shall be effective upon receipt.

IX. MODIFICATION OF AGREEMENT

9.01 No modification of this Agreement shall be effective unless it is made in writing and is approved and executed by the authorized representatives of the parties hereto, except as provided above in the case of a change in FCC rules or regulations.

X. COVERAGE

10.01 The **Fire Department** acknowledges that one hundred percent coverage of any area at all times is improbable. There may be adverse propagation conditions, such as short-term unpredictable meteorological effects and sky wave interference from distant stations that can interrupt the Radio System at times. Other causes beyond reasonable control of the **County** are motor ignition and other electrical noise that could be minimized by corrective devices at the **Fire Department's** expense. Any surveys, studies, research or any other measures taken to ensure the adequacy of coverage provided to the **Fire Department** herein shall be the sole responsibility of the **Fire Department**.

XI. DEFAULT

11.01 If the **Fire Department** fails to make any payment of any sum due or fails to perform as required by any other provision hereunder, and continues in such failure for fifteen days after written notice has been sent by **County** to **Fire Department**, the **Fire Department** shall be deemed in default under this Agreement.

11.02 In the event of default, the **County** has the right to immediately terminate this Agreement, retain all payments made hereunder that are due and owing to the **County** pursuant to the terms of this Agreement, and deny the **Fire Department** any service provided by the County under this Agreement. Each and all of the rights and remedies of the **County** hereunder are cumulative to and not in lieu of each and every other such right and remedy and every right and remedy afforded at law and equity.

XII.

INDEMNITY AND HOLD HARMLESS

12.01 **THE FIRE DEPARTMENT AGREES TO AND SHALL INDEMNIFY, SAVE AND HOLD HARMLESS AND DEFEND THE COUNTY, ITS OFFICIALS, AGENTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS AND LIABILITY OF EVERY KIND, INCLUDING BUT NOT LIMITED TO ATTORNEY'S FEES (WHETHER 1ST PARTY OR 3RD PARTY) AND RELATED COSTS, FOR PERSONAL INJURY DEATH OR PROPERTY DAMAGE, DESTRUCTION OR LOSS ARISING OUT OF OR CONNECTED IN ANY WAY WITH THE PERFORMANCE OF THE FIRE DEPARTMENT'S RESPONSIBILITIES UNDER THIS AGREEMENT, WHERE SUCH PERSONAL INJURY, DEATH OR PROPERTY DAMAGE, DESTRUCTION OR LOSS IS CAUSED BY THE FIRE DEPARTMENT'S SOLE NEGLIGENCE OR ITS SOLE INTENTIONAL ACT OR OMISSION OR WHERE SUCH PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE, DESTRUCTION, OR LOSS IS CAUSED BY THE JOINT NEGLIGENCE OF THE FIRE DEPARTMENT AND ANY OTHER PERSON, OR ENTITY OR THE JOINT INTENTIONAL ACT OR OMISSION OF THE FIRE DEPARTMENT AND OTHER PERSON OR ENTITY.**

12.02 The Fire Department shall provide the County with general liability insurance covering both the County and the Fire Department for liabilities relating to the use of the Radio System. The insurance shall be with carriers and in policy limits acceptable to the County.

12.03 The Fire Department shall provide the County's Risk Management Department with a copy of the proposed insurance within ten (10) days of the effective date hereof. Acceptance of an original certificate of insurance acceptable to the County shall be a condition precedent to the Fire Department's access to the Radio System.

XIII.

ADMINISTRATIVE GUIDELINES

13.01 The parties agree to promulgate mutually acceptable written administrative guidelines relating to the use and operation of the Radio System and Radio Units. Both parties agree to use their best efforts to observe and abide by these written administrative guidelines.

XIV.

GENERAL

14.01 This Agreement constitutes the entire Agreement of the parties and supercedes all prior offers, negotiations and agreements. If any provision of this Agreement shall, at any time and to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby. This Agreement shall bind and inure to the benefit of all the respective heirs, personal representatives, successors and assigns of the parties hereto.

14.02 The waiver by a party hereto of a breach of any provision of this Agreement shall not operate as or be construed as a waiver of any subsequent breach.

IN WITNESS WHEREOF, The parties put their hands to this instrument on the dates indicated.

FORT BEND COUNTY, TEXAS

By: _____

Robert E. Hebert, County Judge

Date: _____

11-20-2012

ATTEST:

Dianne Wilson

Dianne Wilson, County Clerk

Fairchild

FAIRCHILDS VOLUNTEER FIRE DEPARTMENT

By: _____

Fire Chief

Date: _____

NOV, 12, 2012

ATTEST:

