

STATE OF TEXAS §
 §
 COUNTY OF FORT BEND §

**AGREEMENT BETWEEN FORT BEND COUNTY AND
 FORT BEND ESD #7/FRESNO FIRE AND RESCUE**

This 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"), Fort Bend ESD#7/Fresno Fire and Rescue ("Fire Department").

WITNESSETH:

THAT WHEREAS, the County operates a P25 Public 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 which is managed and controlled by the Fort Bend County Sheriff's Office; and

WHEREAS, Fire Department desires to use the 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 Texas Local Government 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:

SECTION ONE
DEFINITIONS

- 1.1 "Project 25 (P25 or APCO-25)" is a standard that defines a form of interoperable digital two-way wireless communications products. The P25 Radio System was developed in North America with state, local and federal representatives and Telecommunications Industry Association (TIA) governance.
- 1.2 "Primary Dispatch System" – A communications system upon which 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.
- 1.3 "Priority Access" – An assigned level of system access which determines the choice of access to the Radio System between two or more Radio Units seeking use simultaneously.
- 1.4 "P25 Compliant Radio" is a Radio Unit that conforms to the P25 standard in the way it functions or operates.
- 1.5 "Radio System" – A P25 Public 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.
- 1.6 "Radio Unit" – Mobile, stationary or portable radio communication units communicating among themselves at certain air wave frequencies.

- 1.7 “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**

- 2.1 The County agrees that during the term of this Agreement it shall:
- A. Allow Fire Department to have access to its Radio System to engage in radio communications among its Radio Units as a Primary Dispatch System and provide Fire Department with the same level of Priority Access afforded to County.
 - B. Provide to Fire Department a Systems Code Identification Number that will allow access to the County’s Radio System, thereby providing a Primary Dispatch System for Fire Department’s Radio Units.
 - 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 Fire Department notifies the County that any one or more of its Radio Units are 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.
- 2.2 County authorizes the Fort Bend County Sheriff’s Office to supervise and manage the P25 Public Radio System on behalf of County, which shall include the authority to increase or decrease the number of radios permitted on the Radio System in order to maximize operational efficiency, and agrees to provide written notice to Fire Department of any increase or decrease in the number of radios permitted on the County Radio System.

**SECTION THREE
OBLIGATIONS OF FIRE
DEPARTMENT**

- 3.1 Fire Department agrees that during the term of this Agreement it shall:
- A. Have sole responsibility to obtain Radio Units to be used by Fire Department on the Radio System. All repairs or service required for Radio Units are the sole responsibility of Fire Department, unless otherwise authorized by County.
 - B. Use only County approved equipment on the Radio System so as not to degrade or negatively impact the radio operations of the Radio System, for any other participating agency, or any other authorized Fire Department of the Radio System. During the term of this Agreement, the TDMA and Radio Authentication 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 and will provide written notice of changes in approved equipment to the Fire Department.
 - C. Notify County within twenty-four hours if Fire Department knows or has reason to know that any Radio Unit or Units being used on the dispatch system have been lost or stolen.
 - D. Use the System Code Identification Number described herein to access the County’s Radio System as a Primary Dispatch System so as not to degrade or negatively impact the radio operations of the Radio System, for any other participating agency, or any other authorized Fire Department of the Radio System.
 - E. 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. Provide accurate inventory of all Radio Units no later than each March 1 and upon request by County.
- H. Request advanced written approval from County to increase the number of Radio Units accessing the County's Radio System.
- I. Notify the County and obtain advance approval from the County before Fire Department's Radio Units are shared with any other person or group other than members of Fire Department's organization for the purpose of allowing any other person or group to access the County's Radio System.

SECTION FOUR **ASSIGNABILITY**

This Agreement is for the benefit of Fire Department, its officers, agents, contractors and employees, and quasi-governmental agencies and it shall not be assigned in whole or in part 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.

SECTION FIVE **PAYMENT OF FEES**

5.1 Monthly Use Fees.

Fire Department expressly understands and agrees to pay the County for access to the Radio System at a monthly rate of \$12.75 per Radio Unit;

5.2 Invoices. The County shall invoice Fire Department in the following manner and based on whether the Fire Department shares use of Radio Unit(s) with another group:

A. Exclusive Use:

Where Radio Units are only used by Fire Department's organization:

- 1. The County will invoice for access to the Radio System quarterly.
- 2. Radio Units added during the 1st through the 15th day of a given month will be charged a Monthly Use Fee for the entirety of that month. Radios added after the 15th day of a given month will not be charged a Monthly Use Fee for that month and air time will be charged beginning with the following month.
- 3. In the event Fire Department increases the total number of Radio Units assigned, the County shall increase Fire Department's monthly payment to reflect such increase. Any decrease in the number of units shall be reflected in Fire Department's payments in the same manner as described above for increases in the number of units.

B. Shared Use:

Where individual Radio Units are shared by Fire Department and other entities who have entered into similar agreements with the County for use of the P25 Public Radio System and whose shared use has been approved in advance by County:

- 1. Fire Department must first notify the Sheriff and receive advance approval from the Sheriff to share an individual Radio Unit.
- 2. A single payment may be tendered for a radio shared by Fire Department and other approved entities; however it is the responsibility of Fire Department to note the other entities with a payment memo to avoid duplicate charges for the same Radio Unit.

3. County reserves the right to collect the entire monthly invoice amount from Fire Department in the event that the proportional payment for the shared radio is not tendered from other authorized entities.
 4. The County will invoice for access to the Radio System quarterly.
 5. Radio Units added during the 1st through the 15th day of a given month will be charged a Monthly Use Fee for the entirety of that month. Radios added after the 15th day of a given month will not be charged a Monthly Use Fee for that month and air time will be charged beginning with the following month.
 6. In the event Fire Department increases the total number of Radio Units assigned, the County shall increase Fire Department's monthly payment to reflect such increase. Any decrease in the number of units shall be reflected in Fire Department's payments in the same manner as described above for increases in the number of units.
 7. Fire Department will be responsible for determining their share of the payment and ensuring that the full amount of \$12.75 is received monthly for each Unit to the County.
- 5.3** In the event the total monthly amount due (\$12.75 per month for each Unit) is not received by the County, Fire Department will be held responsible for any past due amount.
- 5.4** If County determines that the Radio System is substantially unavailable to Fire Department during any billing period, the County shall make a reasonable adjustment of the fee provided for by this section.
- 5.5** The County may change the amount of the Monthly Use Fee by giving Fire Department 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 Fire Department explaining the increase.
- 5.6** Fire Department shall make any payments due and payable to the County under this Agreement out of its current revenues.

SECTION SIX
TERM AND TERMINATION

- 6.1** The term of this Agreement shall commence on June 1, 2020, and end on September 30, 2021. This Agreement shall thereafter automatically renew for additional one year terms, October 1st through September 30th, unless terminated by either party. All renewals are subject to the price adjustment in Section Five of this Agreement.
- 6.2** This Agreement shall terminate immediately if all or substantially all of the licenses or other necessary authorizations held by either the County or Fire Department are revoked by the FCC or any successor agency.
- 6.3** The Agreement may be terminated by either Party by providing thirty (30) days' notice of the intent to terminate to the other Party. In the event of termination, Fire Department shall still remit payment for services rendered by County prior to termination.

SECTION SEVEN
NOTICE

- 7.1** 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:

Original to: Fort Bend County Sheriff's Office
Attention: Sheriff
1410 Williams Way Blvd.
Richmond, Texas 77469.

With a Copy to County: Fort Bend County
Attention: County Judge
401 Jackson
Richmond, Texas 77469
Fax No. (281) 341-8609

To Fire Department: Fort Bend ESD #7/ Fresno Fire and
Rescue
Attention: Chief
P.O. Box 36
Fresno, Texas 77545-0036

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

7.3 Any notice hereunder shall be effective upon receipt.

SECTION EIGHT MODIFICATION OF AGREEMENT

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

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 Fire Department's expense. Any surveys, studies, research or any other measures taken to ensure the adequacy of coverage provided to Fire Department herein shall be the sole responsibility of Fire Department.

SECTION TEN DEFAULT

10.1 If 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 (15) days after written notice has been sent by County to Fire Department, Fire Department shall be deemed in default under this Agreement.

10.2 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 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.

**SECTION ELEVEN
INDEMNITY AND HOLD HARMLESS**

- 11.1 **INDEMNIFICATION: TO THE EXTENT ALLOWED BY LAW, 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 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 (OTHER THAN THE COUNTY OR ITS AGENTS OR EMPLOYEES), OR ENTITY; OR THE JOINT INTENTIONAL ACT OR OMISSION OF THE FIRE DEPARTMENT AND OTHER PERSON OR ENTITY (OTHER THAN THE COUNTY OR ITS AGENTS OR EMPLOYEES).**
- 11.2 Fire Department shall provide the County with general liability insurance covering both the County and 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.
- 11.3 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 Fire Department's access to the Radio System.

**SECTION TWELVE
ADMINISTRATIVE GUIDELINES**

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**

- 13.1 **Entirety.** This Agreement constitutes the entire Agreement of the parties and supersedes 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.
- 13.2 **Waiver.** 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.
- 13.3 **Confidentiality.** Information that identifies the configuration of components of or the operation of the Radio System and would allow unauthorized access to or unlawful disruption of the Radio System shall be maintained as a closed record if allowed by applicable state laws.

13.4 Force Majeure. The parties agree that no party shall be held responsible for interruptions of service due to the forces of nature, war, manmade disasters, or other such acts beyond the control of the agencies.

13.5 Applicable Law. This Agreement shall be construed under and in accordance with the laws of the State of Texas. The Parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all disputes arising hereunder and waive the right to sue or be sued elsewhere.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below.

FORT BEND COUNTY, TEXAS

KP George

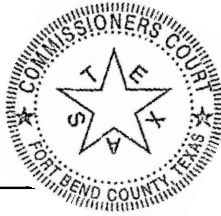
By:

KP George, County Judge

ATTEST:

Laura Richard

Laura Richard, County Clerk



8-25-2020

Date

Reviewed:

Troy E. Nehls

Troy E. Nehls, FBC Sheriff

FORT BEND ESD #7/ FRESNO FIRE AND RESCUE

By:

Freddy Lopez Sr.

Freddy Lopez, President

ATTEST:

7/27/20

Date

By:

Printed Name, Title