

STATE OF TEXAS                   §  
  §  
COUNTY OF FORT BEND       §

**INTERLOCAL AGREEMENT BETWEEN FORT BEND COUNTY AND  
FIRST COLONY LEVEE IMPROVEMENT DISTRICT NO. 2**

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 First Colony Levee Improvement District No. 2, a political subdivision of the State of Texas ("District").

**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 District's Radio Units on a maintenance plan contracted by the County with a private vendor; and

WHEREAS, the District 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 District 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 District hereby agree as follows:

**SECTION ONE**  
**DEFINITIONS**

- 1.01** "Primary Dispatch System" – A communications system upon which the District, 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.

**SECTION TWO**  
**OBLIGATIONS OF COUNTY**

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

- A. Allow the District to have access to its Radio System to engage in radio communications among its Radio Units as a Primary Dispatch System and provide District with the same level of Priority Access provided to County.
- B. Provide to the District a Systems Code Identification Number that will access the County's Radio System, thereby providing a Primary Dispatch System for the District's Radio Units, as shown and identified (by model number and serial number) in Exhibit A to this Agreement.
- C. Observe and abide by all applicable statutes, laws, rules and regulations, including but not limited to those of the FCC.
- D. In the event the District notifies the County pursuant to paragraph 3.01.C 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.

### **SECTION THREE** **OBLIGATIONS OF DISTRICT**

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

- A. Use only County approved equipment on the Radio System. During the term of this Agreement, the approved equipment is that equipment that complies with Project 25 Compliance Assessment Program. The County reserves the right to determine and approve equipment to be used on the radio system. The County reserves the right to change or modify this list at any time with written notification to the subscriber.
- B. Assume responsibility for the radios identified in Exhibit A to this Agreement. Any change to the number of radios assigned to District shall be in accordance with Section Eight of this Agreement.
- C. In the event that any one or more of the Radio Units listed in Exhibit A to this Agreement becomes lost or stolen, the District shall notify the County of same within twenty-four hours that the District knows or has reason to know that such Radio Unit or Units have become lost or stolen.
- D. Use the System Code Identification Number described herein to access the County's Radio System as a Primary Dispatch System.
- 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.

### **SECTION FOUR** **ASSIGNABILITY**

**4.01** This Agreement is for the benefit of the District, its agents, contractors and employees and it shall not be assigned in whole or in part by the District 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.

### **SECTION FIVE** **PAYMENT OF FEES**

**5.01** The District shall pay the following costs for use of the County's radios:

- A. A monthly fee of \$9.50 per radio; and
- B. Reimbursement for County's actual cost to repair any radio
  - 1. Any radio determined by County to require repair may be sent for service to the current County vendor; and
  - 2. District shall reimburse County for the actual cost of repair, which will be included on the next available invoice.

**5.02** The County may change the monthly service fee by giving the District written notice of the increase at least ninety (90) days in advance of the date on which the increased fees are to become effective. Written documentation will be provided upon request to the District explaining the increase.

- 5.03** The District shall make any payments due and payable to the County under this Agreement out of its current revenues.
- 5.04** The County shall invoice the District in the following manner:
- A. The County will invoice air time for the three months prior and including the month of the bill.
  - B. Radios added between the 1<sup>st</sup> and 15<sup>th</sup> day of a given month will be charged air time for the entire month. Radios added after the 15<sup>th</sup> 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.
  - C. The County will invoice service contract fees for the three months succeeding the month of the bill.
  - D. In the event the District increases the total number of radios assigned, 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.
  - E. Any decrease in the number of units shall be reflected in the District's payments in the same manner as described above for increases in the number of units.
- 5.05** If County determines that the Radio System is substantially unavailable to the District during any billing period, the County shall make a reasonable adjustment of the fee provided for by this section.

## **SECTION SIX**

### **TERM AND TERMINATION**

- 6.01** The term of this Agreement shall commence upon signature of County and end on **September 30, 2014**. This Agreement shall thereafter automatically renew for additional one year terms unless terminated by either party. All renewals are subject to the price adjustment in Section 5.02 of this Agreement.
- 6.02** This Agreement shall terminate immediately if all or substantially all of the licenses or other necessary authorizations held by either the County or the District are revoked by the FCC or any successor agency.
- 6.03** The Agreement may be terminated by either Party by providing 30 days notice of the intent to terminate to the other Party. In the event of termination, District shall still remit payment for services rendered by County.
- 6.04** Upon termination, all radios shall be returned to County no later than 48 hours after the time and date the notice to terminate was received.

## **SECTION SEVEN**

### **NOTICE**

- 7.01** 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, 7<sup>th</sup> Floor  
                                        Richmond, Texas 77469  
                                        Fax No. (281) 341-8609

To District:                      First Colony Levee Improvement District No. 2  
                                        c/o Coats, Rose, Yale, Ryman & Lee, P.C.  
                                        3 East Greenway Plaza, Suite 2000  
                                        Houston, Texas 77046

- 7.02** Either party may change its notice address in accordance with this section.
- 7.03** Any notice hereunder shall be effective upon receipt.

**SECTION EIGHT**  
**MODIFICATION OF AGREEMENT**

- 8.01** 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.

**SECTION NINE**  
**COVERAGE**

- 9.01** The District 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 District's expense. Any surveys, studies, research or any other measures taken to ensure the adequacy of coverage provided to the District herein shall be the sole responsibility of the District.

**SECTION TEN**  
**DEFAULT**

- 10.01** If the District 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 District, the District shall be deemed in default under this Agreement.
- 10.02** 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 District 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.

**SECTION ELEVEN**  
**INDEMNITY AND HOLD HARMLESS**

- 11.01** **INDEMNIFICATION: THE DISTRICT 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 DISTRICT'S RESPONSIBILITIES UNDER THIS AGREEMENT, WHERE SUCH PERSONAL INJURY, DEATH OR PROPERTY DAMAGE, DESTRUCTION OR LOSS IS CAUSED BY THE DISTRICT'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 DISTRICT AND ANY OTHER PERSON (OTHER THAN THE COUNTY OR ITS AGENTS OR EMPLOYEES), OR ENTITY; OR THE JOINT INTENTIONAL ACT OR OMISSION OF THE DISTRICT AND OTHER PERSON OR ENTITY (OTHER THAN THE COUNTY OR ITS AGENTS OR EMPLOYEES).**
- 11.02** The District shall provide the County with general liability insurance covering both the County and the District for liabilities relating to the use of the Radio System. The insurance shall be with carriers and in policy limits acceptable to the County
- 11.03** The District 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 District's access to the Radio System.

**SECTION TWELVE**  
**ADMINISTRATIVE GUIDELINES**

- 12.01** 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.

**SECTION THIRTEEN**  
**GENERAL**

- 13.01** 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.
- 13.02** 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*  
Robert E. Hebert, County Judge

Date: \_\_\_\_\_

9-9-2014

ATTEST:

*Dianne Wilson*  
Dianne Wilson, County Clerk

**FIRST COLONY LEVEE IMPROVEMENT  
DISTRICT NO. 2**

By: \_\_\_\_\_

*Ronald J. French*

ATTEST:

*Paul Mazze*

Date: \_\_\_\_\_

Exhibit A: District's Radio Units, as shown and identified by model number and serial number



# **EXHIBIT A**

**DISTRICT'S RADIO UNITS  
UP TO A MAXIMUM OF \_\_\_\_\_ UNITS  
AS SHOWN AND IDENTIFIED BY  
MODEL NUMBER AND SERIAL NUMBER**