



*Town of Highland Park, Texas*  
**TOWN COUNCIL MEETING**  
**A G E N D A**

4:00 PM  
June 24, 2019

4700 Drexel Drive  
Town Council Chamber

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**WORK SESSION - 4:00 PM**

**I. CALL TO ORDER**

**II. DISCUSSION**

- A. Discuss any of the agenda items provided on the Regular Agenda of the June 24, 2019 Town Council meeting.

**TOWN COUNCIL REGULAR AGENDA - 4:00 P.M.**

**I. CALL TO ORDER**

**II. INVOCATION**

**III. CITIZEN COMMENTS**

This is an opportunity for the public to address the Town Council. In accordance with the Texas Open Meetings Act, the Town Council may not discuss issues raised or make any decision at this time. Issues raised may be referred to Town staff for research and possible future action.

**IV. RECOGNITION**

Recognition of the Town's Volunteer of the Year for 2018.

**V. PUBLIC HEARING**

- A. Conduct a public hearing to receive public comments on a request to replat the properties located at 3816 and 3820 Gillon Avenue, into one lot bearing the street address of 3820 Gillon Avenue.

**VI. CONSENT AGENDA**

All items under the Consent Agenda are considered to be routine by the Town Council and will be enacted by one motion and vote. There will be no separate discussion of items unless a request by a Council Member is made prior to the time of the Town Council voting on the motion. In such event, the item will be removed, without debate, from the general order of business and considered in its normal sequence.

- A. Consider approval of the minutes of the Town Council meeting and study session held on June 10, 2019.

- B. Consider approval of a resolution amending the number and terms of the members, and the scope of work of the Town's Finance and Audit Advisory Committee.

## **VII. MAIN AGENDA**

- A. Consider approval to replat Lots 12R and 13R, Block 22, Highland Park Addition, Second Installment into one lot bearing the street address of 3820 Gillon Avenue.
- B. Consider approval of an Interlocal Agreement between the Town of Highland Park and the City of University Park for the acquisition of a joint Project 25 compatible radio system.
- C. Consider approval of a Radio System Interlocal Agreement between the Town of Highland Park, the City of University Park, the City of Garland, and the City of Mesquite.
- D. Consider approval of an Interlocal Radio System Usage Agreement between the Town of Highland Park, the City of University Park, the City of Garland, and the City of Mesquite.
- E. Consider approval of a contract with Motorola for the purchase of a P25 compliant radio system.

## **VIII. ADJOURNMENT**

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Any item on this posted agenda could be discussed in closed session as long as it is within one of the permitted categories under Sections 551.071 through 551.076 and 551.087 of the Texas Government Code

SPECIAL ACCOMMODATIONS FOR TOWN COUNCIL MEETINGS: Let us know if you need special assistance of any kind.

Please contact the Town of Highland Park Administrative staff at (214) 521-4161 from 7:30 a.m. to 4:30 p.m., Monday through Friday.



# **TOWN OF HIGHLAND PARK**

## **Agenda Briefing**

Council Meeting: June 24, 2019

Department: Human Resources

Director: Steven J. Alexander

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### **TITLE**

Recognition of the Town's Volunteer of the Year for 2018.

### **BACKGROUND**

The Excellence in Volunteerism Award is designed to recognize a Town employee who shows exemplary individual achievement, contribution, and performance in volunteering efforts. This individual consistently exhibits a positive and supportive attitude, while making contributions beyond the usual expectations of her employment through participation in the Highland Park Community Assisting Neighbors initiative.

The following employee will be recognized at the Awards Luncheon on July 11, 2019:

Kelle Hall, Communications Manager, Department of Public Safety

### **RECOMMENDATION**

None.

### **FINANCIAL IMPACT**

None.

### **ATTACHMENTS:**

**File Name**

**Description**

No Attachments Available



# TOWN OF HIGHLAND PARK

## Agenda Briefing

Council Meeting: June 24, 2019

Department: Building Inspection

Director: Kathleen Stewart

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### TITLE

Conduct a public hearing to receive public comments on a request to replat the properties located at 3816 and 3820 Gillon Avenue, into one lot bearing the street address of 3820 Gillon Avenue.

### BACKGROUND

The owner of the properties at 3816 and 3820 Gillon Avenue submitted a request to combine the two properties into one building site on February 21, 2019. A public hearing is scheduled at 4:00 p.m. on Monday, June 24, 2019, for the Town Council to receive public comments regarding a request to replat the properties into one lot.

The zoning ordinance amendment to combine the two building sites was approved by the Town Council on May 28, 2019. The public hearing for this replat should have occurred simultaneously with the zoning ordinance public hearing on May 28, 2019. However, the notification to the Park Cities News for the public hearing was inadvertently overlooked by staff. The earliest possible meeting date to observe the requisite 15-day published notice of the replat is June 24, 2019. The property owner was notified immediately of this oversight, and was amenable to the delay, and stated that it did not affect their development plans for the property.

The staff reviewed the replat document and determined that it complies with the Town's zoning regulations, subdivision regulations, and pertinent state law.

### RECOMMENDATION

The staff recommends approval. The Town Council reviewed this item at its study session on May 7, 2019.

### FINANCIAL IMPACT

None.

### ATTACHMENTS:

File Name	Description
3820_Gillon_-_ZONING_APPLIC_SIGNED_2-21-2019.pdf	Replat Application
Plat_Image_20190508.pdf	Final Plat
Engineering_Memorandum_-_3820_Gillon_Avenue.pdf	Engineering Memo



THE TOWN OF

# Highland Park

TEXAS

4700 Drexel Drive, Highland Park, TX 75205  
214-521-4161 office 214-559-9335 fax

## Department of Building Inspection

**RECEIVED**

FEB 21 2019

Building Inspection

(PLEASE COMPLETE A SEPARATE APPLICATION FOR EACH REQUEST)

(The application WILL NOT be scheduled for a review until a completed application is submitted to the Building Inspection Department.)

### I. TYPE OF APPLICATION:

(please check one)

- ☒ Zoning Change / Amendment (Combined Building Site)
- ☐ Planned Development - New
- ☐ Planned Development - Amendment
- ☒ Platting (Replat)

II. ADDRESS OF PROJECT: 3820 AND 3816 GILLON AVE.

### III. APPLICANT INFORMATION:

<u>Current Land Owner</u>	<u>Applicant or Agent of Owner</u>
<u>Karen Jones</u>	<u>Signature</u> <u>Scott Shipp</u>
<u>Karen Jones</u>	<u>Printed Name</u> <u>SCOTT SHIPP</u>
<u>Stephen Jones</u>	<u>Mailing Address</u> <u>8000 WARREN PARKWAY</u>
<u>3820/3816 Gillon Ave</u>	<u>SUITE 100</u>
<u>Dallas TX 75205</u>	<u>FRISCO, TX 75034</u>
<u>972-497-4950</u>	<u>Telephone Number</u> <u>972-543-2412</u>
	<u>Fax Number</u> <u>214-387-7781</u>

By my signature as Current Land Owner, I have applied to combine these properties into one building site. I hereby affirm that I recognize and understand per the Town of Highland Park's Zoning Ordinance, should these building sites be combined they cannot later be subdivided. This Zoning Change is considered permanent and will run with the property in perpetuity.

**IV. PROJECT INFORMATION:**  
(Complete all information)

Proposed Project Name (if applicable): 3820 GILLON AVE.

Street Address of Project: 3820 AND 3816 GILLON AVE.

Existing Zoning District: ONE-FAMILY RESIDENCE

Proposed Zoning District (if applicable): ONE-FAMILY RESIDENCE

Legal Description(s) of Project (Lot, Block, Addition): LOT 13 R, BLOCK 22,  
HIGHLAND PARK 2ND INST, LOT 12 R, BLOCK 22, HIGHLAND PARK 2ND INST.

**V. APPLICATION EXPLANATION** (Please type or print legibly, or submit a detailed explanation in letter format):

PURPOSE OF THE REPLAT IS TO COMBINE THE TWO LOTS  
IN ORDER THAT CERTAIN MAN-MADE IMPROVEMENTS  
CAN BE COMPLETED IN ACCORDANCE WITH THE TOWN'S  
ORDINANCE.

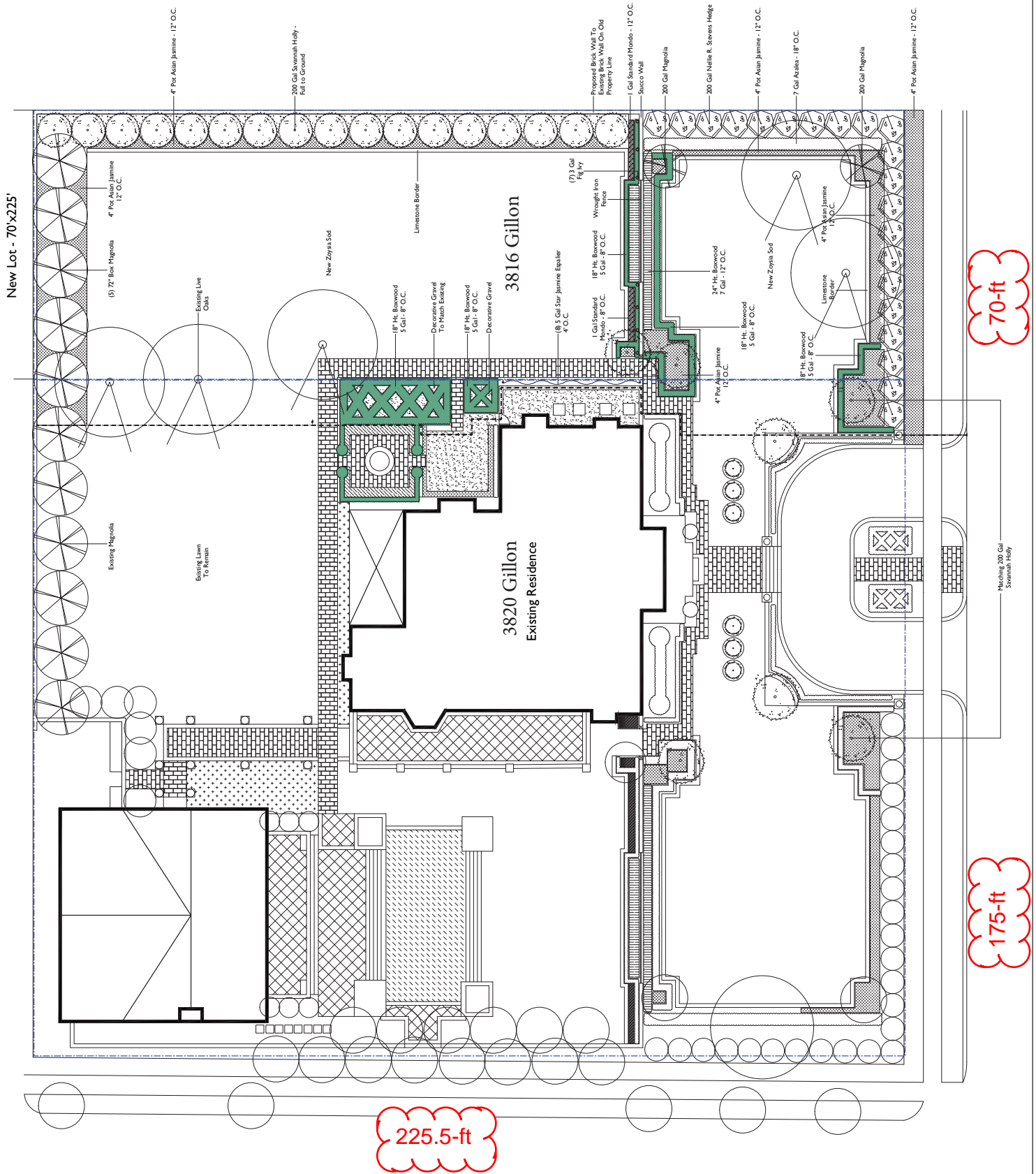
REV. #	DRAWING DATE
ORIGINAL	October 11, 2018
I	October 23, 2018

LANDSCAPE  
PLAN

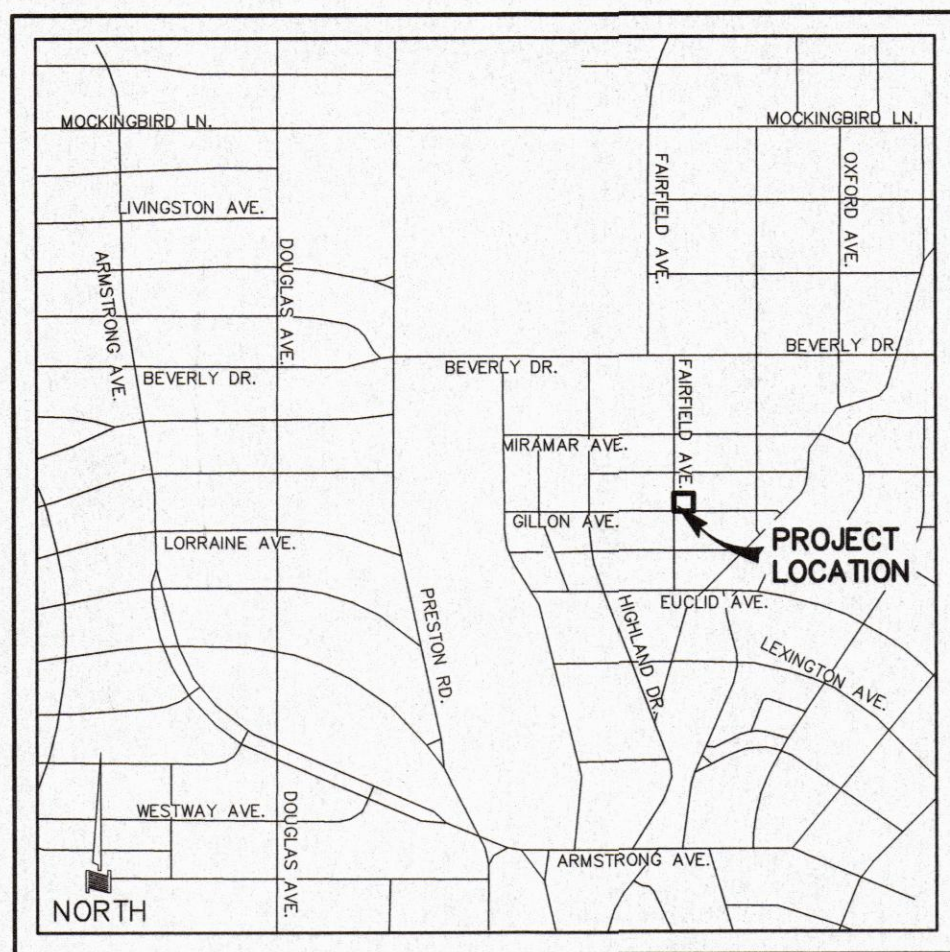
SCALE: 1/8" = 1'

SHEET NO.

0.17







LOCATION MAP  
NOT TO SCALE

BLOCK 21  
HIGHLAND PARK,  
SECOND INSTALLMENT  
VOL. 1, PG. 253  
M.R.D.C.T.

LOT 7

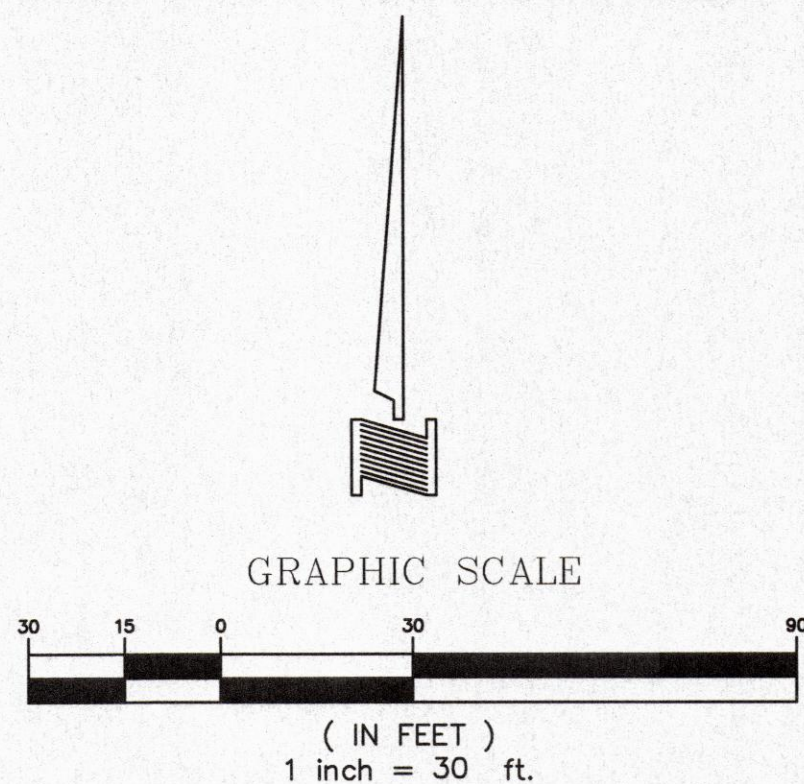
GREG ARNOLD  
LOT 8 & EAST 15' OF  
LOT 9, BLOCK 21  
HIGHLAND PARK,  
SECOND INSTALLMENT  
INST. NO. 20080144932  
O.P.R.D.C.T.

BLOCK 21  
HIGHLAND PARK,  
SECOND INSTALLMENT  
VOL. 1, PG. 253  
M.R.D.C.T.

FAIRFIELD AVENUE  
(60' RIGHT-OF-WAY)

POINT OF  
BEGINNING

BLOCK 25  
HIGHLAND PARK,  
SECOND INSTALLMENT  
VOL. 1, PG. 253  
M.R.D.C.T.



LEGEND

- 1/2" IRON ROD FOUND WITH YELLOW PLASTIC CAP STAMPED "5310" (UNLESS OTHERWISE NOTED)
- 1/2" IRON ROD SET WITH YELLOW PLASTIC CAP STAMPED "DAA" (UNLESS OTHERWISE NOTED)
- TXDOT
- O.P.R.D.C.T.
- D.R.D.C.T.
- M.R.D.C.T.
- IRF
- IPF
- <CM>
- IRON ROD FOUND
- IRON PIPE FOUND
- CONTROL MONUMENT

BLOCK 22  
HIGHLAND PARK,  
SECOND INSTALLMENT  
VOL. 1, PG. 253  
M.R.D.C.T.

LOT 5R, BLOCK 22  
HIGHLAND PARK,  
SECOND INSTALLMENT  
VOL. 2001134, PG. 1  
D.R.D.C.T.

LOT 1

LOT 2

LOT 3

LOT 4

LOT 5

15' ALLEY

N89°10'43"E 245.00'

N: 6989184.70  
E: 2491198.76

N: 6989188.21  
E: 2491443.70

DR. GEORGE A. TOLEDO and  
wife, CAROLYN TOLEDO  
40' OF EAST SIDE OF  
LOT 11 AND 45' OF WEST SIDE OF  
LOT 10, BLOCK 22  
HIGHLAND PARK, SECOND  
INSTALLMENT  
VOL. 2000072, PG. 1065  
D.R.D.C.T.

LOT 12R AND LOT 13R, BLOCK 22  
HIGHLAND PARK,  
SECOND INSTALLMENT  
VOL. 94225, PG. 3051  
D.R.D.C.T.

LOT 13RR, BLOCK 22

BLOCK 22  
HIGHLAND PARK,  
SECOND INSTALLMENT  
VOL. 1, PG. 253  
M.R.D.C.T.

N: 6988959.25  
E: 2491201.81

N: 6988962.77  
E: 2491446.76

S89°10'43"W 245.00'

GILLON AVENUE  
(60' RIGHT-OF-WAY)

LOT 1

LOT 2

LOT 3

LOT 4

LOT 5

BLOCK 24  
HIGHLAND PARK,  
SECOND INSTALLMENT  
VOL. 1, PG. 253  
M.R.D.C.T.

OWNERS CERTIFICATE:  
STATE OF TEXAS §  
COUNTY OF DALLAS §

WHEREAS John Stephen Jones and Karen Gayle Jones, are the sole owners of a tract of land situated in the JOHN COLE SURVEY, ABSTRACT NO. 268, Dallas County, Texas, being all of Lots 12R and 13R of the Amending Plat Lots 12R and 13R, Block 22 Highland Park, Second Installment, an addition to the Town of Highland Park according to plat recorded in Volume 94225, Page 3051, Deed Records, Dallas County, Texas, and being all of Lot 12R conveyed in deed to John S. Jones and Karen G. Jones, according to deed recorded in Document Number 201800175321, Official Public Records, Dallas County, Texas, also being all of Lot 13R conveyed in deed to John Stephen Jones and Karen Gayle Jones, according to deed recorded in Document Number 201800143797, Official Public Records, Dallas County, Texas, and being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod with yellow cap stamped "DAA" set for the southwest corner of said Lot 13 R and being in the north line of Gillon Avenue a 60' right-of-way, same being the east line of Fairfield Avenue a 60' right-of-way;

THENCE N 00° 46' 35" W, with the west line of said Lot 13R, same being the east line of said Fairfield Avenue, a distance of 225.50 feet to a 1/2 inch iron rod with yellow cap stamped "5310" found for the northwest corner of said Lot 13R and being in the east line of said Fairfield Avenue, also being in the south line of a 15' alley;

THENCE N 89° 10' 43" E, with the north line of said Lot 13R, same being the south line of said alley, passing a 1/2 inch iron pipe found for the northeast corner of said Lot 13R, same being the northwest corner of said Lot 12R, at a distance of 175.00 feet, continuing with the north line of said Lot 12R, a total distance of 245.00 feet to a 1/2 inch iron rod with yellow cap stamped "5310" found for the northeast corner of said Lot 12R, same being the northwest corner of that tract of land conveyed in Deed to Dr. George A. Toledo and wife, Carolyn Toledo, according to deed record in Volume 2000072, Page 1065, and being described as the 40' of entire east side of Lot 11 and 45' of entire west side of Lot 10, Block 22, Highland Park, Second Installment, an addition to the Town of Highland Park according to the plat recorded in Volume 1, Page 253, Deed Records, Dallas County, Texas;

THENCE S 00° 46' 35" E, with the east line of said Lot 12R, same being the west line of said Dr. George A. Toledo and wife, Carolyn Toledo tract, a distance of 225.50 feet to a 1/2 inch iron rod with yellow cap stamped "5310" found for the southeast corner of said Lot 12R, same being the southwest corner of said Dr. George A. Toledo and wife, Carolyn Toledo tract, also being in the north line of the above mentioned Gillon Avenue;

THENCE S 89° 10' 43" W, with the north line of said Gillon Avenue, passing a 3/4 inch iron pipe found for the southwest corner of said Lot 12R, same being the southeast corner of said Lot 13R, at a distance of 70.00 feet, continuing with the south line of said Lot 13R, a total distance of 245.00 feet to the POINT OF BEGINNING and containing 1.268 acres of land, more or less.

OWNER'S DEDICATION

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That John Stephen Jones and Karen Gayle Jones, does hereby adopt this plat as an amended plat of Lot 12R and 13R, Block 22, Highland Park, Second Installment. To Lot 13RR, Block 22, Highland Park, Second Installment an addition to the Town of Highland Park, Dallas County, Texas.

WITNESS MY HAND at Dallas, Texas this 7th day of May, 2019.

By: John Stephen Jones  
John Stephen Jones

STATE OF TEXAS §  
COUNTY OF COLLIN §

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared John Stephen Jones, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

WITNESS MY HAND AND SEAL OF OFFICE, this 7th day of May, 2019.

Marylyn Sue Love  
Notary Public in and for the State of Texas

By: Karen Gayle Jones  
Karen Gayle Jones

STATE OF TEXAS §  
COUNTY OF COLLIN §

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Karen Gayle Jones, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

WITNESS MY HAND AND SEAL OF OFFICE, this 7th day of May, 2019.

Marylyn Sue Love  
Notary Public in and for the State of Texas

NOTES:

1. BASIS OF BEARINGS DERIVED FROM THE TEXAS STATE PLANE COORDINATE SYSTEM, NAD83, TEXAS NORTH CENTRAL ZONE (4202).
2. COORDINATES SHOWN HEREON ARE GRID COORDINATES BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, NAD 83, TEXAS NORTH CENTRAL ZONE (4202).
3. ALL DISTANCES HEREON ARE HORIZONTAL DISTANCES AND IN U.S. SURVEY FOOT.
4. NOTICE: SELLING A PORTION OF THIS ADDITION BY METES & BOUNDS IS A VIOLATION OF THE TOWN ORDINANCE AND STATE LAW AND IS SUBJECT TO FINES AND WITHHOLDINGS OF UTILITIES AND BUILDING PERMITS.
5. PURSUANT TO THE CURRENT ZONING ORDINANCE OF THE TOWN OF HIGHLAND PARK THE CONFIGURATION OF THE LOT SHOWN HEREON SHALL BE PERMANENT. THIS LOT SHALL NOT BE SUBDIVIDED IN THE FUTURE, NOR MAY IT BE COMBINED WITH ANY ADJACENT LOTS AT ANY TIME IN THE FUTURE.
6. ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT ADMINISTRATION (FEMA) AND THE FLOOD INSURANCE RATE MAPS (FIRM), MAP NUMBER 48113C0335K, WITH EFFECTIVE DATE OF JULY 07, 2014, THE SUBJECT LOT APPEARS TO LIE INSIDE AREAS OF MINIMAL FLOOD HAZARD (ZONE X)

SURVEYOR'S CERTIFICATE:

To John Stephen and Karen Jones:

I, JESUS J. LAJARA, a Registered Professional Land Surveyor in the State of Texas, do hereby certify that this amended plat is based on an actual on the ground survey made under my direct supervision and all corners are monumented as shown hereon. Except as shown, there are no visible encroachments, conflicts or protrusions apparent on the ground.

JESUS J. LAJARA  
REGISTERED PROFESSIONAL LAND SURVEYOR  
NO. 6378

STATE OF TEXAS §  
COUNTY OF DALLAS §

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas on this day personally appeared JESUS J. LAJARA, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and considerations therein expressed, and in the capacity therein stated.

WITNESS MY HAND AND SEAL OF OFFICE, this 7th day of May, 2019.

Jennifer Martinson  
Notary Public in and for the State of Texas

JENNIFER MARTINSON  
Notary Public, State of Texas  
Comm. Expires 04-12-2021  
Notary ID 131085136

CERTIFICATE OF APPROVAL BY THE TOWN COUNCIL

Approved this day of May, 2019, by the Town Council of the Town of Highland Park, Texas.

By: Margo Goodwin  
Mayor, Town of Highland Park, Texas

Attest:

By: Gayle Kirby  
Secretary, Town of Highland Park, Texas

THE PURPOSE OF THIS AMENDING PLAT IS TO COMBINE  
2 RESIDENTIAL LOTS INTO 1 RESIDENTIAL LOT

AMENDING PLAT FOR  
HIGHLAND PARK,  
SECOND INSTALLMENT  
LOT 13RR, BLOCK 22

AN AMENDING PLAT OF AN AMENDED PLAT LOTS 12R AND  
13R, BLOCK 22, HIGHLAND PARK, SECOND INSTALLMENT  
JOHN COLE SURVEY, ABSTRACT NO. 268  
TOWN OF HIGHLAND PARK, DALLAS COUNTY, TEXAS

MAY 2019

SCALE: 1"=30'

OWNER

JOHN STEPHEN JONES AND KAREN GAYLE JONES  
3820 GILLON AVENUE  
DALLAS, TEXAS 75205

PLANNER/ENGINEER/SURVEYOR  
DOWDEY, ANDERSON & ASSOCIATES, INC.  
5225 Village Creek Drive, Suite 200 Plano, Texas 75093 972-931-0694  
STATE REGISTRATION NUMBER: F-239  
SURVEY FIRM REGISTRATION NUMBER: 10077800





# Memorandum

To: Kathleen Stewart, Director of Town Services  
Kirk Smith, Assistant Director of Town Services

From: Lori Chapin, P.E., Director of Engineering

Date: May 7, 2019

Subject: Amended Plat for 3820 Gillon Avenue, Highland Park, Texas  
Lot 13RR, Block 22, Highland Park, Second Installment

We have reviewed the amended plat documents for the above referenced property, found them to be in compliance with the Town's subdivision regulations meeting all amended plat standards and recommend approval.

MINUTES OF A MEETING OF THE TOWN COUNCIL OF THE TOWN OF HIGHLAND PARK, TEXAS, HELD AT THE TOWN HALL, 4700 DREXEL DRIVE, ON MONDAY, JUNE 10, 2019, AT 8:00 A.M.

Present at the meeting were Mayor Margo Goodwin, and Town Council Members David L. Dowler, Eric Gambrell, Jimmy Grisham, and Craig Penfold. Absent from the meeting was Mayor Pro Tem John McKnight.

Mayor Goodwin called the work session to order and asked if any Town Council Member wished to discuss any of the items on the Regular Agenda. Hearing none, Mayor Goodwin closed the work session and convened the regular meeting.

Council Member Grisham gave the Invocation.

Mayor Goodwin asked if anyone in the audience wished to address the Town Council, and explained that the Council may not discuss issues raised or make any decision at the time; issues raised may be referred to Town staff for research and possible future action. Connie Karcher, 4420 Edmondson Avenue, thanked the Council for the pool opening at 9:00 a.m. on Memorial Day for Lap Swim, and stated that there were 2 people per lane for 1.5 hours. She recounted her estimate of swimmers throughout the weekend, and expressed a need for two lanes for Lap Swim on Sunday evenings. She referenced the new staff and acknowledged that with new people, new challenges arise during training; she referenced lifeguards working in the snack bar and questioned if they were cooking. Ms. Karcher referenced a perceived malfunction of the shower head at the rinse area and stated that the new pool manager said it will not be fixed; she questioned the procedures to follow for swimmers to express concerns. Ms. Karcher concluded by expressing a concern for shelter for swimmers when evacuated from the pool during storm situations after the previous day's storm that came on abruptly, and asking the Council to give consideration for such shelter. Mayor Goodwin asked if anyone else wished to address the Council, to which there was no response.

Mayor Goodwin recognized Colum Taylor, Boy Scout Troop No. 80, in attendance to satisfy requirements for the Citizen in the Community merit badge.

Mayor Goodwin recessed the Council meeting at 8:11 a.m. and convened a public hearing to receive public comments regarding action on substandard buildings at 4509 Mockingbird Lane. Kirk Smith, Assistant Director of Town Services, explained that on March 11, and March 15, 2019, the Fire Marshal and the Building Official investigated the property. In response to a question from Mayor Goodwin, Mr. Smith stated that the investigations resulted in response to a neighborhood concern regarding substandard buildings on the property. Following investigation of the exteriors and a subsequent inspection of the interiors with the property owner, several concerns regarding the structural integrity of the buildings were identified, to the extent that they considered the buildings dangerous, with potential for collapse. Neighbors reported that they were concerned for the safety of their own properties. Kirk Smith stated that the gas and electrical services to the property were disconnected by the respective utility companies; no one is living on the property, and the property owner failed to meet any of the Fire Marshal's prescribed deadlines.

He presented a list of the various dates Town officials met with the property owner and the deadlines given to the property owner to bring the buildings into compliance:

- March 26, 2019 – Fire Marshal issued Notice of Violation (“NOV”)
  - April 8, 2019: deadline to provide scope of work and a time limit to complete work
  - April 15, 2019: deadline to apply and obtain permits
  - April 22, 2019: deadline to commence work
  - May 20, 2019: deadline to complete repairs (or demolition) of the structures
- April 8, 2019 - Property owner requested meeting with Town officials to inspect interior
- April 10, 2019 – Property owner appealed accuracy of the NOV to the Town Administrator
- April 11, 2019 – Building Official requested that Oncor terminate electrical service
- April 15, 2019 – Property Owner registered as a home owner to be a general contractor
- April 23, 2019 – Property Owner requested building permit (denied due to inadequate information)
- May 8, 2019 – Property Owner requested additional days to complete construction due to rain (May 20 deadline); no building permit obtained
- May 22, 2019 – Property Owner submitted written request for more time – Building Inspector via phone call explained the need for a Professional Engineer evaluation and scope of work, etc.
- May 22, 2019 – late afternoon, Property Owner visited Building Inspection officer and started permit application, but did not have Professional Engineer letter, scope of work, etc.
- May 30, 2019 – Property Owner visited Building Inspection office, signed receipt of letter notice of Public Hearing (June 10, 2019 at 8:00 a.m.). Property Owner again requested building permit (denied based on lack of supporting documents – Professional Engineer letter, scope of work, etc.
- May 31, 2019 – Property Owner visited office; Kirk Smith explained the process for which the Public Hearing is being conducted
- May 31, 2019 – Substandard Building Notice posted at all entry doors on property (no one to enter the premises unless associated with a building permit)
- June 4, 2019 – Property Owner requested permission to enter building on June 5 with the original structural Professional Engineer, a foundation contractor, and a foundation Professional Engineer
- June 7, 2019 – Property Owner requested permission to enter property with two general contractors to inspect property
- June 8, 2019 (Saturday) – Property Owner requested permission to enter property with contractor; cancelled when request was denied, then explained need to acquire medicine and clothes; cancelled with Department of Public Safety later stating the items were found elsewhere

Kirk Smith presented a series of photos taken during the inspection of the Property, and explained that no interior photos were allowed by the Property Owner.

- ❖ The first slide contained two photos and showed the rear yard looking north. A tree had fallen partially onto the roof and east wall of the accessory building.
- ❖ The second slide contained two photos and showed the north wall (front) and roof of the accessory building. Mr. Smith stated that the inside revealed a collapsing vaulted ceiling.
- ❖ The third slide contained two photos of the north wall (front) of the main structure and a close-up view of the area west of the front door. Mr. Smith outlined an area of the wall between a second-floor window and a first-floor window directly below, and explained that the non-fired clay brick expands and contracts; this area has been damaged by moisture. Cracks in the brick and rotted wood framing around the lower window were evident.
- ❖ The fourth slide contained two photos of the same window area from a different angle; the cracks and separation were clearly visible.
- ❖ The fifth slide contained two photos of the window directly above the front door on the north wall of the main structure. Mr. Smith explained that the degree of separation of the brick from the shutters around the window posed a possible fall hazard.
- ❖ The sixth slide contained two photos of the north wall of the main structure east of the front door. An outline around the window showed cracking around the window, and moisture damage in the brick around the upper right corner of the window.
- ❖ The seventh slide contained one photo of the south (rear) wall of the main structure. Mr. Smith explained that the right side is a wood-sided two-story addition to the main structure. He further explained that the roof appears to be bowed inward; arrows superimposed on the photo revealed the west chimney leaning toward the roof.
- ❖ The eighth slide contained two photos with close-up views of the rear wall of the main structure. Mr. Smith explained the damage/disrepair of the wood-sided veneer and the slab foundation. An exterior electrical outlet was adjacent to an area where the wood had rotted near the bottom of the corner column.
- ❖ The ninth slide contained two photos of the rear (south) wall of the main structure showing a one-story brick veneer portion of the building with exposed electrical wires and severe cracking around the upper left corner of the window.
- ❖ The tenth slide contained two photos of the rear (south) wall of the main structure depicting the same one-story brick veneer portion of the building. Mr. Smith explained the separation of brick between the one-story and the two-story portion of the building.
- ❖ The eleventh slide contained one photo of the rear of the main structure showing the west side of the building. Mr. Smith described the condition of the area and stated that the damage presents a collapse hazard.
- ❖ The twelfth slide contained two photos of the east side of the main structure. Mr. Smith explained that the degree of separation and the damaged wood siding veneer presents a possible fall hazard.
- ❖ The thirteenth slide contained one photo of a west window on the second floor of the main structure. Mr. Smith outlined the area above the window, around the right side and below the bottom of the window, and explained the cracking wood rot and separation.



- ❖ The fourteenth slide contained three photos of the west wall of the main structure, a one-story stucco on wood veneer addition. Mr. Smith explained that moisture damage caused the stucco to erode near the bottom of the wall; a hole was clearly visible, showing the exposed metal lath on the wood veneer. He further explained the damage at the top of the structure near a brick column.
- ❖ The fifteenth slide contained two photos of the west wall of the main structure, brick veneer on slab foundation. The first photo revealed brick bowing outward; the second photo showed a level with a reading indicating that the brick veneer was out of plumb 1/4-inch per foot.

Kirk Smith did not present photos of the interior investigation of the structures that was made with the property owner present. The following conditions were described:

- Main structure:
  - Living room ceiling failure
  - Stairwell – eastern wall leaning toward the west – no clearance between handrail and wall at the top of the stairs
  - Severe lean/slope on floor of the second story master bedroom (above living room)
  - Sag in roof ridge and chimney leaning toward roof
  - Water stains in ceilings throughout
  - Daylight visible through wall of storage addition to west side
  - Exposed electrical at ceiling of storage addition to west side
- Accessory Structure (Guest House)
  - Wood rot at base of north wall east of entry
  - Partial collapse at vaulted ceiling
  - Water damage at interior and mold present

Kirk Smith stated that as of the time of this public hearing, the Professional Engineer report received from Reedy Engineering dated May 31, 2019, was non-conclusive, and stated that additional investigation is needed after structural elements have been exposed. The Professional Engineer report received from Crosstown Engineering, a foundation engineer, dated June 6, 2019, was also non-conclusive, and stated that the crawl space needs to be excavated, drained, and dried out before a scope of work can be determined. Since March 26, 2019, no comprehensive reports have been concluded by Professional Engineers; no permits have been obtained; and no work has commenced.

Mayor Goodwin asked if the property owner was present; Mr. Smith responded in the affirmative. Council Member Gambrell asked if concerns were expressed by several neighboring homeowners or one, and the type notice required for this public hearing. Kirk Smith explained that the requisite notice was delivered to the Property Owner and the lien holders. In response to further questions, Mr. Smith explained that this public hearing did not require notification of the property owners within 200 feet of the subject property, and prior to March 26, 2019, the date of the Notice of Violation, the Building Inspection department had known of other types of violations, specifically Class C Zoning-type misdemeanors, but not problems of this type. Council Member Penfold asked if the property owner showed a willingness to cooperate; Kirk Smith stated that the Property Owner was open with his communication, expressed concern, and in the latter part of the process, engaged professionals. Council Member Penfold commented that the report

presented was thorough, and gave him a sense that the interior was no better than the outside. Mayor Goodwin asked if the Property Owner wished to speak.

Scott Brei introduced himself and stated that his homestead since 1997 is the property at 4509 Mockingbird Lane; his homestead status was re-established by a Dallas Court in another matter. He added that he was married on December 22, 2017. Mr. Brei further stated that he is respectful of the economy of the Town Council, of Kirk Smith and his knowledge of the rules and ordinances of Highland Park, and that he met with Bill Lindley. He mentioned that he worked on the Mockingbird reconstruction several years ago. Mr. Brei stated that he drove around the Town after the storms the day before, and he is thankful for the police; he mentioned paperwork, and that he was staying at a hotel, and that he found clothes and medications. Mr. Brei read the words of the inscription on the wall on the third floor of Town Hall, and stated that he never thought that would bring him here today. Mr. Brei distributed a series of photos to the Town Council and gave a verbal description of each. He explained that the first photo of the living room was taken less than 30 days ago; the next photo depicted the stairs to the second floor and the first floor hallway/entry; the third photo depicted the rear yard and a large portion of a downed tree. Council Member Gambrell asked the date of the first photo and of the photo of the stairs; Scott Brei stated 60 days; the photo of the stairs was taken at about the same time. Mr. Brei stated that the tree fell on the guest house on March 15. Mayor Goodwin asked when the tree was cleared. Scott Brei stated that it was removed within two days. The tree cutting commenced around 11:00 p.m., and continued until 3:00 a.m.; the power to the neighborhood was cut. Mayor Goodwin asked if the tree is still leaning, to which Mr. Brei explained that Oncor could not accomplish removing the remainder of the tree with a bucket truck. He added that he had contracted with a tree service and scheduled the work to be completed the previous Saturday. Scott Brei described the next photo as the garage door, and stated that repairs have begun; he added that he has started the repairs ordered by the Fire Marshal. Council Member Penfold asked Mr. Brei if a permit is needed before beginning repairs. Mr. Brei stated that he thought he has an owner's permit for some repairs. Council Member Penfold explained that the Town has rules that must be adhered to, and that no one could better explain those rules than Kirk Smith. Mr. Brei explained the next photo as the back fence and the sump pump that pumps into the alley. Mayor Goodwin asked what it pumped; Scott Brei stated that it is a French drain that drains to a small island; he further stated that water is ponding, and the drain is cut off. Mr. Brei mentioned that Moore Tree Service is his contractor. Mayor Goodwin asked Mr. Brei if he is having difficulty in providing the necessary information required to obtain permits. Scott Brei stated that he is a novice at the construction/permitting process; he has asked each time, and stated that he has been told that he can't do "this" until he does "that." Mr. Brei explained the difficulty with the rain delay in getting contractors out. He stated that his focus is on the home and the tree.

Mayor Goodwin explained that the scope of work is more than the tree, and asked Kirk Smith if a contractor bid is required before issuing a building permit; Mr. Smith affirmed. Mayor Goodwin asked if an Engineer's report is also required; Mr. Smith affirmed. Scott Brei commented that engineers have good intentions. Council Member Gambrell asked Mr. Brei if his engineers have furnished any reports regarding the scope of work, issues, and conditions. Scott Brei replied in the affirmative. Council Member Gambrell asked Kirk Smith if he had received Engineer's reports. Kirk Smith stated that two letters were

received. Council Member Gambrell stated that “Engineer’s Report” is a commercial term. Kirk Smith stated that letters are not structural opinions. Mayor Goodwin asked Scott Brei if the documents he presented from engineers were different from those sent to Kirk Smith. Scott Brei verified that they are the same documents. Mayor Goodwin commented that the letters were inconclusive and further investigation is needed. Scott Brei explained that he needs the water drained out, and the area dried out, which he stated takes at least a week, but the rain continues to return. Council Member Penfold read from a letter dated April 14, 2019, from Frank B. Reedy, P.E., and asked Mr. Brei if he had made the recommended cuts and exposed the items listed. Scott Brei stated that Frank Reedy said to cut from above; in the living room an 18-inch box was cut, and an 18-inch box in the hallway, with 2 in the dining room. Council Member Penfold commented that it is now 60 days later, and asked Mr. Brei if he understood the seriousness of the problem. Scott Brei stated that he does. Council Member Penfold asked Mr. Brei what he wants the Council to do; Scott Brei responded look at the facts, look at the bids. He stated that he wants to fix the home.

Council Member Gambrell asked Mr. Brei to state what he is asking for. Mr. Brei said more time. Council Member Gambrell asked Mr. Brei to specify; Scott Brei said rain. Council Member Gambrell asked what it is; more time is not correct. Council Member Grisham asked Mr. Brei what changes going forward, versus what happened in the past. Scott Brei stated that he and Kirk Smith discussed 30 days; he inquired if he could ask for 60 days. He further explained that the contractor said that he could start on Mr. Brei’s property next week. Council Member Gambrell asked Mr. Brei if he acknowledged the structural issues and the concerns of his neighbors, as well as the structural dangers, and asked if Mr. Brei is trying to repair them. Scott Brei replied in the affirmative, and stated that he wants to do the work to satisfy Kirk Smith, with an engineer letter. Mayor Goodwin stated that she wanted a more definite answer because she is skeptical about what can be accomplished in the next 30 days; the reports are old, and she wants to know what is planned, who will be working on Monday, Tuesday, Wednesday, etc. She added that the Town Council does not take the matter lightly because of concerns for the safety of the neighbors and for Mr. Brei. Mayor Goodwin asked Mr. Brei again to state his plan.

Scott Brei responded that he will have the structures evaluated, get the permits, and do the work. He stated that he was told he cannot get a permit until all bids are totaled. Mayor Goodwin asked Mr. Brei if Kirk Smith explained to him the documents that are needed for each permit; Scott Brei answered in the affirmative. In response to Mayor Goodwin, Kirk Smith mentioned a conclusive Engineer’s Report; he is willing to get Mr. Brei a tear-out permit, but he will require an Engineer’s Report that specifies the scope of work. Mr. Smith further stated that it will take three to six months to make the structural and cosmetic repairs. Mayor Goodwin asked how long it will take to get the Engineer’s Report; Kirk Smith estimated two weeks. Mayor Goodwin confirmed that the Engineer could get in to examine the structures.

Council Member Penfold asked what could be any fairer. Scott Brei asked to restore the electricity, so the Engineer could make the necessary cuts. Kirk Smith stated that a temporary power pole could be installed. Scott Brei stated that one contractor said he has a generator. Mayor Goodwin stated that the Town would give Mr. Brei one month to get the Engineer’s Report and contractor bids in place. She reiterated that in 30 days, she wants to see if Mr. Brei has plans in place. Council Member Penfold asked if the Council can

require Mr. Brei to come back at a time certain; he mentioned the expense and asked Mr. Brei if he had a total scope. Scott Brei mentioned \$20,000 and \$60,000, and that the floors are down only 1.5-inches; he will contract professional foundation repairers; one treated beam will pickup the hallway and living room. Mayor Goodwin asked Mr. Brei if he felt that he is financially able to cover the work. Mr. Brei responded in the affirmative, and mentioned money from a loan, possibly getting money from the family. Council Member Penfold asked Mr. Brei if he did not have financing; Scott Brei mentioned the tree on the house and window damage, then stated that Safeco (insurance) will cover the roof on the guest house; the main house has everything but the foundation. Mayor Goodwin noted the break in the vaulted ceiling, and asked if one month is reasonable. Matthew Boyle, Town Attorney, explained that according to the Local Government Code, if the Town grants more than 30 days, it must have a scope and a schedule.

Matthew Boyle asked Mr. Brei if he has the scope and schedule today; he also asked Mr. Brei if anything in the Town's documentation was factually incorrect. Scott Brei responded with the crossbeam in the living room. Matthew Boyle asked if there was anything other than the crossbeam. Mr. Boyle stated that Mr. Brei put the tarp in place to stop water, and asked if that was correct. Scott Brei responded that it was received by the contractor. Matthew Boyle asked if the structures have electrical service; Scott Brei replied in the affirmative: power with Ambit and Highland Park water. Matthew Boyle asked Mr. Brei if the structures have electrical service; Scott Brei stated that he has an electricity bill. Matthew Boyle again asked if he has electrical service; Scott Brei replied in the negative. Mr. Brei further stated that he would like to follow the list Kirk Smith made. Matthew Boyle asked Mr. Brei if he had a building permit. Scott Brei replied in the negative. Matthew Boyle began to address the Mayor and Town Council regarding the public hearing when Council Member Gambrell stated that he would like to go into an Executive Session. Mayor Goodwin asked if anyone else in the audience wished to speak.

Jeanita Brei, 4509 Mockingbird Lane, addressed the Council and stated that she would like to comply to have everything repaired, electrical power restored. She stated that the property is the homestead, and it means a lot to keep their home.

Mayor Goodwin asked if anyone else wished to speak. Catherine Miller, 4220 University Boulevard, University Park, addressed the Council and stated that she is Mr. Brei's ex-wife. She expressed concern about the structural integrity, and concern that Mr. Brei has the financial capability: he has many other obligations, including being 28 months behind on his mortgage. She added that he is in bankruptcy, and is several years past-due on child support. She stated that she wanted to make the Town Council aware of the financial issues.

Anne Marie Hurlbut, Glenwick Lane, University Park, stated that she and Mr. Brei have a 9-year-old daughter together. She described a legal history related to child support that included Mr. Brei being jailed for failure to pay child support. Ms. Hurlbut stated that Mr. Brei has no substantial job other than \$10-per-hour jobs. She added that she has to file monthly for child support in the amount of \$455 per month, plus \$155 for medical. Council Member Gambrell asked her if Mr. Brei is currently in deficiency. Ms. Hurlbut replied in the affirmative, and stated that he has been since November, 2018. Council Member Gambrell asked Ms. Hurlbut if her opinion was that Mr. Brei cannot meet the financial

obligations to repair the house. He then asked Ms. Miller if she was represented by Counsel, to which she responded in the affirmative, through the Attorney General.

In response to questions, Ms. Miller indicated that Mr. Brei owes between \$12,000 and \$13,000 in child support, and approximately \$27,000 for medical. Council Member Gambrell asked Ms. Miller if Mr. Brei was over \$10,000 in arrears, to which she replied in the affirmative, and estimated approximately \$37,000. Ms. Miller explained that in their divorce, Scott Brei was granted the home; Ms. Miller was on the mortgage, and Mr. Brei never took her off the mortgage.

Anne Marie Hurlbut stated that Scott Brei claims that he lives at the house on Mockingbird, but at a hearing in March, 2018, Mr. Brei claimed that he did not live at the house. He stated that he lived 90% of the time at his wife's condominium. Ms. Hurlbut further stated that Mr. Brei abandoned their child; he has had no contact with her since June of 2018.

Council Member Penfold asked Scott Brei if he currently has a job. Scott Brei stated that he is unemployed.

Council Member Gambrell motioned to go into Executive Session. He then stated that he would like to have the opportunity to keep the public hearing open. Mayor Goodwin asked if anyone else in the audience wished to speak during the public hearing.

Jeanita Brei stated that both of the speakers are ex-wives; Mr. Brei filed bankruptcy, and he is trying to get it settled. She further stated that both ex-wives are all about the money. Jeanita Brei explained that she works, but her husband does not work because of the jail record. Council Member Gambrell asked if she understands that Mr. Brei is in arrears in child support, to which Jeanita Brei replied in the affirmative. Council Member Gambrell asked her how he plans to pay for child support if he is in arrears. Jeanita Brei explained that he has insurance. Council Member Gambrell asked about the insurance company's process.

Mayor Goodwin asked Mr. Brei if he is behind on mortgage payments. Scott Brei stated that it was discharged from the bankruptcy. Mayor Goodwin asked if he is required to pay the money back. Scott Brei replied in the affirmative, and stated that his ex-wife never signed a special document to take her off the mortgage. Council Member Gambrell asked Mr. Brei if he is behind on child support. Scott Brei replied in the affirmative. Council Member Gambrell asked how he could pay \$1; Scott Brei stated that he has a check. Council Member Gambrell asked Mr. Brei how he could pay \$1 to repair the house if he can't pay child support. Scott Brei stated that the insurance company sent a check. Council Member Gambrell asked Mr. Brei how he can get the repairs done. Scott Brei explained that the check from the insurance company is for a portion of the repairs. Council Member Dowler asked the balance on the mortgage. Scott Brei stated that he has two loans, the first is for \$250,000, and the second is for \$125,000. He added that the Internal Revenue Service has a lien from 2005 in the amount of \$1,800; the house is listed on the tax roll at \$581,000, which Mr., Brei claimed is typically 20% to 30% below market value. Council Member Penfold indicated that is not correct.

Mayor Goodwin asked if anyone else wished to speak. Hearing none, Mayor Goodwin closed the public hearing at 9:25 a.m., with a right to reopen the public hearing after the

Council finishes discussion on the remaining agenda items, goes into Executive Session and closes the Executive session.

Mayor Goodwin asked if anyone else in the audience wished to speak. Hearing none, Mayor Goodwin closed the public hearing at 9:26 a.m. and reconvened the Council meeting.

On a motion by Council Member Penfold, seconded by Council Member Grisham, the Council voted unanimously to approve Item A. on the Consent Agenda. Prior to the vote, Mayor Goodwin explained that with a consent agenda, several items are voted upon in one motion; any Council Member could request that any item(s) be removed for discussion and voted upon separately. Mayor Goodwin asked if any Council Member had such a request, to which there was no response.

*A. Consider approval of the minutes of the Town Council meeting held on May 28, 2019.*

Mayor Goodwin deferred Item A., “Review, discuss, and consider acting on an order for the repair and/or demolition of all structure at 4509 Mockingbird Lane” on the Main Agenda until later in the meeting.

On a motion by Council Member Penfold, seconded by Council Member Dowler, the Council voted unanimously to approve Resolution No. 004-19 amending building permit fees in the Town’s Master Fee Schedule. Kirk Smith explained that three topics were inadvertently omitted in the draft resolution included in the agenda packet; those items are included in the draft resolution provided at each seat prior to the Council meeting. Those three items have a standard \$180 flat permit fee.

#### *RESOLUTION NO. 004-19*

*A RESOLUTION OF THE TOWN OF HIGHLAND PARK, TEXAS AMENDING BUILDING PERMIT FEES IN THE ITS MASTER FEE SCHEDULE.*

Mayor Goodwin recessed the Town Council meeting at 9:30 a.m. and opened the Town Council study session.

#### UPDOMING AGENDA DISCUSSION

##### **Action**

*No items assigned to this category.*

##### **Consent**

*No items assigned to this category.*

#### FUTURE AGENDAS DISCUSSION

*No items assigned to this category.*

## REPORTS

*“Review and discuss the status of the Monarch Pecan Tree.”* Kathleen Stewart, Director of Town Services, explained that several years ago, the Town began a program with Preservation Tree, the Town’s arborist, to preserve the health of the Monarch Pecan Tree (the “Tree”) located on Armstrong Parkway near the intersection of Preston Road. Micah Pace, Urban Forestry Specialist, implemented treatments and carefully monitored the Tree. Mayor Goodwin has met with neighboring residents to update them on the condition of the Tree. Mrs. Stewart introduced Micah Pace, who addressed the Council and presented an update on the status of the Tree. Mr. Pace stated that the Tree has not improved; it is in a state of retrenchment, a phase in the cycle of a tree’s life when it experiences shrinking, or “die-back.” This condition can last many years, and possibly decades; however, the Tree will not improve or provide its former function and value. Micah Pace explained that in addition to routine pruning of the Tree, cables were installed to stabilize its branches to address safety concerns. Mayor Goodwin stated that if the Tree is continually pruned, the limbs will eventually die, and the canopy will reduce. The Tree produced leaves this spring, but no new branches. Micah Pace stated that he visited the Tree immediately before the study session, and observed new die-back. Mayor Goodwin stated that she visited with Armstrong residents twice, and they understand that if a decision is made to remove the Tree, the wood will be harvested, preserved and utilized for commemorative artifacts. Those residents were also advised that the “Sister” Tree, in close proximity to the Monarch Pecan Tree, will be decorated for the Town’s annual Tree Lighting Ceremony in December. Micah Pace concluded his presentation by recommending that: (i) following the removal of the Tree, the area be sodded with grass; and (ii) the Town focus on nurturing the Sister Tree. Council Member Dowler expressed optimism regarding the utilization of the Tree’s wood. Mayor Goodwin reiterated that it is not known how much wood is salvageable. Council Member Penfold mentioned the possibility of replacing the Tree, even though the Sister Tree is fine, its location and size is not the same. He suggested perhaps soliciting contributions to fund the purchase, rather than utilizing Town funds. Council Member Dowler suggested reviewing the situation after the Tree is gone, and indicated that he would be in favor of considering alternatives.

*“Review and discuss the status of capital projects.”* Lori Chapin, Director of Engineering, asked if she could answer any questions the Council may have. Bill Lindley suggested deferring this item to the next study session.

*“Review and discuss the status of the Preston Road construction project.”* Lori Chapin explained that Phase A is in the process of being finished. Phase B has begun, and is currently slightly ahead of schedule. Mayor Goodwin asked if the concrete put in place after the Dallas Utilities work is being removed. Lori Chapin explained that small sections of the pavement, where its integrity is compromised, will be removed. In response to a question from Mayor Goodwin, Lori Chapin affirmed that the current engineering specifications are stronger than the specifications utilized three to four years ago. Council Member Penfold asked the number of bid days that would be calculated as liquidated damages. Lori Chapin explained that excused days/rain days do not count against the contractor. Council Member Penfold expressed concern of giving the contractor extra days.

Mayor Goodwin adjourned the study session at 9:46 a.m. and reopened the Town Council meeting.

Mayor Goodwin recessed the Town Council meeting at 9:45 a.m. and convened a closed session pursuant to Section 551.071 of the Texas Government Code, to consult with and receive legal advice from the Town Attorney regarding pending or contemplated litigation (Cause No. DC-18-08709 in the 191st Judicial District Court of Dallas County, Texas: McCullers v. USAI, LP, et al; and to obtain legal advice regarding Item IV A. and VI. A., acting on an order for the repair and/or demolition of all structures at 4509 Mockingbird Lane.

Council Member Grisham excused himself from the meeting at 9:48 a.m.

Mayor Goodwin closed the closed session at 10:16 a.m. and reconvened the Council meeting in open session. No final action, decision, or vote was taken during the closed session.

Mayor Goodwin asked for comments or a motion regarding Agenda Item VIII.A., to which there was no response.

Mayor Goodwin asked for comments or a motion regarding Agenda Item VI.A. On a motion by Council Member Gambrell, seconded by Council Member Penfold, the Council voted unanimously to approve an ORDER BY THE TOWN OF HIGHLAND PARK TOWN COUNCIL TO REPAIR, REMOVE OR DEMOLISH BUILDINGS AT 4509 MOCKINGBIRD LANE (the "Order"), a copy of which is attached. Following a discussion, Mayor Goodwin advised Scott Brei that he is required to appear at the Town Council meeting on Monday, July 8, 2019, and provide documentation to the Town Council that includes a conclusive Engineer's Report, a Contractor's Scope of Work and Schedule, and Building Permit(s) to make the required repairs to the buildings on the property. She further stated that failure to provide the documentation will result in enforcement of the Order deadline of thirty days from June 10, 2019.

There being no further business to come before the Council, the meeting was adjourned at 9:31 a.m.

APPROVED on this the 24th day of June, 2019.

By:

Margo Goodwin  
Mayor

ATTEST:

Gayle Kirby  
Town Secretary



**ORDER BY THE TOWN OF HIGHLAND PARK TOWN COUNCIL TO REPAIR,  
REMOVE OR DEMOLISH BUILDINGS AT 4509 MOCKINGBIRD**

**Property:** 4509 Mockingbird in the Town of Highland Park, County of Dallas, State of Texas

**Date of Order:** June 10, 2019

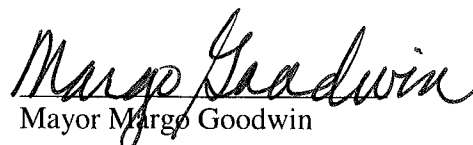
On June 10, 2019, the Town of Highland Park Town Council opened a public hearing regarding the above property. The Town of Highland Park Town Council declares the buildings located on the property to be substandard and/or a hazard to the public health, safety and welfare in accordance with Article 3.17 of the Town of Highland Park Code of Ordinances and Chapter 214 of the Texas Local Government Code. Violations on the property include:

- 1) Lack of utilities;
- 2) Lack of hot or cold running water to required plumbing fixtures; (no WH)
- 3) Lack of adequate heating facilities;
- 4) Dampness of interior areas;
- 5) General dilapidation or improper maintenance;
- 6) Defective or deteriorated flooring or floor supports;
- 7) Deteriorated or damaged framing members:
  - Members of walls, partitions, or other vertical supports that split, lean, list, or buckle due to defective material or deterioration;
- 8) Hazardous wiring;
- 9) Faulty weather protection, which shall include but not be limited to the following:
  - Deteriorated, crumbling, or loose plaster or masonry;
  - Deteriorated or ineffective water-proofing of exterior walls, roof, foundations, or floors, including broken windows or doors;
  - Defective or lack of weather protection for exterior wall coverings, including lack of paint, or weathering due to lack of paint or other approved protective covering;
  - Broken, rotted, split, or buckled exterior wall coverings or roof coverings.
- 10) Hazardous or insanitary premises; and
- 11) Inadequate maintenance.

Within thirty (30) days of this Order, the property owner must repair, remove or demolish the buildings. If the ordered action is not taken within said time, the Town of Highland Park will vacate, secure, remove and demolish the buildings at the Town's expense.

Upon the completion of the Town's vacation, securing, removal and demolition of the building, the Town shall assess a lien against the property in an amount not to exceed the Town's incurred costs in vacation, securing, removal and demolition, plus eight percent (8%) per annum of such incurred costs, against the property.

Passed and approved by a vote of 3 to 0 on this 10th day of June 2019.

  
Mayor Margo Goodwin



# **TOWN OF HIGHLAND PARK**

## **Agenda Briefing**

Council Meeting: June 24, 2019

Department: Fiscal and Human Resources

Director: Steven J. Alexander

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### **TITLE**

Consider approval of a resolution amending the number and terms of the members, and the scope of work of the Town's Finance and Audit Advisory Committee.

### **BACKGROUND**

The Town Council created the Finance and Audit Committee (the "Committee") in 2013. The Committee provides advice and recommendations to the Town Council concerning the investment of Town funds, financial, accounting, and audit-related affairs, practices, and policies of the Town. Since its inception, the Committee has focused specifically on the results of the annual audit, the development of the Town's annual budget, with an emphasis on reviewing the multi-year financial plan for the CIP, and monitoring monthly financial reporting to the Town Council. The Committee meets as needed, and serves in an advisory capacity to both Town Staff and the Town Council.

The key amendments proposed to the Committee's membership and scope of work include the following:

- Modifies the number of private citizens to be appointed to the Committee from three to four.
- Removes the number of terms that a Committee Member can serve.
- Removes language related to the Town Council Administrative Committee and reflects the appointment of two Town Council Members to the Committee.
- Clarifies the Committee's responsibilities as they relate to commenting and/or reporting on matters to the Town Council.
- Sets the frequency of meetings to occur "as needed" as opposed to a required number of meetings per month.

### **RECOMMENDATION**

Town Staff recommends approval. The Town Council reviewed this item at its study session on June 18, 2019.

### **FINANCIAL IMPACT**

None.

### **ATTACHMENTS:**

<b>File Name</b>	<b>Description</b>
Resolution_amending_FAAC_05022019.pdf	Proposed resolution

RESOLUTION NO.

A RESOLUTION OF THE TOWN OF HIGHLAND PARK, TEXAS, AMENDING THE MEMBERSHIP AND SCOPE OF WORK OF THE TOWN OF HIGHLAND PARK FINANCE AND AUDIT ADVISORY COMMITTEE.

WHEREAS, the Town Council of the Town of Highland Park, Texas ("Town") is committed to insuring that the municipal government remains a fiscally sound organization; and

WHEREAS, the Town Council encourages citizen involvement in the process of governing, and seeks to improve fiscal accountability and transparency to the public; and

WHEREAS, ensuring that the resources of the Town are properly managed and accounted for is of the utmost importance to the Town Council; and

WHEREAS, the Town Council believes that the Finance and Audit Advisory Committee is in the best interest of the citizens of Highland Park;

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Highland Park, Texas:

That, the membership and scope of work of the Finance and Audit Advisory Committee are hereby amended and set forth in the document entitled, "Town of Highland Park, Texas, Finance and Audit Advisory Committee" attached hereto and made a part hereof.

PASSED AND APPROVED by the Highland Park Town Council this 24th day of June 2019.

APPROVED AS TO FORM:

APPROVED:

Matthew C.G. Boyle  
Town Attorney

Margo Goodwin  
Mayor

ATTEST:

Gayle Kirby  
Town Secretary

**Town of Highland Park, Texas**  
**Finance and Audit Advisory Committee**

***Purpose of the Committee:***

The Town of Highland Park Finance and Audit Committee (the "Committee") will provide advice and recommendations to the Town Council concerning the investment, financial, accounting, and audit-related affairs, practices, and policies of the Town.

***Membership/Structure/Term of Office:***

The membership of the Committee will be composed of four individuals consisting of the Mayor and at least three, but not more than four, private individuals with significant knowledge and experience in the realms of business finance and/or municipal finance. In addition, the Committee shall have four *Ex Officio* members consisting of the two Town Council Members ~~who serve as members of the Town's Administrative Committee~~, the Town Administrator, and the Chief Financial Officer of the Town.

The ~~three~~ private individuals and two Council Members will be appointed ~~by the~~ at the discretion of the Mayor; however, their appointments shall be subject to confirmation by the Town Council (the ~~"Council"~~). The ~~three~~ private individuals, the Mayor, and the two Council Members ~~members of the Administrative Committee~~ shall serve as members of the Committee for a term of two years ending simultaneously with the ending of the terms of the Mayor and of the Town Council Members. ~~The service of the private individuals shall be limited to not more than three successive two-year terms.~~ The Mayor shall appoint the Chair of the Committee with the confirmation of the Town Council.

***Responsibilities of the Committee:***

The Committee will: (i) consider the policies and priorities of the Town as expressed in the current budget and capital improvement program and as otherwise conveyed to the Committee by the Council; (ii) study and assess the financial performance and financial condition of the Town; (iii) identify issues and opportunities related to such performance and condition; and (iv) convey comments and make recommendations to the Council as it deems appropriate or as the Council may request. In conjunction therewith, the Committee will:

- On a monthly basis, review the Town's periodic financial reports ~~with the Town Staff~~ and provide comments as appropriate;
- On a monthly basis, review the Town's investment portfolio ~~with the Town Staff~~ and provide comments as appropriate;
- Review, assess, and comment, as the committee determines necessary, upon the investment, financial, accounting, and audit policies and practices of the Town;

- Participate in, and review, assess, and comment upon, the development and preparation of the proposed Annual Budget. At the request of Town Council, this may include, but is not limited to:
  - ~~to include reviewing annually t~~The Town's Compensation ~~and Benefits~~ Program, as well as the Pay for Performance (P4P) Program; and
  - The Town's benefits program to include health insurance and retirement; and
  - ~~, and t~~The Capital Improvement Program and related financing plans as they are developed, prepared and circulated.;
- Confer with the independent auditors retained by the Town, including conducting at least one annual conference without the presence of any member of the Town Staff, including without the presence of any *Ex Officio* members of the Committee who are members of the Town Staff; and
- Review, assess, and comment upon the Comprehensive Annual Financial Report prepared by the auditors.

The Town Staff will furnish to the Committee the benefit of its knowledge, experience, and recommendations as the Staff may deem appropriate; and the Committee will draw upon such knowledge, experience, and recommendations as it deems appropriate.

The Staff, without the approval of the Council, may implement recommendations of the Committee which involve routine adjustments or refinements of existing administrative practices of the Town; however, no recommendation that is inconsistent with any prior directive of the Town Council or that constitutes a change in Town policy will be implemented without the prior approval of the Council.

#### ***Frequency of Meetings:***

The Committee will meet ~~monthly as needed~~ and at such ~~other~~ times as the Chairman or the members of the Committee deem appropriate. Meetings may be conducted in person, by videoconferencing, by teleconferencing, or by a combination thereof.

#### ***Reports to the Town Council:***

The Committee will submit to the Council ~~on a quarterly basis a~~ written reports as determined necessary by the committee or at the request of the Town Council concerning: (i) the financial performance of the Town relative to the current Budget; (ii) any recommendations it may deem appropriate; and (iii) such other matters within the realm of its responsibilities as it may deem appropriate. ~~Such quarterly reports will be submitted within thirty (30) days of the close of each fiscal quarter of the Town.~~ Such report(s) may be supplemented by the members of the Committee or a representative appearing at a meeting of the Council. Further, the Committee may make written reports to, or its members or a representative may make appearances before; the Council as the Committee, or its member(s) may deem appropriate.



# TOWN OF HIGHLAND PARK

## Agenda Briefing

Council Meeting: June 24, 2019

Department: Building Inspection

Director: Kathleen Stewart

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### TITLE

Consider approval to replat Lots 12R and 13R, Block 22, Highland Park Addition, Second Installment into one lot bearing the street address of 3820 Gillon Avenue.

### BACKGROUND

The owner of the properties at 3816 and 3820 Gillon Avenue submitted a request to combine the two properties into one lot on February 21, 2019. Following the public hearing, this item is presented for the Town Council to accept the final plat as Lot 13RR, Block 22, Highland Park Addition, Second Installment, Town of Highland Park, Dallas County, Texas. The staff reviewed the replat and determined that it complies with the Town's zoning regulations, subdivision regulations, and pertinent state law.

The property owner understands that acceptance and approval by the Town Council of the final plat, known as 3820 Gillon Avenue, results in a permanent lot combination which will run with the property in perpetuity.

### RECOMMENDATION

The staff recommends approval. This item was reviewed by the Town Council at its study session on May 7, 2019.

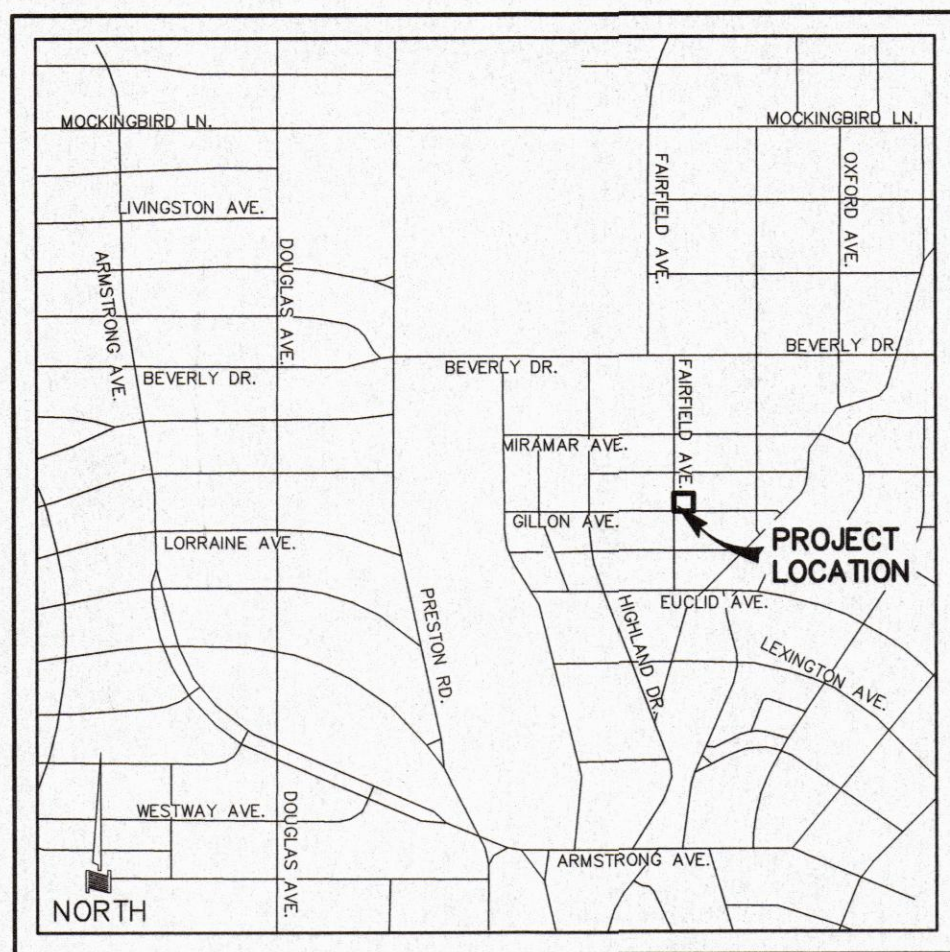
### FINANCIAL IMPACT

None.

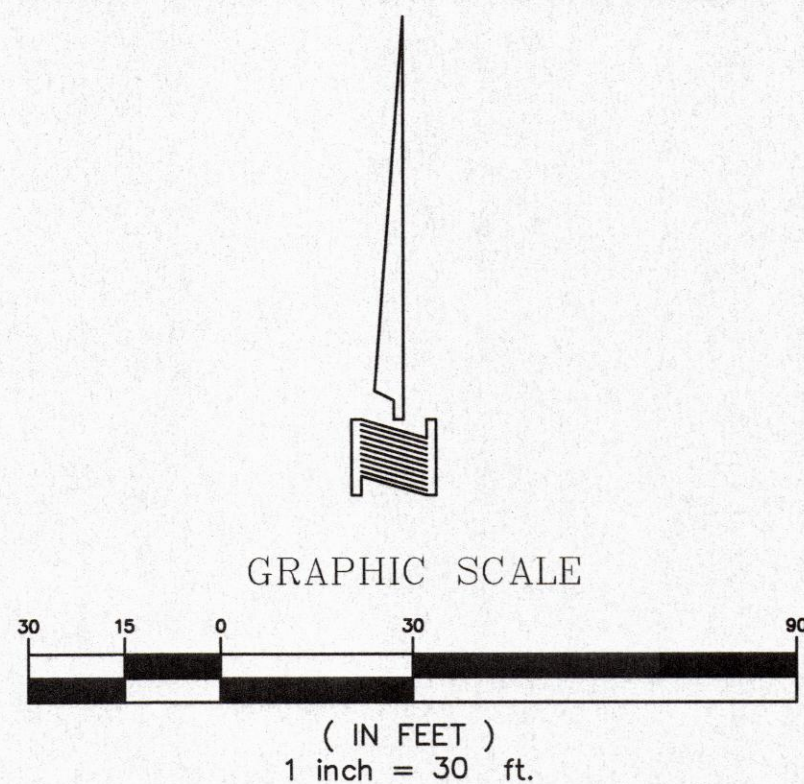
### ATTACHMENTS:

File Name	Description
Plat_Image_20190508.pdf	Replat Document
Engineering_Memorandum_-_3820_Gillon_Avenue.pdf	Engineering Memo





LOCATION MAP  
NOT TO SCALE



LEGEND	
●	1/2" IRON ROD FOUND WITH YELLOW PLASTIC CAP STAMPED "5310" (UNLESS OTHERWISE NOTED)
•	1/2" IRON ROD SET WITH YELLOW PLASTIC CAP STAMPED "DAA" (UNLESS OTHERWISE NOTED)
TXDOT	TEXAS DEPARTMENT OF TRANSPORTATION
O.P.R.D.C.T.	OFFICIAL PUBLIC RECORDS, DALLAS COUNTY, TEXAS
D.R.D.C.T.	DEED RECORDS, DALLAS COUNTY, TEXAS
M.R.D.C.T.	MAP RECORDS, DALLAS COUNTY, TEXAS
IRF	IRON ROD FOUND
IPF	IRON PIPE FOUND
<CM>	CONTROL MONUMENT

OWNERS CERTIFICATE:  
STATE OF TEXAS §  
COUNTY OF DALLAS §

WHEREAS John Stephen Jones and Karen Gayle Jones, are the sole owners of a tract of land situated in the JOHN COLE SURVEY, ABSTRACT NO. 268, Dallas County, Texas, being all of Lots 12R and 13R of the Amending Plat Lots 12R and 13R, Block 22 Highland Park, Second Installment, an addition to the Town of Highland Park according to plat recorded in Volume 94225, Page 3051, Deed Records, Dallas County, Texas, and being all of Lot 12R conveyed in deed to John S. Jones and Karen G. Jones, according to deed recorded in Document Number 201800175321, Official Public Records, Dallas County, Texas, also being all of Lot 13R conveyed in deed to John Stephen Jones and Karen Gayle Jones, according to deed recorded in Document Number 201800143797, Official Public Records, Dallas County, Texas, and being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod with yellow cap stamped "DAA" set for the southwest corner of said Lot 13 R and being in the north line of Gillon Avenue a 60' right-of-way, same being the east line of Fairfield Avenue a 60' right-of-way;

THENCE N 00° 46' 35" W, with the west line of said Lot 13R, same being the east line of said Fairfield Avenue, a distance of 225.50 feet to a 1/2 inch iron rod with yellow cap stamped "5310" found for the northwest corner of said Lot 13R and being in the east line of said Fairfield Avenue, also being in the south line of a 15' alley;

THENCE N 89° 10' 43" E, with the north line of said Lot 13R, same being the south line of said alley, passing a 1/2 inch iron pipe found for the northeast corner of said Lot 13R, same being the northwest corner of said Lot 12R, at a distance of 175.00 feet, continuing with the north line of said Lot 12R, a total distance of 245.00 feet to a 1/2 inch iron rod with yellow cap stamped "5310" found for the northeast corner of said Lot 12R, same being the northwest corner of that tract of land conveyed in Deed to Dr. George A. Toledo and wife, Carolyn Toledo, according to deed record in Volume 20000072, Page 1065, and being described as the 40' of entire east side of Lot 11 and 45' of entire west side of Lot 10, Block 22, Highland Park, Second Installment, an addition to the Town of Highland Park according to the plat recorded in Volume 1, Page 253, Deed Records, Dallas County, Texas;

THENCE S 00° 46' 35" E, with the east line of said Lot 12R, same being the west line of said Dr. George A. Toledo and wife, Carolyn Toledo tract, a distance of 225.50 feet to a 1/2 inch iron rod with yellow cap stamped "5310" found for the southeast corner of said Lot 12R, same being the southwest corner of said Dr. George A. Toledo and wife, Carolyn Toledo tract, also being in the north line of the above mentioned Gillon Avenue;

THENCE S 89° 10' 43" W, with the north line of said Gillon Avenue, passing a 3/4 inch iron pipe found for the southwest corner of said Lot 12R, same being the southeast corner of said Lot 13R, at a distance of 70.00 feet, continuing with the south line of said Lot 13R, a total distance of 245.00 feet to the POINT OF BEGINNING and containing 1.268 acres of land, more or less.

#### OWNER'S DEDICATION

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That John Stephen Jones and Karen Gayle Jones, does hereby adopt this plat as an amended plat of Lot 12R and 13R, Block 22, Highland Park, Second Installment. To Lot 13RR, Block 22, Highland Park, Second Installment an addition to the Town of Highland Park, Dallas County, Texas.

WITNESS MY HAND at Dallas, Texas this 7th day of May, 2019.

By: John Stephen Jones  
John Stephen Jones

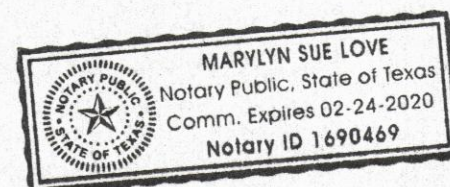
STATE OF TEXAS §  
COUNTY OF COLLIN §

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared John Stephen Jones, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

WITNESS MY HAND AND SEAL OF OFFICE, this 7th day of May, 2019.

Marilyn Sue Love  
Notary Public in and for the State of Texas

By: Karen Gayle Jones  
Karen Gayle Jones

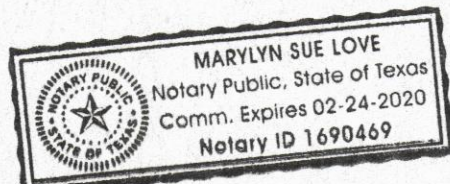


STATE OF TEXAS §  
COUNTY OF COLLIN §

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Karen Gayle Jones, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

WITNESS MY HAND AND SEAL OF OFFICE, this 7th day of May, 2019.

Marilyn Sue Love  
Notary Public in and for the State of Texas



#### NOTES:

1. BASIS OF BEARINGS DERIVED FROM THE TEXAS STATE PLANE COORDINATE SYSTEM, NAD83, TEXAS NORTH CENTRAL ZONE (4202).
2. COORDINATES SHOWN HEREON ARE GRID COORDINATES BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, NAD 83, TEXAS NORTH CENTRAL ZONE (4202).
3. ALL DISTANCES HEREON ARE HORIZONTAL DISTANCES AND IN U.S. SURVEY FOOT.
4. NOTICE: SELLING A PORTION OF THIS ADDITION BY METES & BOUNDS IS A VIOLATION OF THE TOWN ORDINANCE AND STATE LAW AND IS SUBJECT TO FINES AND WITHHOLDINGS OF UTILITIES AND BUILDING PERMITS.
5. PURSUANT TO THE CURRENT ZONING ORDINANCE OF THE TOWN OF HIGHLAND PARK THE CONFIGURATION OF THE LOT SHOWN HEREON SHALL BE PERMANENT. THIS LOT SHALL NOT BE SUBDIVIDED IN THE FUTURE, NOR MAY IT BE COMBINED WITH ANY ADJACENT LOTS AT ANY TIME IN THE FUTURE.
6. ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT ADMINISTRATION (FEMA) AND THE FLOOD INSURANCE RATE MAPS (FIRM), MAP NUMBER 48113C0335K, WITH EFFECTIVE DATE OF JULY 07, 2014, THE SUBJECT LOT APPEARS TO LIE INSIDE AREAS OF MINIMAL FLOOD HAZARD (ZONE X)

#### SURVEYOR'S CERTIFICATE:

To John Stephen and Karen Jones:

I, JESUS J. LAJARA, a Registered Professional Land Surveyor in the State of Texas, do hereby certify that this amended plat is based on an actual on the ground survey made under my direct supervision and all corners are monumented as shown hereon. Except as shown, there are no visible encroachments, conflicts or protrusions apparent on the ground.

Jesus J. Lajara 05/07/2019  
JESUS J. LAJARA  
REGISTERED PROFESSIONAL LAND SURVEYOR  
NO. 6378

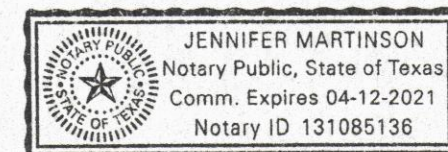


STATE OF TEXAS §  
COUNTY OF DALLAS §

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas on this day personally appeared JESUS J. LAJARA, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and considerations therein expressed, and in the capacity therein stated.

WITNESS MY HAND AND SEAL OF OFFICE, this 7th day of May, 2019.

Jennifer Martinson  
Notary Public in and for the State of Texas



#### CERTIFICATE OF APPROVAL BY THE TOWN COUNCIL

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by the Town Council of the Town of Highland Park, Texas.

By: \_\_\_\_\_  
Margo Goodwin  
Mayor, Town of Highland Park, Texas

#### Attest:

By: \_\_\_\_\_  
Gayle Kirby  
Secretary, Town of Highland Park, Texas

THE PURPOSE OF THIS AMENDING PLAT IS TO COMBINE  
2 RESIDENTIAL LOTS INTO 1 RESIDENTIAL LOT

### AMENDING PLAT FOR HIGHLAND PARK, SECOND INSTALLMENT LOT 13RR, BLOCK 22

AN AMENDING PLAT OF AN AMENDED PLAT LOTS 12R AND  
13R, BLOCK 22, HIGHLAND PARK, SECOND INSTALLMENT  
JOHN COLE SURVEY, ABSTRACT NO. 268  
TOWN OF HIGHLAND PARK, DALLAS COUNTY, TEXAS

MAY 2019

SCALE: 1"=30'

OWNER

JOHN STEPHEN JONES AND KAREN GAYLE JONES  
3820 GILLON AVENUE  
DALLAS, TEXAS 75205

PLANNER/ENGINEER/SURVEYOR  
DOWDEY, ANDERSON & ASSOCIATES, INC.  
5225 Village Creek Drive, Suite 200 Plano, Texas 75093 972-931-0694  
STATE REGISTRATION NUMBER: F-239  
SURVEY FIRM REGISTRATION NUMBER: 10077800





# Memorandum

To: Kathleen Stewart, Director of Town Services  
Kirk Smith, Assistant Director of Town Services

From: Lori Chapin, P.E., Director of Engineering

Date: May 7, 2019

Subject: Amended Plat for 3820 Gillon Avenue, Highland Park, Texas  
Lot 13RR, Block 22, Highland Park, Second Installment

We have reviewed the amended plat documents for the above referenced property, found them to be in compliance with the Town's subdivision regulations meeting all amended plat standards and recommend approval.





## **TOWN OF HIGHLAND PARK**

### **Agenda Briefing**

Council Meeting: June 24, 2019

Department: Department of Public Safety

Director: Rick Pyle

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#### **TITLE**

Consider approval of an Interlocal Agreement between the Town of Highland Park and the City of University Park for the acquisition of a joint Project 25 compatible radio system.

#### **BACKGROUND**

This agenda item is provided as an opportunity for the Town Council to review and discuss the status of the Town and the City of University Park ("City") pursuing the acquisition of a new public safety radio system. Black & Veatch ("Consultant") was previously retained by the Town and the City to assist in the evaluation of options (Phase III) and development of Interlocal Agreements ("ILAs") for the replacement and upgrade of the public safety radio system ("System") meeting the federal P25 standards. The Town Council previously gave direction to staff to pursue the development of various agreements with Garland, Mesquite, Rowlett, and Sachse ("GMRS") for the purchase and operation of the System. As part of Phase III, the Consultant will also assist with the oversight of system installation, implementation, system performance verification, and system acceptance testing prior to system cut-over. Based on the technical complexity and the critical functionality of the system, staff for both the Town and the City propose to continue with the Consultant to provide these services for both agencies until the completion of the public safety radio system project.

The Town Attorney, in cooperation with the City Attorney, reviewed the Agreement, and its accompanying contracts/agreements. The Agreement addresses the Town and the City creating and managing a "three-site simulcast cell." Once the Town and the City create the cell, the two entities will join the Garland and Mesquite radio system.

P25 is a standards development process for the design, manufacturing, and evaluation of interoperable digital two-way land mobile radio systems communications products created by and for public safety professionals. The P25 standard is a critical component to achieve interoperability among different agencies. Both federal and state guidelines set an objective that radio communications for all first responders be P25 compliant. The Town's current radio system is not P25 compliant.

The current HPDPS radio system, purchased in 2011, is not public safety grade, is outdated, and scheduled for replacement. The system was purchased as an interim system until a P25 solution could be identified. The Consultant previously recommended that the Town partner with the City and join the GMRS system as the most cost effective alternative available. Following this course of action provides a radio system that is interoperable with all area agencies, enhances clarity, provides wider area coverage, delivers deeper building penetration, and provides encryption capabilities. As part of the Town's and the City's work, the two entities will upgrade their existing antennae sites. These sites will then be combined to form a cell. This cell will tie into the GMRS system, resulting in all partner cities gaining increased coverage and reliability.

## RECOMMENDATION

Staff agrees with and recommends approval of the Agreement and accompanying agreements/contracts. The University Park City Council approved the purchase, and the associated agreements/contracts at its Council Meeting on June 18, 2019. This item was reviewed by the Town Council at its Study Session on June 18, 2019.

## FINANCIAL IMPACT

Motorola has proposed three cost options, each differing based on the Town pre-funding annual maintenance. These proposals, which cover a 10-year period, include:

<u>Option</u>	<u>Cost</u>	<u>Maintenance Period Covered</u>	<u>Future Maintenance Cost</u>
Option 1	\$3.58 Million	2 years	\$2.15 Million
Option 2	\$4.04 Million	5 years	\$1.58 Million
Option 3	\$5.48 Million	10 years	\$0

Note: the numbers presented above do not include annual subscription fees to be paid to GMRS. These annual fees amount to \$30,097 in Year 1 and \$11,398 per year for Years 2 through 10.

Since added to the Town's Capital Improvement Plan ("CIP"), funding for the communication system has been expected to come from some form of capital lease or lease-purchase program. The CIP sets out annual payments for the system over a 10-year period. The capital lease planned in the CIP was set up to fund only the initial cost of the system (Option 1), with maintenance programmed from the annual operating budget beginning in Year 3. Since the purchase price of the equipment and related maintenance have increased over time, the CIP and the 10-year financial model will need to be adjusted to accommodate the current pricing. Alternatives to financing the system through a capital lease include cash financing through available fund balances and current resources, or other forms of debt such as Tax Anticipation Notes ("TANs"). Option pricing from Motorola includes discounts tied to pre-funding the annual maintenance, with Option 2 reducing the overall cost of the system by \$110,000, and Option 3 saving the Town \$250,000.

It is important to recognize that whether financing comes from a capital lease or TANs, the Town will be required to report the debt in its annual financial statements. While TANs will likely have a lower interest rate than a capital lease, the amortization period is limited to 7 years. Should the issuance of debt be pursued, Town Staff would engage a financial advisor to assist with the process.

## ATTACHMENTS:

<b>File Name</b>	<b>Description</b>
HPUP_ILA_(1).pdf	HP UP ILA

A.

**INTERLOCAL AGREEMENT BETWEEN THE TOWN OF HIGHLAND PARK AND  
THE  
CITY OF UNIVERSITY PARK FOR A JOINT RADIO COMMUNICATIONS SYSTEM  
FOR MUNICIPAL SERVICES**

This Agreement is made between the **TOWN OF HIGHLAND PARK, TEXAS**, a home-rule municipal corporation with the authorization of its governing body, (hereinafter referred to as “Highland Park” or the “Town” or the “Party”), and the **CITY OF UNIVERSITY PARK, TEXAS**, a home rule municipal corporation with the authorization of its governing body, (hereinafter referred to as “University Park” or the “City” or the “Party”), and collectively as the “Park Cities” or “Parties” as follows:

**WITNESSETH**

**WHEREAS**, Highland Park and University Park are political subdivisions within the State of Texas, and each is engaged in the provision of governmental services for the benefit of its citizens; and

**WHEREAS**, the Interlocal Cooperation Act, Texas Government Code, Chapter 791, as amended (the “Act”) provides authority for local governments of the State of Texas to enter into interlocal agreements with each other to perform governmental functions and services as set forth in the Act; and

**WHEREAS**, the Park Cities is implementing a new 700-Megahertz radio system for providing radio communications in support of its governmental operations; and

**WHEREAS**, the City and Town have entered into The Cities of Garland and Mesquite and the City of University Park & Town of Highland Park Radio System Interlocal Agreement dated \_\_\_\_\_, 2019 (the “Garland/Mesquite/Park Cities Radio System ILA”), to implement a combined wide area, multi-site digital trunked simulcast radio system that is compliant with P-25 interoperability standards (the system being defined in the Garland/Mesquite/Park Cities Radio System ILA and being hereinafter referred to as the “GMRS System”), attached hereto as Exhibit A to this Agreement; and

**WHEREAS**, pursuant to the Garland/Mesquite/Park Cities Radio System ILA, it is further anticipated that some Participants (individually an “Infrastructure Participant” and collectively the “Infrastructure Participants”) will purchase and locate within their municipal boundaries various items of equipment, materials, hardware, firmware, structures, and other items composing a portion of the GMRS System (“Infrastructure Components”); and

**WHEREAS**, the Park Cities desire to: (i) participate in the GMRS System as more fully set forth herein and in that certain Interlocal Radio System Usage Agreement and (ii) purchase the Infrastructure Components more fully described herein as the “Park Cities Simulcast Cell”, upon the terms and conditions more fully set forth herein; and

**WHEREAS**, the Garland/Mesquite/Park Cities Radio System ILA and the Interlocal Radio System Usage Agreement are incorporated herein by reference; and

**WHEREAS**, to provide dependable/mission-critical voice radio service for each of the authorized users, Highland Park and University Park desire to enter into an Interlocal Agreement to provide a Joint Radio Communications System for Municipal Services (hereinafter referred to as the “Joint System”); and

**WHEREAS**, use of this Joint System will provide for system coverage for each of the Park Cities to ensure safe, effective and efficient communications, and benefit the greatest number of citizens both now and in the future; and

**WHEREAS**, this Agreement will provide the framework for administering the Joint System, and the costs associated with implementation, maintenance and operation of the Joint System distributed among Highland Park and University Park.

**NOW, THEREFORE**, Highland Park and University Park, for and in consideration of the mutual benefits and obligations set forth in this Agreement, the receipt and sufficiency of which are hereby affirmed, agree as follows:

The above findings are found to be true and correct and are incorporated fully into this Agreement by reference as if copied in their entirety.

## **1. ADMINISTRATION OF THE JOINT COMMUNICATIONS SYSTEM**

**1.01 GMRS Governance Board.** Operation, administration and policy development of the GMRS System shall be the responsibility of the GMRS Governance Board as provided for Section 6.01 of the Garland/Mesquite/Park Cities Radio System ILA.

**1.02 Governance of Park Cities Simulcast Cell.** The Parties shall jointly own the Park Cities Simulcast Cell which includes all the components at each of the three water tower sites (Highland Park's Holland Water Tower Site and University Park's Fondren Water Tower Site and Northwest Highway Water Tower Site), ring microwave equipment at each of the dispatch sites, and the microwave equipment that supports the microwave link to the GMRS System. The link to the GMRS System has components at the Northwest Highway Water Tower Site and at the GMRS Forest Lane tower site. This link to the GMRS System would also be considered part of the Park Cities Simulcast Cell. Jointly owned software would include all the software and software licenses added to the GMRS System needed to support the shared components of the Park Cities Simulcast Cell. All equipment which encompasses the Park Cities Simulcast Cell is listed and described in the attached Exhibit B.

In that all the components comprise the Park Cities Simulcast Cell, the Park Cities Simulcast Cell cannot operate as designed without a single component listed at these sites. The City Manager and Town Administrator shall each appoint two representatives, and mutually select a 5<sup>th</sup> representative to serve as the Park Cities Governance Committee ("PCGC"), to represent respective municipality in making recommendations and considering requests regarding Joint System changes, upgrades, additional uses and any other aspects of the Park Cities Simulcast Cell to the City Manager and Town Administrator. The City Manager and Town Administrator shall be ad hoc members to the PCGC and the decisions made by the City Manager and Town Administrator shall be final. The PCGC will provide participation on the GMRS Technical Advisory Board (TAB) and any Highland Park and University Park member of the GMRS Governance Board shall be selected respectively from the PCGC.

**1.03 GMRS Technical Advisory Board (TAB).** The GMRS maintains a group of technical and advisory personnel consisting of the GMRS System owners and Infrastructure Participants whom are referred to as the Technical Advisory Board (hereinafter "the TAB") as provided for in Section 6.02 of the Garland/Mesquite/Park Cities Radio System ILA. The Park Cities shall assign four (4) members to represent the Park Cities on the TAB. Highland Park shall appoint two representatives,

selected by the Town Administrator, and University Park shall appoint two representatives, selected by the City Manager. Technical Standards for the operation of the Joint System shall be developed by the TAB and approved by agreement of the Governance Board. Once approved, these standards must be compatible with existing or new equipment owned and operated by the Parties and may not violate any of the terms of this Agreement or of any existing maintenance or hardware agreement in place to the benefit of the Parties.

## **2. II. FUTURE EXPANSION OF THIS AGREEMENT**

**2.01 Third parties to this Agreement.** All third parties who are serviced by the respective radio systems of Highland Park and University Park at the time of signing of this Agreement may participate in the Joint System created by this Agreement. However, for purposes of this Agreement, including its intended operation and effect, the Parties specifically agree and contract that: (a) this Agreement only affects the Parties hereto, and is in no way intended by the Parties to benefit or otherwise affect any third person or entity not a party hereto, notwithstanding the fact that such third person or entity may be in a contractual relationship with Highland Park or University Park, either individually or collectively; and (b) the terms of this Agreement are not intended to release, either by contract or operation of law, any third person or entity from obligations owed by them to any of the Parties or to create any rights for the benefit of third parties, unless expressly provided herein. **2.02 Subscriber Participants on the Park Cities Simulcast Cell.** The Parties may allow other entities access to the Park Cities Simulcast Cell. Radios used on the Joint System subject to their meeting all the requirements specified herein (P25 Phase II, etc.). These users will pay user fees equal to that of a subscriber (non-infrastructure) participant on the GMRS System for each radio and for each talk group. Any user entities granted such access must first enter into an Interlocal Agreement or similar agreement with the Park Cities that identifies the usage requirements of the Park Cities Simulcast Cell prior to being granted access. Programming of these user radios shall be configured to only allow usage of the Park Cities Simulcast Cell. User radios shall not be allowed to roam onto other neighboring systems unless approved by the PCGC. The PCGC must approve such configuration prior to allowing the user radios to access the Park Cities Simulcast Cell. User fees shall be paid directly to the Parties who in turn will pay GMRS.

**These user entities** shall also maintain a support agreement on each of its individually-owned components, including dispatch consoles, mobile radio equipment, and portable radios, directly with the component's manufacturer. The manufacturer will invoice each user agency individually. The user entities' support agreement may elect to pay per repair or as part of a comprehensive maintenance agreement.

The Parties will pay these user fees to GMRS at the Park Cities Infrastructure Participant rates. Any fees above the Infrastructure Participant rate shall be directed to a fund maintained by the Parties that will be used to support Joint System maintenance costs and upgrades for the Park Cities Simulcast Cell.

### **3. OWNERSHIP INTERESTS OF THE PARTIES**

**3.01 Radio License Titling.** Federal Communications Commission ("FCC") licenses for the Park Cities Simulcast Cell will be titled respectively to Highland Park and University Park. Highland Park shall hold three (3) 700 MHz system licenses and the University Park shall hold three (3) 700 MHz system licenses. All licensing shall be in accordance with FCC rules and regulations.

**3.02 Hardware/Software.** The Joint System is considered a "simulcast cell". The operation of all three sites working in conjunction is required to provide the level of coverage needed to fully support both parties. The Park Cities Simulcast equipment at the tower sites will be jointly owned by the Parties. This will include all fixed radio infrastructure components and microwave radio system components. The microwave link to the GMRS system is essential for both parties to operate and therefore is also considered shared equipment *and will be jointly owned by Highland Park and University Park*. Dispatch center equipment will be individually owned and maintained by the individual Parties. Highland Park has one dispatch center with four (4) dispatch consoles and associated radio resources. University Park has two (2) dispatch centers, one with three console positions and associated radio resources, and a back-up dispatch center with two dispatch console positions and radio resource equipment. Each entity will maintain its own dispatch console equipment, logging

recorder equipment, Archiving Interface Server (AIS), back-up control station equipment, and switch connections to the GMRS Master site All user radio equipment (mobiles, portables, and control stations) will be individually owned and maintained by each Party.

Park Cities user fees on the GMRS Master Site will be paid by the individual Parties to GMRS. Fees are based on the number of user radios and the number of talk groups operated by each party.

#### **4. FINANCING AND INFRASTRUCTURE COST SHARING**

**4.01** Each Party incurring costs has the sole responsibility to make payment to Vendors providing equipment and services for the Joint System. In no event shall any Party be held liable for debts incurred by any other Party for expenditures made pursuant to this Agreement. The Parties shall share the costs for any additions and/or upgrades to the shared components. **4.02 Maintenance Agreements.** Both Parties will maintain a mutual support agreement with a manufacturer-approved qualified service provider to provide system infrastructure technical expertise and service. The cost of the support agreement and the daily cost of the Joint System infrastructure shared components will be shared equally between the Parties.

**4.03 Shared Components.** The Parties shall equally share all maintenance, service and upgrade (if required) costs for the Park Cities Infrastructure Components. The Parties agree that consistent with, and to the extent allowed by all laws governing purchases made by municipalities, each Party's respective maintenance agreement shall include coverage for all software, hardware and support systems which comprise the shared components of the Simulcast Cell. Each Party shall maintain comprehensive property insurance coverage for any portion of the Park Cities Simulcast Cell located within their respective city limits. Said insurance shall provide replacement cost "broad form" or "special form" property insurance insuring the Park Cities Infrastructure Components against damage and loss. Such insurance shall identify System Owners as joint loss payees with respect to the Park Cities Infrastructure Components. If this insurance provision is satisfied through a program of self-insurance, the execution of this Agreement shall constitute the



agreement by the Party that said Party will repair or replace the portion of Park Cities Infrastructure Components in their city limits at their sole cost and expense in the event of any damage or loss to the Park Cities Infrastructure Components.

**4.04 Individually-Owned Components.** The Parties will maintain a separate support agreement on each of its individually-owned components including dispatch consoles, logging recorder system, Archiving Interface Server, back-up control station equipment, mobile radio equipment, and portable radios directly with the component's manufacturer. The manufacturer shall invoice each Party incurring individually. The Parties may elect to pay per repair or as part of a comprehensive maintenance agreement. Both Parties are responsible for the type of service they individually choose.

## **5. JOINT SYSTEM USE AND STANDARDS**

**5.01 Rules.** To maintain an effective and safe system, the following rules shall apply:

**a. Talk Groups.** A talk group is comparable to a "channel" used on a conventional system. The term "talk group" shall mean a group of radio users in a common functional responsibility that transmit and talk among themselves. The number of talk groups that each Party to this Agreement may maintain shall not exceed fifteen percent (15%) of the total number of their respective subscriber units as hereinafter defined. The number of talk groups used by either Party shall be documented and provided to the Governance Board

**b. Subscriber Units.** Subscriber Units are individual radios. The number of radios permitted on the Joint System shall be documented and provided to the Governance Board.

**c. Equipment.** No Party shall purchase, install and/or use equipment on the Park Cities Simulcast Cell, unless such purchase, installation and/or use is approved by the PCGC. If at the time of signing of this Agreement, any Party hereto does not have fully type accepted equipment, such Party shall replace such nonconforming equipment with conforming equipment. All subscriber units shall be equipped with P-25 Phase II capabilities. Any subscriber units equipped only with P25 Phase I capabilities shall only be allowed on the Joint System if approved by the PCGC.

**d. Patching.** Cross connecting or patching of radio talk groups to talk groups or channels on other radio systems shall be done only as necessary for specific events or emergencies. Continuous patching to other systems or agencies shall require the prior written approval of the PCGC.

**5.02 Joint System Priorities.** The Parties agree that the priority of radio transmissions for the Joint System shall be, in descending order of priority, as follows:

a. Emergency Activation

b. Police/Fire/EMS

c. General Government

## **6. ACQUISITION/DISPOSITION OF ASSETS**

Except as otherwise provided herein, assets acquired under this Agreement by each Party must be acquired and disposed of in accordance with applicable law and the Parties' respective City or Town Charters. Proceeds for such assets shall be divided in accordance with the cost-sharing procedure in effect at the time the asset was acquired. For example, each Party may receive a percentage of the proceeds. The percentage received by each Party shall be based upon the amount of money paid by such Party, individually, after the initial investment identified in this Agreement. This amount would be proportionate to the total amount of money paid by the Parties after such initial investment. Each Party paying for assets to be acquired or making any type of payment pursuant to this Agreement shall make such payments from current revenues legally available to that respective Party.

## **7. SYSTEM MANAGEMENT AND OPERATION**

All Park Cities Simulcast Cell management operations shall be performed by factory-trained and qualified personnel. Policies and procedures for specific management issues shall be pre-determined and approved by the PCGC and by the Interlocal Agreements with GMRS. The PCGC shall, in its sole discretion and in accordance with all applicable laws governing purchases by municipalities, select a vendor to provide day-to-day operation and management of the Park Cities Simulcast Cell. The PCGC shall make all decisions regarding matters other than the day-to-day operation and management of the Park Cities Simulcast Cell. System Management shall be considered a "shared component" and each entity shall equally share the costs equally of system management support.

## **8. TERM/TERMINATION OF THE AGREEMENT**

**8.01** The Initial Term of this Agreement is for ten (10) years from the Effective Date. Any Party may terminate this Agreement at any time for any reason or no reason by providing the other Party with at least one (1) year written advanced written notice subject to and conditioned upon the following conditions:

a. Upon termination, the terminating Party shall be entitled to seek an FCC license with the same frequencies which the Party had prior to the execution of this Agreement.

b. Upon termination, Highland Park will receive three (3) 700Mhz radio frequency channels and University Park will receive three (3) 700Mhz radio frequency channels that were initially granted to support the Park Cities Simulcast Cell.

c. **If one Party desires to terminate this Agreement, Highland Park shall maintain ownership of the Prime Simulcast Site and all associated equipment at the Holland Water Tower Site. University Park shall maintain ownership of the Prime Simulcast Site at the Fondren Water Tower Site. The terminating Party shall reimburse the non-terminating party for its investment into the third simulcast site at Northwest Highway, including the microwave link to the GMRS Forest Lane Tower Site. The terminating Party shall also be responsible for all costs associated with FCC licensing, reconfiguration of microwave links, and the reconfiguration of any once-shared components still needed by the non-terminating Party. The terminating Party shall also be responsible for all costs associated with any technical assistance necessary to physically connect the non-terminating Party's trunked radio site(s) to the GMRS System or another system if needed.**

## **9. RELEASE AND HOLD HARMLESS**

To the extent allowed by law, each of the Parties does hereby waive all claims against, release, and hold harmless the other Party and its officials, officers, agents, attorneys, representatives, and employees, in both their public and private capacities, from any and all liability, claims, suits, demands, losses, damages, attorneys' fees, and costs, 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 the acts or omissions of their respective officials, officers, agents, representatives, and employees related to

or arising out of the performance of this Agreement. If a claim is filed, each Party shall be responsible for its proportionate share of liability. The Parties agree that each shall be liable only for damages related to or arising out of the intentional or negligent act or omission of its respective officials, officers, agents, representatives, and employees in the performance of this Agreement.

#### **10. IMMUNITY**

It is expressly understood and agreed that, in the execution of this Agreement, no Party waives, nor shall be deemed hereby to have waived any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the Parties do not create any obligations, express or implied, other than those set forth herein, and this Agreement shall not create any rights in parties not signatories hereto.

#### **11. ASSIGNMENT AND SUBLETTING**

The Parties shall not assign, sublet, subcontract or transfer any interest in the Agreement without the prior written consent of the other Parties. No assignment, delegation of duties or subcontract under this Agreement will be effective without the written consent of all Parties.

#### **12. ENTIRE AGREEMENT**

This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations and/or agreements, either written or oral about the subject matter hereof. This Agreement may be amended and modified only by written instrument signed by each Party.

#### **13. NOTICES**

Unless notified otherwise in writing in accordance with this section, all notices required to be given to any Party hereto shall be in writing and delivered in person or sent by certified mail, return receipt requested, to the respective Parties at the following addresses:

**Highland Park Representative:**

Mayor & Town Administrator

Copy – Director of Public Safety

Town of Highland Park

**University Park Representative:**

Mayor & City Manager

Copy – Fire Chief & Police Chief

City of University Park

4700 Drexel Drive  
Highland Park, TX 75205

3800 University Blvd.  
University Park, TX 75205

With a copy to:

Matthew C G. Boyle  
Boyle & Lowry, LLP  
4201 Wingren, Suite 108  
Irving, Texas 75062

#### **14. AUTHORITY TO SIGN – TOWN COUNCIL AND CITY COUNCIL AUTHORIZATION**

The undersigned officers and/or agents of the Parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the Parties hereto. Highland Park has executed this Agreement pursuant to duly authorized action of the Town Council on \_\_\_\_\_. University Park has executed this Agreement pursuant to duly authorized action of the City Council on \_\_\_\_\_.

#### **15. SEVERABILITY**

The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held to be contrary to the law or contrary to any rule or regulation having the force and effect of the law, such decisions shall not affect the remaining portions of the Agreement.

#### **16. VENUE**

This Agreement and any of its terms or provisions, as well as the rights and duties of the Parties hereto, shall be governed by the laws of the State of Texas. The Parties agree that this Agreement shall be enforceable in Dallas County, Texas, and, if legal action is necessary, exclusive venue shall lie in Dallas County, Texas.

#### **17. INTERPRETATION OF AGREEMENT**

This is a negotiated document. Should any part of this Agreement be in dispute, the Parties agree that the terms and provisions of this Agreement shall not be construed more favorably for or more strictly against any Party.

## **18. REMEDIES**

No right or remedy granted herein or reserved to the Parties is exclusive of any right or remedy granted by law or equity; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Agreement may be waived without the express written consent of all parties. It is further agreed that one (1) or more instances of forbearance by any Party in the exercise of its respective rights under this Agreement shall in no way constitute a waiver thereof.

## **19. SUCCESSORS AND ASSIGNS**

The Parties bind themselves, their respective successors and assigns, to the other Parties to this contract. References in this Agreement to Highland Park and University Park, whether individually or collectively, includes the successors and assigns of each of the respective Parties.

## **20. DISPUTE RESOLUTION**

In the event of a dispute regarding any aspect of this Agreement, and the Park Cities Governance Committee is unable to agree on a resolution, then the issue shall be referred to a joint meeting of the Town Administrator and City Manager. If the matter continues to remain unresolved after this process, the Parties shall refer the matter to outside mediation for resolution prior to engaging in litigation.

## **21. GOVERNMENTAL FUNCTION**

The Parties have determined by their execution of this Agreement that this Agreement and the obligations of the Parties contained herein are in discharge of a governmental function as set forth in the Interlocal Cooperation Act, and participation in this Agreement by one Party shall not be construed as creating any kind of agency relationship, partnership, or joint enterprise between the Parties.

## **22. HEADINGS**

The headings of this Agreement are for convenience of reference only and shall not affect in any manner any of the terms and conditions of this Agreement.

**23. DUPLICATE ORIGINAL DOCUMENTS**

This Agreement will be executed in duplicate counterparts, each of which shall be deemed an original for all purposes.

**EXECUTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**TOWN OF HIGHLAND PARK, TEXAS**

BY: \_\_\_\_\_

Bill Lindley

Town Administrator

APPROVED AS TO FORM:

\_\_\_\_\_

Matthew Boyle, Town Attorney

**EXECUTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**CITY OF UNIVERSITY PARK, TEXAS**

BY: \_\_\_\_\_

Robbie Corder

City Manager

APPROVED AS TO FORM:

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Robert L. Dillard, III, City Attorney



**ACKNOWLEDGMENTS**

**STATE OF TEXAS        )**  
**)**  
**COUNTY OF DALLAS    )**

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2019, by Bill Lindley, Town Administrator of the **TOWN OF HIGHLAND PARK, TEXAS**, a home-rule municipality, on behalf of such municipality.

\_\_\_\_\_  
Notary Public, State of Texas

**STATE OF TEXAS        )**  
**)**  
**COUNTY OF DALLAS    )**

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2019, by Robbie Corder, City Manager, of the **CITY OF UNIVERSITY PARK, TEXAS**, a home-rule municipality, on behalf of such Municipality.

\_\_\_\_\_  
Notary Public, State of Texas



# **TOWN OF HIGHLAND PARK**

## **Agenda Briefing**

Council Meeting: June 24, 2019

Department: Department of Public Safety

Director: Rick Pyle

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### **TITLE**

Consider approval of a Radio System Interlocal Agreement between the Town of Highland Park, the City of University Park, the City of Garland, and the City of Mesquite.

### **BACKGROUND**

This agreement deals specifically with the Radio System Interlocal Agreement (Participant Agreement) addressing the Town and the City of University Park (the "City") joining the Garland and Mesquite radio system. This agenda item is provided as an opportunity for the Town Council to review and discuss the status of the Town and the City pursuing the acquisition of a new public safety radio system. Black & Veatch (the "Consultant") was previously retained by the Town and the City to assist in the evaluation of options (Phase III) and development of Interlocal Agreements for the replacement and upgrade of the public safety radio system (the "System") meeting the federal P25 standards. The Town Council previously gave direction to staff to pursue the development of various agreements with Garland, Mesquite, Rowlett, and Sachse ("GMRS") for the purchase and operation of the System. As part of Phase III, the Consultant will also assist with the oversight of system installation, implementation, system performance verification, and system acceptance testing prior to system cut-over. Based on the technical complexity and the critical functionality of the system, staff for both the Town and the City propose to continue with the Consultant to provide these services for both agencies until the completion of the public safety radio system project. The Town Attorney, in cooperation with the City's Attorney this and other agreements/contracts related to the project.

P25 is a standards development process for the design, manufacturing and evaluation of interoperable digital two-way land mobile radio systems communications products created by and for public safety professionals. The P25 standard is a critical component to achieve interoperability among different agencies. Both federal and state guidelines set an objective that radio communications for all first responders be P25 compliant. The Town's current radio system is not P25 compliant.

The current HPDPS radio system, purchased in 2011, is not public safety grade, is outdated, and scheduled for replacement. The system was purchased as an interim system until a P25 solution could be identified. The Consultant previously recommended that the Town partner with the City and join the GMRS system as the most cost effective alternative available. Following this course of action provides a radio system that is interoperable with all area agencies, enhances clarity, provides wider area coverage, delivers deeper building penetration, and provides encryption capabilities. As part of the Town's and the City's work, the two entities will upgrade their existing antennae sites. These sites will then be combined to form a cell. This cell will tie into the GMRS system, resulting in all partner cities gaining increased coverage and reliability.

### **RECOMMENDATION**

Staff agrees with and recommends approval of this agreement and proceeding with acquisition of the System. The University Park City Council approved the purchase, the associated ILAs, and the Motorola contract at its Council meeting on June 18, 2019. This item was reviewed by the Town Council at its Study Session on June 18, 2019.

## **FINANCIAL IMPACT**

Motorola has proposed three cost options, each differing based on the Town pre-funding annual maintenance. These proposals, which cover a 10-year period, include:

<u>Option</u>	<u>Cost</u>	<u>Maintenance Period Covered</u>	<u>Future Maintenance Cost</u>
Option 1	\$3.58 Million	2 years	\$2.15 Million
Option 2	\$4.04 Million	5 years	\$1.58 Million
Option 3	\$5.48 Million	10 years	\$0

Note: the numbers presented above do not include annual subscription fees to be paid to GMRS. These annual fees amount to \$30,097 in Year 1 and \$11,398 per year for Years 2 through 10.

Since added to the Town's Capital Improvement Plan ("CIP"), funding for the communication system has been expected to come from some form of capital lease or lease-purchase program. The CIP sets out annual payments for the system over a 10-year period. The capital lease planned in the CIP was set up to fund only the initial cost of the system (Option 1), with maintenance programmed from the annual operating budget beginning in Year 3. Since the purchase price of the equipment and related maintenance have increased over time, the CIP and the 10-year financial model will need to be adjusted to accommodate the current pricing. Alternatives to financing the system through a capital lease include cash financing through available fund balances and current resources, or other forms of debt such as Tax Anticipation Notes ("TANs"). Option pricing from Motorola includes discounts tied to pre-funding the annual maintenance, with Option 2 reducing the overall cost of the system by \$110,000, and Option 3 saving the Town \$250,000.

It is important to recognize that whether financing comes from a capital lease or TANs, the Town will be required to report the debt in its annual financial statements. While TANs will likely have a lower interest rate than a capital lease, the amortization period is limited to 7 years. Should the issuance of debt be pursued, Town Staff would engage a financial advisor to assist with the process.

## **ATTACHMENTS:**

### **File Name**

GMRS\_Participant\_Agreement\_(1).pdf

### **Description**

GMRS Participant Agreement (1)

B.

**THE CITIES OF GARLAND AND MESQUITE AND THE  
CITY OF UNIVERSITY PARK & TOWN OF HIGHLAND PARK RADIO SYSTEM  
INTERLOCAL AGREEMENT  
(Participant Agreement)**

This Interlocal Agreement (this “Agreement”) is entered into as of the Effective Date between the **CITY OF GARLAND (“Garland”) and CITY OF MESQUITE (“Mesquite”)**, Texas home-rule municipalities with the authorization of their governing bodies, (hereinafter collectively referred to as “System Owners”), and the **TOWN OF HIGHLAND PARK and the CITY OF UNIVERSITY PARK**, Texas home-rule municipalities with the authorization of their governing bodies (hereinafter collectively referred to as the “Park Cities”). System Owners and the Park Cities may be collectively referred to as the “Parties” or individually as a “Party”.

**WITNESSETH:**

**WHEREAS**, System Owners and the Park Cities are local governments within the State of Texas, and each is engaged in the provision of governmental services for the benefit of its citizens; and

**WHEREAS**, the Interlocal Cooperation Act, Texas Government Code, Chapter 791, as amended (the “Act”), provides authority for local governments of the State of Texas to enter into Interlocal Agreements with each other for the purpose of performing governmental functions and services as set forth in the Act; and

**WHEREAS**, System Owners currently own and operate a Motorola 700 Megahertz radio system for the purpose of providing radio communications in support of their governmental operations; and

**WHEREAS**, System Owners entered into the City of Garland and the City of Mesquite Radio System Interlocal Agreement dated July 7, 2015 (the “Garland/Mesquite Radio System ILA”), to implement a combined wide area, multi-site digital trunked simulcast radio system that is compliant with P-25 interoperability standards (the radio system as defined herein below and being hereinafter referred to as the “System”); and

**WHEREAS**, pursuant to the Garland/Mesquite Radio System ILA, it is anticipated that various municipalities, school districts and other third parties will participate in the System by using services provided by the System (individually a “Participant” and collectively the “Participants”); and

**WHEREAS**, pursuant to the Garland/Mesquite Radio System ILA, it is further anticipated that some Participants (individually, an “Infrastructure Participant” and collectively, the “Infrastructure Participants”) will purchase and locate within their municipal boundaries various items of equipment, materials, hardware, firmware, structures, and other items composing a portion of the System (“Infrastructure Components”); and

**WHEREAS**, the Park Cities desire to: (i) participate in the System as more fully set forth herein and in that certain Interlocal Radio System Usage Agreement (as defined below); and (ii) purchase the Infrastructure Components more fully described herein as the “Park Cities Infrastructure Components,” upon the terms and conditions more fully set forth herein; and

**WHEREAS**, in order to provide dependable/mission-critical radio service for use by System Owners, the Park Cities and all other Participants, the Parties desire to enter into this Agreement allowing the Park Cities to participate in the System, which radio system coverage is essential and a necessary component of providing certain vital governmental services by each of the Parties and other Participants, including, without limitation, police, fire, emergency medical, and public works protection provided by each of the Parties and other Participants to ensure safe, effective, and efficient communications, and benefit the greatest number of citizens of each of the Parties and other Participants both now and in the future; and

**WHEREAS**, concurrently with the execution of this Agreement, the Parties shall execute that certain Interlocal Radio System Usage Agreement in the form attached hereto as **Exhibit A** and fully incorporated herein by reference, which may be amended from time to time as more fully set forth therein, which expressly sets forth the rights, duties, obligations, and responsibilities of the Park Cities as an Infrastructure Participant to the System (the “Interlocal Radio System Usage Agreement”); and

**WHEREAS**, System Owners will enter into communication systems agreements with the Selected Vendor, relating to the purchase and installation of the System and its components and are joint owners in the Shared Components (defined below) of the System; and

**WHEREAS**, the Parties desire to enter this Agreement for the purpose of memorializing the agreement of the Parties regarding the Park Cities’ participation in the System as an Infrastructure Participant (defined below); and

**NOW, THEREFORE**, for and in consideration of the mutual benefits and obligations set forth in this Agreement, the Parties agree as follows:

## **I. DEFINITIONS**

Any capitalized terms used within this Agreement and not otherwise defined herein shall have the meanings set forth in the Garland/Mesquite Radio System ILA, a copy of which has been provided to the Park Cities. Unless the context clearly indicates a different meaning, the words and phrases set forth in this Article I shall have the following meanings when used in this Agreement:

“**Act**” shall have the meaning set forth in the Recitals to this Agreement.

“**Business Day**” means any day other than a Saturday, Sunday, or official City holiday in which any of the Parties’ respective City Offices are closed for business.

**“Communication System Agreement”** or **“CSA”** means that certain Communication System Agreement to be entered into between System Owners (as Buyer) and the Selected Vendor (as Seller) relating to the purchase and installation of the Non-Shared Components of the System to be purchased by System Owners (as defined in the Garland/Mesquite Radio System ILA). The Park Cities shall enter into their own CSA with the Selected Vendor for all non-shared components.

**“Default”** shall mean the failure of a Party to timely keep or perform any term, provision, covenant, or condition to be kept or performed by such Party under the terms of this Agreement and such failure continues for thirty (30) days after written notice by any non-defaulting Party to the defaulting Party and copied to all other Parties.

**“Effective Date”** means the later of the dates this Agreement is approved by the governing bodies of the System Owners and the Park Cities and signed by the authorized representatives of each entity.

**“Governance Board”** means the administrative governing body tasked with the operation and administration of the System and being more particularly described in the Garland/Mesquite Radio System ILA.

**“Infrastructure Costs”** means those costs relating to the purchase, installation, operation, repair, maintenance, and upgrade of the Park Cities’ Infrastructure Components (as defined below) including, but not limited to, all amounts to be paid pursuant to the Park Cities’ CSA for the purchase and installation of the Park Cities Infrastructure Components and all amounts to be paid pursuant to the SMA relating to repair and maintenance of the Park Cities’ Infrastructure Components. These Infrastructure Costs shall be itemized in detail by an addendum executed by each of the Parties and attached to this Agreement and incorporated by reference as **Exhibit B** after design review by the Selected Vendor.

**“Infrastructure Participants”** means municipalities, whether one or more, other than System Owners, that participate in the System by using services provided by the System and that own Infrastructure Components of the System located within their respective municipalities. Infrastructure Participants shall pay Participant Fees in accordance with fee schedules established from time to time by the Governance Board.

**“Non-Shared Components”** means the components of the System individually owned by each System Owner, individually, as more fully defined in the Garland/Mesquite Radio System ILA. The term shall also refer to the components owned by the Park Cities and located within their own Town or City or placed within the Garland/Mesquite System as necessary to support the Park Cities Simulcast Cell.

**“Park Cities Infrastructure Components”** means the equipment, materials, hardware, software, firmware, structures and other items composing a portion of the System that are located within the municipal boundaries of either of the Park Cities and which are more specifically detailed and itemized in **Exhibit C** attached hereto and incorporated herein by reference.

**“Participant”** means an Infrastructure Participant or a Subscriber Participant, and **“Participants”** collectively means all Infrastructure Participants and Subscriber Participants.

**“Participant Fee Fund”** means the fund consisting of the Participant Fees described in Section 7.01 of this Agreement.

**“Participant Fees”** means all fees paid by Participants to use the System.

**“RFP”** means that certain Request For Proposal dated August 12, 2014 and titled *Cities of Garland, Mesquite, Rowlett & Sachse P25 Radio System Request for Proposal RFP No 4469-14*, published and distributed by Garland on or about August 13, 2014, and advertised by Garland for the purpose of seeking proposals from qualified vendors relating to the purchase, installation, repair and maintenance of the System and related services as described therein.

**“Selected Vendor”** means the vendor from whom the System Owners agree to purchase the Shared Components of the System and from whom the Parties individually agree to purchase their respective Non-Shared Components of the System.

**“Selected Maintenance Vendor”** means the vendor System Owners select and with whom System Owners enter into a System Maintenance Agreement to provide ongoing repair, maintenance, and support (hardware and software) of the System. The term shall also refer to the vendor with whom the Park Cities enter into a System Maintenance Agreement to provide ongoing repair, maintenance, and support (hardware and software) of the System.

**“Shared Components”** means the components of the System that are jointly owned by Garland and Mesquite as more fully defined in the Garland/Mesquite Radio System ILA. The term shall also mean the components of the System that will be owned by System Owners (as set forth in the Garland/Mesquite Radio System ILA, but also used to support the operations of the Park Cities Simulcast Cell.

**“Simulcast Cell”** means a standalone multi-site trunked radio system that operates off the master site owned by System Owners.

**“Subscriber Participant”** means the various municipalities, school districts, and other third parties, other than Infrastructure Participants and the System Owner, that participate in the System by using services provided by the System and that own their own subscriber units (radios) or other subscriber components, which provide access to the System. Subscriber Participants are referred to in the Garland/Mesquite Radio System ILA as “Non-Infrastructure Participants” and all references in this Agreement to “Subscriber Participant” or “Subscriber Participants” shall mean “Non-Infrastructure Participant” or “Non-Infrastructure Participants” under the Garland/Mesquite Radio System ILA. Subscriber Participants shall pay Participant Fees in accordance with fee schedules established from time to time by the Governance Board.

**“System”** means a wide area, multi-site (“simulcast”) digital trunked radio system compliant with P-25 interoperability standards as more expressly defined in the Garland/Mesquite Radio System

ILA and shall include the Shared Components, the Non-Shared Components, and all Infrastructure Components including, without limitation, the Park Cities Infrastructure Components.

**“System Maintenance Agreement”** or **“SMA”** means that certain System Maintenance Agreement to be entered into between Garland (as Customer) and the Selected Maintenance Vendor relating to ongoing repair, maintenance, and support (hardware and software) of the Non-Shared Components of the System owned by Garland, Mesquite, Rowlett, as well as that for maintenance of the Park Cities Infrastructure Components.

**“System Owner(s)”** means, in the singular form, either Garland or Mesquite; in plural form, the term means both Garland and Mesquite collectively.

**“Term”** means the term of this Agreement as defined in Section 2.01.

## **II. TERM TERMINATION**

**2.01 Term.** The initial term of this Agreement shall commence on the Effective Date and shall continue until and including September 30, 2026 (the “Initial Term”) in order to allow each Party the opportunity to recover its investment, unless terminated earlier as provided herein. Unless terminated earlier as provided herein, following the Initial Term, this Agreement shall automatically renew for successive terms of three (3) years beginning October 1, 2026 and continuing on October 1<sup>st</sup> of each third calendar year thereafter (each a “Renewal Term” and collectively the “Renewal Terms”) unless either Party terminates this Agreement by written notice to the other Party at least seven hundred and twenty (720) days prior to the end of the Initial Term or the then current Renewal Term, as applicable. The Initial Term and all Renewal Terms shall collectively be referred to herein as the “Term”.

**2.02 Termination in Event of Non-Appropriation of Funds.** As home rule municipalities in the State of Texas, each Party is subject to Article III, Section 52a of the Texas Constitution prohibiting unfunded debt. All expenditures to be made by each Party under the terms of this Agreement shall be subject to such Party’s appropriation of funds for such purpose to be paid in the fiscal year for which such expenditure is to be made and shall be paid only from funds of such City authorized by Article III, Section 52a of the Texas Constitution. Each Party agrees to give the other Parties at least ninety (90) days prior written notice if such Party anticipates that funds may not be appropriated to meet its obligations under the terms of this Agreement for the next fiscal year. In the event the City (or Town) Council of any Party fails to appropriate funds in any fiscal year during the Term of this Agreement for the payment of all obligations of such Party under the terms of this Agreement for such fiscal year, such Party shall have the right to terminate this Agreement by giving the other Parties written notice of the non-appropriation of funds within five (5) days after such Party fails to appropriate the necessary funds. The termination of this Agreement because of any Party’s failure to obtain necessary appropriations or funding shall be effective as of the last day for which funds were appropriated.



**2.03 Early Termination During Initial Term.** Notwithstanding anything to the contrary herein, any Party may terminate this Agreement based on any other Party's Default prior to the end of the Initial Term or during any Renewal Term.

**2.04 Effect of Termination of this Agreement Pursuant to Section 2.02.** In the event a Party terminates this Agreement pursuant to Section 2.02, the terminating Party shall reimburse the non-terminating Parties, as well as any affected Infrastructure Participant for reasonable costs associated with reconfiguring the System as is necessary for the non-terminating Parties and all other Participants to continue to access, use, maintain and repair the System. The provisions of this Section 2.04 shall expressly survive the termination of this Agreement.

**2.05 Effect of Termination of this Agreement at the end of the Initial Term or any Renewal Term pursuant to Section 2.01 above.** In the event either Party terminates this Agreement at the end of the Initial Term or any Renewal Term pursuant to Section 2.01 above, the following provisions shall apply:

- (i) Prior to the date of termination, the terminating Party must pay any remaining financial obligations related to the System or its components including, without limitation, the Park Cities Infrastructure Components, incurred or accrued prior to the date of the termination;
- (ii) All the Park Cities Infrastructure Components of the System, if previously conveyed by Garland to the Park Cities, shall continue to be owned 100% by the Park Cities; and
- (iii) The provisions of this Section 2.05 shall expressly survive the termination of this Agreement.

**2.06 Notice of Termination.** No notice of termination of this Agreement shall be effective unless given in accordance with Section 7.07 below.

### **III. INTERLOCAL RADIO SYSTEM USAGE AGREEMENT**

The Parties shall execute an Interlocal Radio System Usage Agreement with this Agreement, which may be amended from time to time, in the form attached hereto as **Exhibit A**, and fully incorporated herein by reference, which expressly sets forth the rights, duties, obligations, and responsibilities of the Park Cities as Infrastructure Participants of the System.

### **IV. PURCHASE AND INSTALLATION OF INFRASTRUCTURE COMPONENTS; MAINTENANCE**

**4.01 CSA for the Park Cities Infrastructure Components.** The Parties acknowledge that the Park Cities have entered into a CSA with the Selected Vendor relating to the purchase of the hardware, software and all other components of the System to be located within the Park Cities and constituting the Park Cities Infrastructure Components of the System. System Owners shall

**Interlocal Agreement Between the Cities of Garland and Mesquite and the Park Cities**

comply with applicable competitive bidding laws and requirements and the Park Cities and System Owners expressly consent to cooperative purchasing.

**4.02 The Park Cities Infrastructure Components.** The Park Cities shall maintain title to the Park Cities Infrastructure Components as described in Exhibit C (the Itemized List of Infrastructure Components to be conveyed to the Park Cities upon receipt of reimbursement payments). The Park Cities will maintain the same hardware and software levels as needed to connect to the System Owners' master site. System Owners will maintain all of their infrastructure components during the term of this Agreement that are needed to support the Park Cities Simulcast Cell. This will include the master site and all associated components needed to support the systems connected by the Park Cities, Garland's Forest Lane Tower site that will be used to support the Park Cities Simulcast Cell's connection to the master site, and the microwave system that will also be used to support the connection of the Park Cities system.

**4.03 Invoices from the Selected Vendor and Selected Maintenance Vendor for the Park Cities Infrastructure Components.** The Park Cities will be responsible for all of the maintenance costs of the components of the Park Cities Simulcast Cell and components added to the System needed to support the Park Cities radio system operation. System Owners will be responsible for the maintenance costs and vendor support for the master site and all components supporting the connection of the Park Cities components to the System Owners' master site. The Park Cities' contributions to the maintenance costs of the System Owners' equipment used to support the Park Cities system would be included in the user fees the Park Cities pay to System Owners.

**4.04 Disputed Invoices.** If a Party disputes any amount appearing on an invoice from the Selected Vendor or Selected Maintenance Vendor, the Party disputing the invoice shall provide a written notice to Mesquite/Garland and the Selected Vendor or Selected Maintenance Vendor, as applicable, not later than thirty (30) days following receipt of the invoice, identifying the amount(s) disputed and the basis for the dispute. A Party disputing an amount on an invoice shall pay any undisputed amount as required by Section 4.04 above in accordance with the due date for such amount. If any amount that is disputed by a Party shall, in fact, be determined to be due, the Party disputing the amount shall be solely responsible for also paying any late fees and interest accrued on delinquent payments pursuant to the CSA or SMA, which amounts said Party shall pay directly to the Selected Vendor or Selected Maintenance Vendor, as applicable.

## **V. RIGHT OF ACCESS**

### **5.01 License to Enter, Access, Ingress, Egress and Use the System.**

(a) The Parties agree to reasonably cooperate with the Selected Vendor, the Selected Maintenance Vendor, and the other Parties with respect to the installation, operation, maintenance, repair, and use of the System, including the Park Cities Infrastructure Components, and agree to take such actions that are reasonable and necessary to ensure that the Selected Vendor is able to timely perform its obligations under the CSA, and the Selected Maintenance Vendor is able to timely perform its obligations under the SMA. For and in consideration of the sum of TEN AND

NO/100 DOLLARS (\$10.00) and other good and valuable consideration including, without limitation, the covenants and agreements of the Parties as more fully set forth herein, the receipt and sufficiency of which is hereby acknowledged and confessed, subject to the provisions of subpart (b) of this section, the Park Cities hereby grant licenses to both System Owners to enter and access the Park Cities' property including, without limitation, rights of ingress and egress over, across, upon and through the Park Cities' property to the extent reasonable and necessary for System Owners, either acting individually or collectively, to access and use the System, including the Park Cities Infrastructure Components, and further grant to the System Owners, subject to the provisions of subpart (b) of this section, rights of entry and access including, without limitation, rights of ingress and egress over, across, upon and through those portions of the Park Cities' facilities and property on which any component of the System is located for the purpose of installing, inspecting, testing, operating, maintaining, servicing, repairing, upgrading, and using the System, including the Park Cities Infrastructure Components. The Park Cities further agree to grant the Selected Vendor and the Selected Maintenance Vendor, their employees, agents, and subcontractors a license, subject to the provisions of subpart (b) of this section, to enter and access the Park Cities' property including, without limitation, rights of ingress and egress over, across, upon and through the Park Cities' facilities and property for the purpose of installing, inspecting, and testing the System including, without limitation, the Park Cities Infrastructure Components and, as long as the SMA is in effect, for the purpose of operating, maintaining, repairing, and upgrading the System including, without limitation, the Park Cities Infrastructure Components.

(b) Notwithstanding the foregoing, System Owners shall use reasonable efforts to provide prior notice to the Park Cities prior to the exercise of any right of ingress and egress over, across or upon the Park Cities' facilities or property by either of the System Owners, the Selected Vendor and the Selected Maintenance Vendor. The Park Cities may enforce reasonable and necessary security measures with respect to access to the Park Cities' property and facilities (including, without limitation, requirements that reasonable notice be given prior to such access) to the extent necessary to protect the Park Cities' property and facilities, the health and safety of employees, residents, citizens, and businesses, or to comply with applicable state and federal laws and regulations. In the event access to the Park Cities' facilities or property where any component of the System is located requires an escort or requires entry or access by an employee or representative of the Park Cities, the Park Cities shall provide, at the Park Cities' sole cost and expense, an employee or other authorized person to provide such escort, entry, and access within a reasonable time after request by either System Owner. The Parties specifically acknowledge that each Party is making substantial expenditures in connection with the purchase of the System in reliance on the licenses and rights of entry, access, ingress, egress and use of the System granted to System Owners as more fully set forth in this Article V. The Parties expressly agree that the licenses and rights of entry, access, ingress, egress and use of the System granted pursuant to this Article V are irrevocable and coupled with an interest and shall not be terminated during the Term of this Agreement.

**5.02 Enforcement of Rights of Entry, Access, Ingress, Egress and Use of the System.** The Parties acknowledge that the major components of the System are owned by System Owners and that the System was purchased and installed to provide emergency public safety services to System

Owners and all Participants of the System, and that it is critical that System Owners and all Participants of the System have continued and uninterrupted access to and use of the Park Cities Infrastructure Components. Notwithstanding anything contained in this Agreement to the contrary, the Parties acknowledge that the licenses, rights of entry, access, ingress, egress and use of the System including, without limitation, the Park Cities Infrastructure Components, granted pursuant to Section 5.01 above shall, in addition to all other remedies available herein or by law or in equity, be enforceable by injunction and/or specific performance. The Parties further agree that in the event the Park Cities unreasonably fail to allow or knowingly interfere with System Owners' rights of entry, access, ingress, egress or use of the System as more fully set forth in Section 5.01 above, System Owners, acting individually or collectively, shall have the right to enforce the licenses and rights of entry, access, ingress, egress and use of the System granted to System Owners pursuant to Section 5.01 above immediately without waiting the thirty (30) day period for such failure to rise to a Default under the terms of this Agreement.

**5.03 Survival.** All covenants, agreements, terms, provisions, obligations, rights and remedies of the Parties set forth in Article V of this Agreement shall expressly survive the termination of this Agreement.

## **VI. ADMINISTRATION AND OPERATION OF THE SYSTEM; THE PARK CITIES' RIGHT OF ACCESS FOR SYSTEM USE**

**6.01 Governance Board.** The Garland/Mesquite Radio System ILA creates a governance board to operate and administer the System that is comprised of three (3) representatives from Mesquite and three representatives from Garland, each appointed by their respective City Managers, and one (1) representative for the remaining Infrastructure Participants, selected by the City Manager or Town Administrator of the municipality entitled to appoint a representative for that term (the "Governance Board"). The representatives appointed by the respective City Managers of System Owners shall serve as members on the Governance Board until such representative resigns in writing or is removed or replaced by the City Manager or the governing body of the city that appointed such representative. Each representative appointed by an Infrastructure Participant shall serve a one-year term and the position shall rotate between Infrastructure Participants annually. The first Infrastructure Participant member to serve on the Governance Board shall be a representative of the Infrastructure Participant with the largest citizen population at the time the members of the Governance Board are initially appointed. Each succeeding appointment of an Infrastructure Participant member to the Governance Board shall be a representative of the Infrastructure Participant with the largest citizen population at the time of the appointment that has not already appointed a representative to serve as a member on the Governance Board. If, at the time of any succeeding appointment to the Governance Board, all Infrastructure Participants have previously had representatives who have served as members of the Governance Board, the Infrastructure Participant with the largest citizen population will appoint a representative to serve on the Governance Board for the then current one-year term and after serving such one-year term, that Infrastructure Participant shall not be eligible to appoint a member to the Governance Board until all other Infrastructure Participants existing at the time of the appointment have appointed members to serve second one (1) year terms. This process for

appointing the Infrastructure Participant member to the Governance Board shall be repeated similarly for Infrastructure Participants appointing members to serve third, fourth and subsequent one (1) year terms on the Governance Board. The Park Cities, as Infrastructure Participants, shall be eligible to appoint one (1) representative to serve as a member of the Governance Board in accordance with the procedure set forth above. Each appointment by the Park Cities' Infrastructure Participant shall be for a one (1) year term. All members of the Governance Board shall serve at the pleasure of the City or Town appointing such member and may be removed from the Governance Board with or without cause at any time by action of the City Manager or Town Administrator of the City or Town appointing such member.

**6.02 Technical Advisory Board.** A Technical Advisory Board has been created and comprised of a group of technical personnel selected to advise the Governance Board (hereinafter "Technical Advisory Board"), in accordance with the terms and conditions of the Garland/Mesquite Radio System ILA. The Technical Advisory Board shall consist of two (2) representatives from each of the System Owners, appointed by the City Managers of each city, respectively. Every other Infrastructure Participant (including, without limitation, the Park Cities) may select up to two (2) persons to serve on the Technical Advisory Board. All members serving on the Technical Advisory Board shall serve until such member resigns in writing or is removed or replaced by the City Manager, Town Administrator, or the governing body of the city or Infrastructure Participant that appointed such representative. All members of the Technical Advisory Board shall serve at the pleasure of the city or town appointing such member and may be removed from the Technical Advisory Board with or without cause at any time by action of the City Manager or Town Administrator of the City or Town Infrastructure Participant appointing such member.

**6.03 Covenant to Access and Use the System in Accordance with Procedures Established by Governance Board.** The Park Cities grant to the Governance Board the right to establish rules, regulations, procedures and guidelines in connection with the operation, administration, access and use of the Park Cities Infrastructure Components. The Park Cities hereby covenant and agree to timely keep and perform all rules, regulations, procedures and guidelines established by the Governance Board in connection with the operation, administration, access to and use of the System.

**6.04 Covenant to Timely Pay Participant Fees.** The Park Cities covenant and agree to timely pay all Participant Fees as more fully set forth in the Interlocal Radio System Usage Agreement and as hereafter established by the Governance Board to System Owners at the addresses set forth in Section 7.07 below (or at such other address as System Owners may hereafter notify the Park Cities of in writing). The Governance Board shall establish Participant Fees based on generally accepted accounting principles and set at rates designed to cover costs of operation, maintenance, repair, replacements, upgrades, and administration of the System on a non-profit basis. The Park Cities shall have the right to inspect, at the Park Cities' expense and on reasonable notice and during normal business hours, the books and records of the Governance Board upon which Participant Fees are based. All such Participant Fees shall be due and payable on such dates as set forth in the Interlocal Radio System Usage Agreement or on such dates as established by the Governance Board. In the event there is a conflict between the payment dates set forth in the

Interlocal Radio System Usage Agreement and the payments dates now or hereafter established by the Governance Board, the dates established by the Governance Board shall control.

**6.05 Right to Access and Use the System.** Provided the Park Cities are not in Default of this Agreement, and further provided that no event exists which, but for notice, the lapse of time, or both, would constitute a Default by the Park Cities under the terms of this Agreement, the Park Cities shall have the right to access and use the System during the Term of this Agreement in accordance with the terms and conditions of this Agreement, the Interlocal Radio System Usage Agreement, and the rules, regulations, procedures and guidelines established by the Governance Board.

**6.06 Right to Access and Use the Park Cities Infrastructure Components.** During the Term, provided System Owners are not in Default of this Agreement, and further provided that no event exists which, but for notice, the lapse of time, or both, would constitute a Default by either System Owner under the terms of this Agreement, System Owners and all Participants shall have the right to access and use the Park Cities Infrastructure Components in accordance with the terms and conditions of this Agreement and the rules, regulations, procedures and guidelines established by the Governance Board. This would primarily include the use of the System Owners' Simulcast Cell or the Park Cities Simulcast Cell to extend coverage for first responders who may be providing mutual aid outside of the coverage area of their respective simulcast cell. The Technical Advisory Board will provide guidance in how user radios will be programmed as to minimize interference and/or disruption between System Owners' Simulcast Cell and Park Cities' Simulcast Cell authorized users.

**6.07 Right to Access and Use the System Owners' Infrastructure Components.** During the Term, provided neither of the Park Cities is in Default of this Agreement, and further provided that no event exists which, but for notice, the lapse of time, or both, would constitute a by Default by either of the Park Cities under the terms of this Agreement, System Owners and all Participants shall have the right to access and use the System Owners' Infrastructure Components in accordance with the terms and conditions of this Agreement and the rules, regulations, procedures and guidelines established by the Governance Board.

**6.08 Park Cities Access to the System.** The Park Cities will have the right to implement their system and connect it to the System, which includes the following items:

- A. Installation of a microwave radio system and all of its components in the equipment shelter of Garland's Forest Lane tower site that would include the equipment and antenna systems, and connection to primary and standby power systems (excluding UPS) owned by Garland. This will be used to support the microwave link to the Park Cities trunked simulcast cell and dispatch centers.
- B. The Park Cities will perform a structural analysis on the Forest Lane tower ("Tower") adding the additional microwave dish. In the event the structural analysis reports the Tower is loaded beyond 85%, the Park Cities at its own expense will pay the selected vendor to remediate the Tower to not exceed 85%.

- C. Usage of the System Owners' microwave system for connection to the System Owners' master site. System Owners will have control over the microwave system configuration, which shall not unreasonably affect the Park Cities use.
- D. Connection of the Prime and Redundant Prime Simulcast Controllers to the System Owners' master site through the above-mentioned systems.
- E. Connection of nine (9) MCC7500 dispatch consoles to the master site.
- F. Connection of two (2) Archiving Interface Servers (AIS) to the master site.
- G. The Governance Board will manage data capabilities and how it is administered.
- H. Additional software licenses to the System Owners' master site as listed in the table below:

ENH: TRUNKED ENHANCED DATA	1
ADD: ASTRO 25 FDMA SITE LICENSE	3
ADD: P25 PHASE 2 TDMA TRKNG OP SITE LIC	3
ADD: PHASE 2 DYNAMIC TG ASGNMT SITE LIC	3
ADD: P25 PHASE 2 TDMA SW BASE RADIO LIC	15
ADD: PHASE 2 DYNAMIC CH BASE RADIO LIC	6
ENH: 500 ENHANCED TRUNKED DATA USER LICENSES	1
ADD: 500 RADIO ALIAS UPDATE LICENSES	1
ADD: 50 TALK GROUP TEXT LICENSES	1
ADD: MCC7500/MCC7100 CONSOLE GROUP TEXT LICENSES	9
ADD: PROVISIONING MANAGER	1
ADD: UNIFIED EVENT MANAGER (UEM)	1
ADD: EMAIL ALARM NOTIFICATIONS	1
ADD: ZONEWATCH GRID & CTRL	1
ADD: RADIO CONTROL MANAGER	1
ADD: ANTI-MALWARE DEF UPDATE LIC	11
MCAFEES WINDOWS AV CLIENT	11
ADD : LOCATION ON PTT 500 USER LICENSE	1
ADD: ENHANCED DATA-P25 TRNK SITE	3
ADD: CLASSIC DATA-P25 TRNK SITE	3

**6.09 Modifications to Forest Lane Tower.** The Park Cities shall submit engineered plans and specifications to Garland prior to any modification of the Tower. For the purposes of this

Section 6.09, “modifications” shall mean any physical change or alteration made to the Tower, including but not limited to adding, removing, or replacing any equipment on the Tower. Garland shall review the engineered plans and determine whether or not the proposed modifications are necessary and acceptable. Garland shall have the sole discretion whether to approve the proposed modifications, and shall not unreasonably withhold said approval. Garland shall oversee implementation of any necessary and approved Tower modifications. To the extent allowed by law, the Park Cities agree to indemnify Garland for any damage or loss arising from the Park Cities’ modification of the Tower.

## **VII. PARTICIPANT FEE FUND; MISCELLANEOUS PROVISIONS**

**7.01 Participant Fee Fund.** The Park Cities shall pay a reasonable fee to System Owners, as set by the attached Interlocal Radio System User Agreement, for the use of the System Owners’ master site and roaming onto the System Owners’ Simulcast Cell. All such fees for use of the System shall be remitted to Garland to be held in trust for the benefit of the System Owners. Such fees as set by the Governance Board shall be due and payable on such dates as set forth by the Governance Board.

**7.02 Insurance on the Park Cities Infrastructure Components.** In the event of any casualty or other damage or loss to the Park Cities Infrastructure Components, the Park Cities shall be solely responsible for and shall pay all costs and expenses of repairing and replacing all of the Park Cities Infrastructure Components. Prior to the date the risk of loss on the Park Cities Infrastructure Components is transferred to the Park Cities, the Park Cities shall secure replacement cost “broad form” or “special form” property insurance insuring the Park Cities Infrastructure Components or self-insure the Park Cities Infrastructure Components against damage and loss. Such insurance shall identify System Owners as joint loss payees with respect to the Park Cities Infrastructure Components. If this insurance provision is satisfied through a program of self-insurance, the execution of this Agreement shall constitute the agreement by the Park Cities that the Park Cities will repair or replace the Park Cities Infrastructure Components at their sole cost and expense in the event of any damage or loss to the Park Cities Infrastructure Components.

System Owners shall abide by the preceding clause reciprocally in regard to the Garland-owned master site and all components needed to support the Park Cities’ Simulcast Cell and dispatch centers.

**7.03 Immunity.** It is expressly understood and agreed that, in the execution of this Agreement, no Party waives, nor shall be deemed hereby to have waived, any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the Parties do not create any obligations, express or implied, other than those set forth herein.

**7.04 Entire Agreement; Conflict.** This Agreement, including the attached Interlocal Radio System Usage Agreement, represents the entire and integrated agreement between System Owners and the Park Cities, and supersedes all prior negotiations, representations or agreements, either written or oral, with regard to the subject matter hereof. This Agreement may be amended and



modified only by written instrument signed by all Parties. There are no oral agreements between the Parties. In the event of a conflict between the terms and conditions of this Agreement and the attached Interlocal Radio System Usage Agreement, but not including definitions expressly defined in either agreement, the terms and conditions of this Agreement shall control.

**7.05 Notices.** All notices required or permitted to be given to any Party hereto shall be in writing and shall be considered properly given if sent by United States electronically tracked certified mail, return receipt requested, in a postage paid envelope addressed to the respective Parties at the following addresses or by delivery of the notice in person to the intended addressee by hand delivery or by a nationally recognized courier service having the ability to track shipping and delivery of notices including but not limited to services such as Federal Express or United Parcel Service (UPS). Notices mailed by certified mail as set forth above shall be effective two (2) days after deposit in the United States mail. Notices given in any other manner shall be effective only when received by the addressee. For purposes of notice, the addresses of the Parties shall be as set forth below; Any Party shall have the right to change such Party's address for notice purposes by giving all other Parties at least thirty (30) days' prior written notice of such change of address in the manner set forth herein:

**Notices to System Owners:**

**Garland Representative:**  
Chief Information Officer  
City of Garland  
1490 State Highway 66  
Garland, Texas 75040  
972-781-7205

With a copy to  
City Attorney  
City of Garland  
200 North Fifth Street, 4<sup>th</sup> Floor  
Garland, Texas 75040

**Mesquite Representative:**  
Fire Chief  
City of Mesquite  
1515 N. Galloway  
Mesquite, Texas 75149

With a copy to:  
City Attorney

**Notices to Park Cities:**

**Highland Park Representative:**  
Mayor and Town Administrator  
Town of Highland Park  
4700 Drexel Drive  
Highland Park, Texas 75205  
214-559-9450

With a copy to:  
Director of Public Safety  
Town of Highland Park  
4700 Drexel Drive  
Highland Park, Texas 75205  
and  
Matthew C. G. Boyle-Town Attorney  
4201 Wingren, Suite 108  
Irving, Texas 75062

**University Park Representative:**  
Mayor & City Manager  
City of University Park  
3800 University Blvd.  
University Park, Texas 75205

With a copy to:  
Police Chief, Fire Chief & City Attorney

City of Mesquite  
11515 N. Galloway  
Mesquite, Texas 75149

City of University Park  
3800 University Blvd.  
Mesquite, Texas 75205

**7.06 Mutuality.** Garland and Mesquite commit and agree that future Participants in the System will be allowed to participate under the same base terms as provided for herein so that no future Participant is provided access under materially different terms than those provided for herein.

### **VIII. AUTHORITY TO SIGN/GOVERNING BODIES AUTHORIZATION**

The undersigned officer or agent of each of the Parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the Parties hereto. System Owners and the Park Cities are each executing this Agreement pursuant to duly authorized action by each of their respective Governing Bodies.

### **IX. SEVERABILITY**

The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held to be invalid, unenforceable or contrary to the law or contrary to any rule or regulation having the force and effect of the law, such decisions shall not affect the validity, enforceability or legality of any of the remaining portions of the Agreement and the remaining provisions shall remain in full force and effect and shall be construed and enforced as if the invalid, unenforceable or illegal provision had never been included in the Agreement.

### **X. VENUE**

This Agreement and any of its terms or provisions, as well as the rights and duties of the Parties hereto, shall be governed by the laws of the State of Texas. The Parties agree that this Agreement shall be enforceable in Dallas County, Texas, and, if legal action becomes necessary, exclusive venue shall lie in state courts of competent subject matter jurisdiction in Dallas County, Texas.

### **XI. INTERPRETATION OF AGREEMENT**

This is a negotiated document. Should any part of this Agreement be in dispute, the Parties agree that the terms and provisions of this Agreement shall not be construed more favorably for or strictly against any Party.

### **XII. DEFAULT AND REMEDIES; WARRANTIES AND LIMITATION ON LIABILITY**

**12.01 Remedies for Default.** In the event of a Default by any Party to this agreement, the following remedies shall be available (as applicable):

(a) The Parties shall have the right to enforce the provisions of Section 5.01 of this Agreement by injunction and/or specific performance as more fully set forth in Section 5.02 of this Agreement.

(a) Upon the occurrence of a Default by either System Owner, the Park Cities shall have the right to terminate this Agreement by written notice to the System Owners and shall further have the right to exercise any rights and remedies available to the Park Cities at common law, by statute, in equity or otherwise pursuant to the laws of the State of Texas.

(c) Upon the occurrence of a Default by the Park Cities, System Owners shall have the right to terminate this Agreement by written notice to the Park Cities and shall further have the right to exercise any rights and remedies available to System Owners at common law, by statute, in equity or otherwise pursuant to the laws of the State of Texas.

(d) In the event of a Default by any Party, the Defaulting party must pay any remaining financial obligations related to the System or its components including, without limitation, the Park Cities Infrastructure Components, incurred or accrued prior to the date of notice of termination by the non-Defaulting party.

(e) In the event of a Default by either Party, all the Park Cities Infrastructure Components of the System, if previously conveyed from System Owners to the Park Cities, shall continue to be owned 100% by the Park Cities. In the event of Default by either Party, the defaulting Party shall, within ninety (90) days after written demand, reimburse the non-defaulting Party and all Infrastructure Participants for reasonable costs associated with the reconfiguring of the System that are necessary for the non-defaulting Party and all Participants to continue to access, use, maintain and repair the System including, but not limited to, microwave realignment and licensing fees.

(f) The Dispute Resolution provisions of Section 22 of the Interlocal Radio System Usage Agreement shall apply to this Agreement for disputes not related to public safety. The Parties specifically agree that the provisions of Section 22 of the Interlocal Radio System Usage Agreement shall not apply if any delay in the resolution of the issue in dispute could adversely affect the public safety of the citizens of any Party. Notwithstanding any provision of this Section 12.02(f) to the contrary, the Parties acknowledge and agree that Section 22 of the Interlocal Radio System Usage Agreement shall not apply to disputes relating to Article V of this Agreement and the Parties further agree that any Party may institute a lawsuit or other proceeding to exercise the remedies available under Section 5.02 of this Agreement without first attempting to resolve the dispute by following the dispute resolution process set forth in Section 22 of the Interlocal Radio System Usage Agreement.

(g) The provisions of this Section 12.02 shall expressly survive the termination of this Agreement.

**12.03 Remedies Cumulative.** The Parties' rights and remedies under this Agreement are cumulative and are not exclusive of any other right or remedy provided by law. Each right and remedy of the Parties provided for in this Agreement or now or hereafter existing pursuant to the

laws of the State of Texas shall be cumulative and concurrent and shall be in addition to every other right or remedy provided for in this Agreement or now or hereafter existing pursuant to the laws of the State of Texas.

**12.04 Disclaimer of Warranties.** System Owners make no representations or warranties, either express or implied, as to the System or its components, and the Park Cities acknowledge that the use of the System is being provided to the Park Cities on an “AS-IS” “WHERE IS” basis with any and all latent and patent defects. System Owners expressly disclaim any warranty or representation as to the System’s coverage, quality, dependability, performance, continuation of service, non-infringement, merchantability, fitness for any purpose, or fitness for the uses intended by the Park Cities. The Park Cities assume the entire risk associated with the results and use of the System or its components by the Park Cities, their employees, agents, representatives, officials and all persons and entities using or accessing the System. Neither of the System Owners shall be liable to the Park Cities, their employees, agents, representatives, officials or to any other person or entity for any indirect, incidental, special or consequential damages whatsoever, including, but not limited to, damages for any loss of use, time, data, goodwill, revenue or profit, in any way related to or arising from this Agreement, the use, misuse or non-use of the System by the Park Cities, and/or any inadequacies of coverage, quality, dependability, performance, errors or interruption in service or partial or total failure of the System even if System Owners, individually or collectively, have been advised of the possibility of such damages. System Owners and their employees, agents, representatives and officials shall not be liable to the Park Cities, their employees, agents, representatives, officials or any other person or entity for personal injuries, death or property damage due to or arising from the use, misuse or non-use of the System by the Park Cities and/or arising from any inadequacies of coverage, quality, dependability, performance, errors or interruption in service or partial or total failure of the System. To the extent allowed by law, the Park Cities agree to hold System Owners and their employees, agents, representatives and officials harmless from and against all liability of any nature whatsoever for personal injuries, death or damage to tangible property caused by or arising from the use, misuse or non-use of the System by the Park Cities.

**12.05 Limitation on Liability.** Notwithstanding anything contained herein to the contrary, it is expressly understood and agreed by the Parties that the Park Cities and System Owners shall not be held liable for the acts or omissions of each other or for the acts or omissions of each other’s agents, representatives or employees in the performance of this Agreement, other than losses arising from the Park Cities modification of the Tower, as set forth in Section 6.09, *supra*.

**12.06 Survival.** All provisions of this Article XII shall expressly survive the expiration or termination of this Agreement.

### **XIII. WAIVER**

No covenant or condition of this Agreement may be waived without the express written consent of the waiving Party. No failure by any Party to insist upon the strict or timely performance of

any covenant, duty, agreement, term or condition of this Agreement shall constitute a waiver of any such covenant, duty, agreement, term or condition. It is further agreed that one (1) or more instances of forbearance by any Party in the exercise of its respective rights under this Agreement shall in no way impair such right or constitute a waiver of such right or a waiver of any breach theretofore or thereafter occurring.

#### **XIV. GOVERNMENTAL FUNCTION**

The provision of police, fire and emergency medical services, the radio communications that are essential thereto and the work and services described herein in connection therewith, are essential to the public health and safety of the citizens of both Parties and are governmental functions and services pursuant to the Act that each Party is authorized to perform individually. Each Party agrees that all monetary obligations of such Party under the terms of this Agreement shall be made only from current revenues or other lawful funds appropriated and available for the performance of such obligations.

#### **XV. NO PARTNERSHIP, JOINT VENTURE, AGENCY OR EMPLOYER/EMPLOYEE RELATIONSHIP**

Nothing contained in this Agreement shall be deemed or construed by the Parties hereto, nor by any third party, as creating the relationship of partnership, joint venture, joint enterprise, agency or employer/employee relationship between the Parties and/or between any Party.

#### **XVI. HEADINGS**

The headings of this Agreement are for convenience of reference only and shall not affect in any manner any of the terms and conditions of this Agreement.

#### **XVII. DUPLICATE ORIGINAL DOCUMENTS**

This Agreement may be executed in any number of original, facsimile or electronically-scanned counterparts, each of which shall be considered an original and all of which shall be considered one and the same instrument. A digital or electronic signature shall be considered an original signature for all purposes.

#### **XVIII. TIME IS OF THE ESSENCE**

The Parties agree that time is of the essence in the performance of this Agreement.

#### **XIX. SYSTEM OWNERS RADIO SYSTEM ILA WAIVER, RELEASE AND COVENANT NOT TO SUE**

The Parties acknowledge that System Owners have entered into the Garland/Mesquite Radio System ILA (a copy of which has been provided to the Park Cities) regarding, inter alia, the installation, operation, administration, maintenance and implementation of the System and that

**Interlocal Agreement Between the Cities of Garland and Mesquite and the Park Cities**

pursuant to the Garland/Mesquite Radio System ILA, System Owners have certain rights to terminate the Garland/Mesquite Radio System ILA as more fully set forth in therein. The Parties expressly agree that this Agreement does not alter, affect, modify or amend the Garland/Mesquite Radio System ILA in any manner including, without limitation, either of the System Owners' right to terminate the Garland/Mesquite Radio System ILA. The Parties further agree that in the event either System Owner exercises its right to terminate the Garland/Mesquite Radio System ILA (under the terms and subject to the conditions set forth therein), (i) the System (as defined in this Agreement) and the Interlocal Radio System Usage Agreement shall no longer include any components of the System owned solely by Mesquite; (ii) upon such termination, neither Garland or the Park Cities shall have any rights to access or use the components of the System that are owned solely by Mesquite; and (iii) upon such termination, any access or use of the Shared Components of the System shall be limited to the rights of access and use, if any, that expressly survive the termination of the Garland/Mesquite Radio System ILA. **For and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, Garland and the Park Cities hereby voluntarily WAIVE, RELEASE AND FOREVER DISCHARGE Mesquite and its employees, agents, representatives, officials, attorneys and insurers, both individually and in their official capacities (hereinafter collectively the "Released Parties"), of and from any and all claims, demands, damages, liabilities, actions and causes of action of every kind and nature whether known or unknown, foreseen or unforeseen (collectively "Claims"), which Garland or the Park Cities, their employees, agents, representatives or officials have or may have against any one or more of the Released Parties arising from or relating to the termination by Mesquite of the Garland/Mesquite Radio System ILA provided Mesquite is not in default (as defined in the Garland/Mesquite Radio System ILA) of the Garland/Mesquite Radio System ILA [or no event has occurred which, but for notice, the lapse of time or both would constitute a "Default" by Mesquite under the terms of the Garland/Mesquite Radio System ILA] and such termination is in accordance with the terms and conditions set forth in the Garland/Mesquite Radio System ILA including, without limitation, any claims at law or in equity arising from or relating to any adverse effect on the use or operation of the System or any component of the System including but not limited to the Park Cities Infrastructure Components caused by or as a result of the termination by Mesquite of the Garland/Mesquite Radio System ILA. Garland and the Park Cities further covenant and agree not to institute any action, litigation or suit at law or in equity against Mesquite for any Claims arising out of or in any way relating to the termination of the Garland/Mesquite Radio System ILA provided Mesquite is not in "Default" (as defined in the Garland/Mesquite Radio System ILA) of the Garland/Mesquite Radio System ILA [or no event has occurred which, but for notice, the lapse of time or both would constitute a "Default" by Mesquite under the terms of the Garland/Mesquite Radio System ILA] and such termination is in accordance with the terms and provisions of the Garland/Mesquite Radio System ILA.**

*[Remainder of page intentionally left blank; Signature page to follow]*

**EXECUTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**CITY OF GARLAND, TEXAS**  
**a Texas home-rule municipality**

BY: \_\_\_\_\_  
Bryan L. Bradford  
City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Stephen M. Hines, Sr. Asst. City Attorney

**EXECUTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**CITY OF MESQUITE, TEXAS,**  
**a Texas home-rule municipality**

BY: \_\_\_\_\_  
Cliff Keheley, City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Ileana N. Fernandez, Sr. Asst. City Attorney

**EXECUTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**CITY OF UNIVERSITY PARK, TEXAS**  
**a Texas home-rule municipality**

BY: \_\_\_\_\_  
Robert Corder, City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Robert L. Dillard, III, City Attorney

**EXECUTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**CITY OF HIGHLAND PARK, TEXAS**  
**a Texas home-rule municipality**

BY: \_\_\_\_\_  
Bill Lindley, Town Administrator

APPROVED AS TO FORM:

\_\_\_\_\_  
Matthew Boyle, Town Attorney



**EXHIBIT “A”**

**Interlocal Radio System Usage Agreement**  
**(to be executed by System Owners and the Park Cities concurrently with this Agreement)**

**Exhibit “B”**

**(Each Party’s itemized Infrastructure Costs (to be executed by the Parties and attached after design review by the selected vendor)**

**EXHIBIT “C”**

(None)





# **TOWN OF HIGHLAND PARK**

## **Agenda Briefing**

Council Meeting: June 24, 2019

Department: Department of Public Safety

Director: Rick Pyle

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### **TITLE**

Consider approval of an Interlocal Radio System Usage Agreement between the Town of Highland Park, the City of University Park, the City of Garland, and the City of Mesquite.

### **BACKGROUND**

This agreement addresses the Radio System Usage Agreement between the Town, the City of University Park (the "City"), the City of Garland, and the City of Mesquite. This agenda item is provided as an opportunity for the Town Council to review and discuss the status of the Town and City pursuing the acquisition of a new public safety radio system. Black & Veatch (the "Consultant") was previously retained by the Town and the City to assist in the evaluation of options (Phase III) and development of Interlocal Agreements for the replacement and upgrade of the public safety radio system (the "System") meeting the federal P25 standards. The Town Council previously gave direction to staff to pursue the development of various agreements with Garland, Mesquite, Rowlett, and Sachse ("GMRS") for the purchase and operation of the System. As part of Phase III, the Consultant will also assist with the oversight of system installation, implementation, system performance verification, and system acceptance testing prior to the system cut-over. Based on the technical complexity and the critical functionality of the system, staff for both the Town and the City propose to continue with the Consultant to provide these services for both agencies until the completion of the public safety radio system project. The Town Attorney, in cooperation with the City's Attorney, reviewed this usage agreement and the accompanying agreements/contracts.

P25 is a standards development process for the design, manufacturing and evaluation of interoperable digital two-way land mobile radio systems communications products created by and for public safety professionals. The P25 standard is a critical component to achieve interoperability among different agencies. Both federal and state guidelines set an objective that radio communications for all first responders be P25 compliant. The Town's current radio system is not P25 compliant.

The current HPDPS radio system, purchased in 2011, is not public safety grade, is outdated, and scheduled for replacement. The system was purchased as an interim system until a P25 solution could be identified. The Consultant previously recommended that the Town partner with the City and join the GMRS system as the most cost effective alternative available. Following this course of action provides a radio system that is interoperable with all area agencies, enhances clarity, provides wider area coverage, delivers deeper building penetration, and provides encryption capabilities. As part of the Town's and the City's work, the two entities will upgrade their existing antennae sites. These sites will then be combined to form a cell. This cell will tie into the GMRS system, resulting in all partner cities gaining increased coverage and reliability.

## RECOMMENDATION

Staff agrees with and recommends approval of this agreement and proceeding with acquisition of the System. The University Park City Council approved the purchase, the associated ILAs, and the Motorola contract at its Council meeting on June 18, 2019. This item was reviewed by the Town Council at its Study Session on June 18, 2019.

## FINANCIAL IMPACT

Motorola has proposed three cost options, each differing based on the Town pre-funding annual maintenance. These proposals, which cover a 10-year period, include:

<u>Option</u>	<u>Cost</u>	<u>Maintenance Period Covered</u>	<u>Future Maintenance Cost</u>
Option 1	\$3.58 Million	2 years	\$2.15 Million
Option 2	\$4.04 Million	5 years	\$1.58 Million
Option 3	\$5.48 Million	10 years	\$0

Note: the numbers presented above do not include annual subscription fees to be paid to GMRS. These annual fees amount to \$30,097 in Year 1 and \$11,398 per year for Years 2 through 10.

Since added to the Town's Capital Improvement Plan ("CIP"), funding for the communication system has been expected to come from some form of capital lease or lease-purchase program. The CIP sets out annual payments for the system over a 10-year period. The capital lease planned in the CIP was set up to fund only the initial cost of the system (Option 1), with maintenance programmed from the annual operating budget beginning in Year 3. Since the purchase price of the equipment and related maintenance have increased over time, the CIP and the 10-year financial model will need to be adjusted to accommodate the current pricing. Alternatives to financing the system through a capital lease include cash financing through available fund balances and current resources, or other forms of debt such as Tax Anticipation Notes ("TANs"). Option pricing from Motorola includes discounts tied to pre-funding the annual maintenance, with Option 2 reducing the overall cost of the system by \$110,000, and Option 3 saving the Town \$250,000.

It is important to recognize that whether financing comes from a capital lease or TANs, the Town will be required to report the debt in its annual financial statements. While TANs will likely have a lower interest rate than a capital lease, the amortization period is limited to 7 years. Should the issuance of debt be pursued, Town Staff would engage a financial advisor to assist with the process.

## ATTACHMENTS:

### **File Name**

GMRS\_Usage\_Agreement\_(1).pdf

### **Description**

GMRS Usage Agreement (1)

C.

**INTERLOCAL RADIO SYSTEM USAGE AGREEMENT**  
**(Exhibit "A" – Infrastructure/Subscriber Participant Agreement)**

This Interlocal Agreement ("Agreement") is made and entered into on this \_\_\_\_ day of \_\_\_\_\_ 2019 by and between the **CITY OF GARLAND** ("Garland") and **CITY OF MESQUITE** ("Mesquite"), Texas home-rule municipalities (collectively, the "System Owners"), and the **CITY OF UNIVERSITY PARK** and the **TOWN OF HIGHLAND PARK**, Texas home-rule municipalities (collectively referred to as the "Park Cities"). System Owners and the Park Cities may be collectively referred to as the "Parties" or individually as a "Party".

**WITNESSETH:**

**WHEREAS**, System Owners and the Park Cities are local governments within the State of Texas, and each is engaged in the provision of governmental services for the benefit of its citizens; and

**WHEREAS**, the Interlocal Cooperation Act, Texas Government Code, Chapter 791, as amended (the "Act"), provides authority for local governments of the State of Texas to enter into Interlocal Agreements with one another for the purpose of performing governmental functions and services as set forth in the Act; and

**WHEREAS**, the System Owners and the Park Cities wish to enter into this Agreement to provide for the use of a portion of the additional capacity of the 700 MHz System by the Park Cities under such terms as will not interfere with the use, ownership or operation of the 700 MHz System by the System Owners; and

**WHEREAS**, System Owners have investigated and determined that it would be advantageous and beneficial to the citizens of their respective jurisdictions to purchase and implement a combined wide area, multi-site digital trunked simulcast radio system that is compliant with P-25 interoperability standards (the "System"); and

**WHEREAS**, the Parties acknowledge that System Owners have entered into *The City of Garland and the City of Mesquite Radio System Interlocal Agreement* dated July 7, 2015 (the "Garland/Mesquite Radio System ILA"), a copy of which has been provided to the Park Cities regarding, inter alia, the installation, operation, administration, maintenance and implementation of the System; and

**WHEREAS**, the Park Cities have investigated and determined that it would be advantageous and beneficial to the citizens of the Park Cities to participate in the new System as an Infrastructure Participant (defined below).

**NOW, THEREFORE**, under the authority of the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, the System Owners and the Park Cities, for the mutual consideration hereinafter stated, agree as follows:



## **Section 1.     General.**

### **1.01     Definitions.**

**“700 MHz System”** shall mean the 700 Mhz frequencies of the System that System Owners are providing for the Park Cities’ use.

**“Effective Date”** means the later of the dates this Agreement is approved by the governing bodies of the System Owners and the Park Cities and signed by the authorized representatives of each entity.

**“Governance Board”** means the administrative governing body tasked with the operation and administration of the System and being more particularly described in the Garland/Mesquite Radio System ILA.

**“Infrastructure Components”** means the equipment, materials, hardware, software, firmware, structures and other items composing a portion of the System that are located within the municipal boundaries of either of the Park Cities and which are more specifically detailed and itemized in Exhibit C to that agreement known as “The Cities of Garland and Mesquite and the City of University Park and Town of Highland Park Radio System Interlocal Agreement”, a copy of which has been provided to and approved by the Park Cities and which is incorporated herein by reference.

**“Infrastructure Participants”** means municipalities, whether one or more, other than System Owners, that participate in the System by using services provided by the System and that own Infrastructure Components of the System located within their respective municipalities. Infrastructure Participants shall pay Participant Fees in accordance with fee schedules established from time to time by the Governance Board.

**“Initial Term”** means that period commencing upon the Effective Date and concluding at midnight on September 30<sup>th</sup> of the fifth calendar year thereafter.

**“Participant”** means an Infrastructure Participant, or a Subscriber Participant and **“Participants”** collectively means all Infrastructure Participants and Subscriber Participants.

**“Patching”** means cross connecting a radio or Talk Group(s) to other Talk Group(s) or channel(s) on other radio systems.

**“Renewal Term”** means the five (5) year renewal periods following the Initial Term and beginning on the first day of October immediately following the conclusion of the Initial Term or prior Renewal Term and renewing on October 1<sup>st</sup> of each fifth calendar year thereafter (individually, a “Renewal Term”; collectively, the “Renewal Terms”).

**“Shared Components”** means the components of the System that are jointly owned by System Owners as more fully defined in the Garland/Mesquite Radio System ILA. The term shall also

mean the components of the System that will be owned by System Owners, but also used to support the operations of the Park Cities Simulcast Cell.

**“Simulcast Cell”** means a standalone multi-site trunked radio system that operates off the master site owned by System Owners.

**“Subscriber”** or **“Subscriber radio”** means an individual Phase 2 Project 25 radio used by the Park Cities.

**“Subscriber Participant”** means the various municipalities, school districts, and other third parties, other than Infrastructure Participants and the System Owners, that participate in the System by using services provided by the System and that own their own subscriber units (radios) or other related components, which provide access to the System. Subscriber Participants are referred to in the Garland/Mesquite Radio System ILA as “Non-Infrastructure Participants” and all references in this Agreement to “Subscriber Participant” or “Subscriber Participants” shall mean “Non-Infrastructure Participant” or “Non-Infrastructure Participants” under the Garland/Mesquite Radio System ILA. Subscriber Participants shall pay Participant Fees in accordance with fee schedules established from time to time by the Governance Board.

**“System”** means a wide area, multi-site (“simulcast”) digital trunked radio system compliant with P-25 interoperability standards as more expressly defined in the Garland/Mesquite Radio System ILA and shall include the Shared Components, the Non-Shared Components, and all Infrastructure Components including, without limitation, the Park Cities’ Infrastructure Components.

**“System Owners Technical Advisory Board”** means the group of technical personnel selected to advise the Governance Board and being more particularly described in Section 6.04 of the Garland/Mesquite Radio System Interlocal Agreement dated July 7, 2015.

**“Talk Group”** means a specific channel name assigned to the Park Cities.

**“Term”** means, with the exception of the Initial Term as defined herein above, a five (5) year period, commencing on October 1 and terminating at midnight on September 30<sup>th</sup> of the fifth calendar year thereafter (the “Termination Date”), unless sooner terminated as provided herein, for each successive Renewal Term.

## **Section 2. Use of the 700 MHz System.**

**2.01 Capacity.** The System Owners agree to provide the Park Cities use of additional capacity of the 700 MHz System. Exhibit A defines the number of Talk Groups and Subscribers the Park Cities are authorized to use on the System. As technical improvements are made to the 700 MHz System by the System Owners, and provided that the System Owners have sufficient system capacity (as determined by the System Owners in their sole discretion) for their own present and future needs and those of others with whom the System Owners may enter agreements for use of the additional capacity of the 700 MHz System, the Park Cities may add additional units to the 700MHz System under the same terms and conditions contained herein.

**2.02 Notification by Infrastructure Participant.** The Park Cities, as Infrastructure Participants, agree to notify the System Owners Technical Advisory Board of:

- (a) the Park Cities' entire inventory of Subscriber radios being used on or in conjunction with the 700 MHz System; and
- (b) any changes in the inventory within ten (10) days after such change.

**2.03 Talk Group Auto-Roaming.** System Owners do not guarantee any Subscriber Participant's Talk Group will be authorized to operate on all tower sites in the System ("auto-roam"). A Subscriber Participant may request, in writing, that the System Owners authorize a Talk Group to auto-roam between towers on the System. In accordance with Article VI of the Garland/Mesquite Radio System ILA, the Technical Advisory Board shall review all such requests to ensure the request does not negatively impact the System's quality of service. The Technical Advisory Board shall recommend the Governance Board authorize or deny the request. The Governance Board shall then, at its sole and final discretion, authorize or deny the request and notify the Subscriber Participant of its decision.

**Section 3. Terms of Use.** The Infrastructure Participants are to use the System strictly in accordance with and under the terms of use set forth in Exhibit A.

**Section 4. Fees.**

**4.01 Payment.** The Park Cities shall remit payments to Garland in the amount and manner set forth in Exhibit A.

**4.02 Payment source.** All payments made by the Park Cities under this Agreement must be made from current revenues available to the Park Cities.

**4.03 Adjustment of fees.** The System Owners may adjust the annual fees based on an estimation of their variable costs, such as maintenance and operating expenses.

**4.04 Pro rata policy.** In the event this Agreement terminates on any day other than September 30 of a given year of the Term, a refund or fee shall be made on a pro rata basis.

(a) If the Agreement terminates within a year for which the Park Cities have paid the annual fee, the Park Cities shall be entitled to a pro rata refund of fees paid.

(b) If the Agreement terminates during a year for which the Park Cities have not paid the annual fee, the System Owners shall be entitled to a pro rata payment of fees for the unpaid services. This pro rata payment shall be based upon the fee that would otherwise have been due on the October 1 immediately preceding the termination date, including any adjustments of the fees that have occurred, provided the System Owners sent written notice of the fee adjustment to the Park Cities prior to receiving the requisite written notice set forth in Section 6 below.



**Section 5. System Management; Disclaimer of Warranties.** It is understood by the Parties that the intent of this Agreement is only for airtime usage of the 700 MHz System, and does not provide the Park Cities control of the System or any part of the System. This Agreement does not provide the Park Cities with any ownership rights to any part of the System. **The System Owners make no representations or warranties, either express or implied, as to the System or its components, and the Park Cities acknowledge that the use of the System is being provided to the Park Cities on an “AS-IS”, “WHERE IS” basis with all latent and patent defects. The System Owners expressly disclaim any warranty or representation as to the System’s coverage, quality, dependability, performance, continuation of service, non-infringement, merchantability, fitness for a particular purpose or fitness for the uses intended by the Park Cities. The Park Cities assume the entire risk as to the results and use of the System or its components. The System Owners shall not be liable to the Park Cities, their respective employees, agents, representatives, officials or to any other person or entity for any indirect, incidental, special or consequential damages whatsoever, including, but not limited to, damages for any loss of use, time, data, goodwill, revenue or profit, in any way related to or arising from this Agreement, the use, misuse or non-use of the System by the Park Cities and/or any inadequacies of coverage, quality, dependability, performance, errors or interruption in service or partial or total failure of the System even if the System Owners have been advised of the possibility of such damages. The System Owners and their employees, agents, representatives and officials shall not be liable to the Park Cities, their respective employees, agents, representatives, officials or any other person or entity for personal injuries, death or property damage due to or arising from the use, misuse or non-use of the System by the Park Cities and/or arising from any inadequacies of coverage, quality, dependability, performance, errors or interruption in service or partial or total failure of the System. To the extent allowed by law, the Park Cities agree to indemnify and hold the System Owners and their respective employees, agents, representatives and officials harmless from and against all liability of any nature whatsoever for personal injuries, death or damage to tangible property caused by or arising from the use, misuse or non-use of the System by the Park Cities. It is expressly intended by the Parties that the disclaimer of warranties and the indemnity by the Park Cities contained in this Section 5 shall expressly survive the expiration or termination of this Agreement.**

**Section 6. Termination.**

**6.01 Termination by owner.** The System Owners may terminate this Agreement upon providing the Park Cities with the lesser of

(a) at least three hundred sixty (360) days’ written notice of termination for terminations made on an at-will basis; or

(b) thirty (30) days’ written notice to the Park Cities in the event the Park Cities fail to make any payment due or otherwise breach an obligation of the Park Cities under this Agreement, and fail to correct such non-payment or breach within the opportunity to cure period provided in Section 9.02;

**6.02 Termination by Park Cities.** The Park Cities may terminate this agreement at will and without cause or penalty upon providing the System Owners with at least one hundred and twenty (120) days' written notice of termination.

**6.03 Termination for failure to appropriate.** The Park Cities agree to notify the System Owners within five (5) business days if the Park Cities fail to appropriate funds for payment of their obligations under this Agreement. This Agreement will expire thirty (30) days after provision of the written notice.

**6.04 Payment or refund of fees upon termination.** Upon termination of this Agreement on any day other than September 30 of a given year, any payment or refund shall be on a pro rata basis as set forth in Section 4.04 of this Agreement.

**Section 7. Garland/Mesquite Radio System ILA; Waiver, Release and Covenant Not to Sue.**

The Parties acknowledge that Garland and Mesquite have entered into the Garland/Mesquite Radio System ILA, a copy of which has been provided to the Park Cities, regarding, inter alia, the installation, operation, administration, maintenance and implementation of the System and that pursuant to the Garland/Mesquite Radio System ILA, Mesquite has certain rights to terminate the Garland/Mesquite Radio System ILA as more fully set forth in the Garland/Mesquite Radio System ILA. The Parties expressly agree that this Agreement does not alter, affect, modify or amend the Garland/Mesquite Radio System ILA in any manner including, without limitation, this Agreement does not affect or limit in any way Mesquite's right to terminate the Garland/Mesquite Radio System ILA. The Parties further agree that in the event Mesquite exercises its right to terminate the Garland/Mesquite Radio System ILA under the terms and subject to the conditions set forth in the Garland/Mesquite Radio System ILA, (i) the System as defined in this Agreement and the Participant Agreement shall no longer include any components of the System owned solely by Mesquite; (ii) upon such termination, neither Garland or the Park Cities shall have any right to access or use the components of the System that are owned solely by Mesquite; and (iii) upon such termination, any access or use of the Shared Components of the System shall be limited to the rights of access and use, if any, that expressly survive the termination of the Garland/Mesquite Radio System ILA.

**Section 8. Notices.** All notices required or permitted to be given to any Party hereto shall be in writing and shall be considered properly given if sent by United States electronically tracked certified mail, return receipt requested, in a postage paid envelope addressed to the respective Parties at the following addresses or by delivery of the notice in person to the intended addressee by hand delivery or by a nationally recognized courier service having the ability to track shipping and delivery of notices including but not limited to services such as Federal Express or United Parcel Service (UPS). Notices mailed by certified mail as set forth above shall be effective two (2) days after deposit in the United States mail. Notices given in any other manner shall be effective only when received by the addressee. For purposes of notice, the addresses of the Parties shall be as set forth below; provided, however, that any Party shall have the right to change such Party's address for notice purposes by giving all other Parties at least thirty (30) days' prior written notice of such change of address in the manner set forth herein:

**Notices to System Owners:**

**Garland Representative:**

Chief Information Officer  
City of Garland  
1490 State Highway 66  
Garland, Texas 75040  
972-781-7205

With a copy to:

City Attorney  
City of Garland  
200 North Fifth Street, 4<sup>th</sup> Floor  
Garland, Texas 75040

**Mesquite Representative:**

Fire Chief  
City of Mesquite  
1515 N. Galloway  
Mesquite, Texas 75149

With a copy to:

City Attorney  
City of Mesquite  
1515 N. Galloway  
Mesquite, Texas 75149

**Notices to Park Cities:**

**Highland Park Representative:**

Mayor & Town Administrator  
Town of Highland Park  
4700 Drexel Drive  
Highland Park, Texas 75205  
214-559-9450

With a copy to:

Director of Public Safety & Town Attorney  
Town of Highland Park  
4700 Drexel Drive  
Highland Park, Texas 75205  
and  
Matthew C. G. Boyle-Town Attorney  
4201 Wingren, Suite 108  
Irving, Texas 75062

**University Park Representative:**

Mayor & City Manager  
City of University Park  
3800 University Blvd.  
University Park, Texas 75205

With a copy to:

Police Chief, Fire Chief & City Attorney  
City of University Park  
3800 University Blvd.  
University Park, Texas 75205

**Section 9. Dispute Resolution.**

**9.01 In general.** In the event of a dispute between the parties regarding the terms, performance, or any other aspect of this Agreement, the Parties shall attempt to resolve the dispute as set forth in this Section.

**9.02 Opportunity to cure.** If a Party asserts that any other Party(s) has breached any provision of this Agreement or any active Work Order, the non-breaching Party shall provide the breaching Party(s) written notification of the alleged breach, describing the facts and circumstances the non-



breaching Party claims constitutes the breach. The breaching Party(s) shall have one hundred and twenty (120) days to cure any such breach.

**9.03 Informal mediation.** The Parties agree that, in the event of a dispute, the appropriate technical directors and other City officials, including, but not limited to, a representative from the Parties' respective City Attorney's office, shall conduct a meeting, via telephone or in person, and shall conduct a substantive discussion of each dispute in a good faith effort to resolve the dispute.

**9.04 Formal mediation.** In the event the Parties are unable to resolve the dispute through the informal mediation procedure set forth above, the Parties shall submit the dispute to formal mediation to be conducted at a mutually acceptable location in Dallas County, Texas. Formal mediation shall be a prerequisite for filing suit. The mediator shall be selected as follows:

(a) The Parties may jointly agree upon a mediator. All expenses of the mediation, including required traveling and other expenses or charges of the mediator, shall be borne equally by the Parties. The expenses of participants, such as expert witnesses for any side, shall be paid by the Party requesting the participant's attendance.

(b) If the Parties are unable to jointly agree upon a mediator, the Parties shall request the American Arbitration Association ("AAA") to appoint a mediator and conduct the mediation under the AAA's Commercial Mediation Procedures. All mediation expenses, including any fees imposed by the AAA as well as any required traveling and other expenses or charges of the mediator, shall be borne equally by the Parties. The expenses of participants for any Party shall be paid by the Party requesting the participant's attendance.

**9.05 Litigation.** In the event the Parties are unable to resolve any dispute through either informal or formal mediation, the dispute may be pursued through litigation.

**9.06 Venue.** The exclusive venue for all disputes shall be in any civil District Court of Dallas County, Texas.

**9.07 Recovery of litigation costs.** The prevailing Party(s) shall be entitled to recover costs, reasonable expenses, expert fees and reasonable attorneys' fees incurred in connection with the dispute, including expenses incurred through the formal mediation process described in Section 9.04. For purposes of this section, a claimant or plaintiff is a "prevailing party" if it recovers at least eighty percent (80%) of the monies it seeks as damages, or obtains all injunctive relief it might seek, otherwise, the respondent or defendant shall be the prevailing Party(s). If no Party is a "prevailing party", then each Party shall bear its own costs, reasonable expenses, expert fees and reasonable attorney's fees.

**Section 10. No Assignment.** No Party shall have the right to assign its interest in this Agreement without the prior written consent of the other Parties.

**Section 11. Severability.** If any term or provision of this Agreement is held to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby, and in lieu of each such illegal, invalid or

unenforceable term or provision, there shall be added automatically to this Agreement a legal, valid or enforceable term or provision as similar as possible to the term or provision declared illegal, invalid or unenforceable.

**Section 12. Waiver.** Both the System Owners and the Park Cities shall have the right to waive any requirement contained in this Agreement, which is intended for the waiving Party's benefit, but, except as otherwise provided herein, such waiver shall be effective only if in writing executed by the non-waiving Party(s). No waiver of any breach or violation of any term of this Agreement shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or of a different type of breach or violation.

**Section 13. Paragraph Headings; Construction.** The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. All Parties have participated in the negotiation and preparation of this Agreement, and this Agreement shall not be construed either more or less strongly against or for any Party.

**Section 14. Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

**Section 15. Entire Agreement.** It is understood and agreed that this Agreement contains the entire Agreement between the Parties and supersedes all prior agreements, arrangements or understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. This Agreement may only be modified by a writing signed by all Parties that expressly calls for its modification and not by implication from any other written document or oral agreement. This shall not prevent other documents from being incorporated by reference.

**Section 16. Relationship of Parties.** Nothing contained in this Agreement shall be deemed or construed by the Parties or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the Parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the Parties hereto shall be deemed to create any relationship between the Parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement. There are no third-party beneficiaries to this Agreement and no third-party beneficiaries are intended by implication or otherwise.

**Section 17. No Creation of Debt.** To the extent, if any, that this Agreement imposes an obligation on any Party to make a payment or other expenditure of any sort, such payment or expenditure shall be payable solely from current revenues that are immediately available for such purposes, and no debt is or is intended to be created by reason of said Agreement. All obligations of a Party under this Agreement are payable solely from that Party's operations budget in parity with all other operating expenses of that Party and no ad valorem tax revenue or other revenues of that Party shall in any manner be pledged or be deemed to have been pledged to the payment of any amounts under this Agreement nor shall any Party have the right to demand payment of any amounts under

**Section 18. No Waiver of Immunity.** It is expressly understood and agreed that, in the execution of this Agreement, no Party waives, nor shall be deemed hereby to have waived any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the Parties do not create any obligations, express or implied, other than those set forth herein.

**Section 20. Mutuality.** Garland and Mesquite commit and agree that future Participants in the System will be allowed to participate under the same base terms as provided for herein so that no future Participant is provided access under materially different terms than those provided for herein.

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**EXECUTED** this \_\_\_\_ day of \_\_\_\_\_, 2019.

**CITY OF GARLAND, TEXAS**

\_\_\_\_\_  
Bryan Bradford  
City Manager

Approved as to form:

\_\_\_\_\_  
Stephen M. Hines  
Sr. Assistant City Attorney

**EXECUTED** this \_\_\_\_ day of \_\_\_\_\_, 2019.

**CITY OF MESQUITE, TEXAS**

\_\_\_\_\_  
Cliff Keheley  
City Manager

Approved as to form:

\_\_\_\_\_  
Ileana Fernandez  
Assistant City Attorney

**EXECUTED** this \_\_\_\_ day of \_\_\_\_\_, 2019.

**CITY OF UNIVERSITY PARK, TEXAS**

\_\_\_\_\_  
Robbie Corder  
City Manager

Approved as to form:

\_\_\_\_\_  
Robert L. Dillard, III  
City Attorney

**EXECUTED** this \_\_\_\_ day of \_\_\_\_\_, 2019.

**TOWN OF HIGHLAND PARK, TEXAS**

\_\_\_\_\_  
Bill Lindley  
Town Administrator

Approved as to form:

\_\_\_\_\_  
Matthew Boyle  
Town Attorney

## **EXHIBIT A**

### **TERMS OF USE**

1. All definitions set forth in the Usage Agreement are incorporated herein by reference.
2. The System Owners own Federal Communications Commission (FCC) license(s) that the System uses for its operation for site 1. Site 1 is defined as the original nine-site simulcast system. This Agreement shall not be construed or interpreted to grant, convey, or otherwise provide the Park Cities with any rights whatsoever to the System Owners' FCC license(s) or to the radio frequency spectrum used by the System. The Park Cities are the owners of the FCC frequencies that will comprise their three-site simulcast system. The Park Cities must maintain and comply with FCC rules and regulations.
3. The installation and maintenance of the System zone controller equipment is the responsibility of the System Owners unless otherwise stated in this Agreement.
4. The System Owners make no guarantee, either express or implied, as to radio signal strength or a specific level of radio coverage in a particular location. The Park Cities are responsible for conducting appropriate and applicable in-building and geographical coverage testing to determine the expected radio coverage level for the Park Cities' equipment.
5. In order to ensure hardware and software compatibility with the System infrastructure, all Subscriber radios and console(s) intended for use by the Park Cities on the System shall be compliant with Project 25 Phase 2 TDMA standards established by the Telecommunications Industry Association. The use of unauthorized radios on the System may result in suspended operation of the unauthorized radios, the Subscriber radios, and/or termination of this Agreement.
6. Antennas greater than 3dB will be not allowed for mobiles and consolettes. Power settings may not exceed 15 watts. Exceptions may be made upon approval of the System Owners.
7. The use of the System is for voice communications. The use of data shall be restricted and must be approved by the System Owners.

### **Applicable Fees**

8. The Park Cities agree to pay the System Owners a fee of One Hundred Twenty-One and 50/100 Dollars (\$121.50) per year for each authorized Talk Group and a fee of Eight-Four and No/100 Dollars (\$84.00) per year for each of the Park Cities' Subscriber radios. Payment of the initial sum shall be calculated on a pro rata basis from the Effective Date through September 30, 2019. Payment of the initial sum under this Agreement is due on

the Effective Date. Thereafter, payment shall be due on or before the first day of October of each year of this Agreement. System Owners may adjust the annual fees based on an estimation of the variable costs of the System, such as maintenance and operating expenses. System Owners agree to notify the Park Cities one hundred and twenty (120) days prior to the effective date of the fee adjustment. All payments made by the Park Cities under this Agreement must be made from current revenues available to the Park Cities.

9. The Park Cities agree to pay the System Owners a one-time fee of One Hundred and No/100 Dollars (\$100.00) for each Subscriber radio added to the System. This fee covers the administrative duties of the System zone controller and the initial programming of the new Subscriber. This fee shall be paid when the Park Cities request that new Subscribers be added to the System.
10. The Park Cities agree to pay the System Owners a one-time fee of One Thousand Five Hundred and No/100 Dollars (\$1,500.00) for each console position added to the System. This fee covers the administrative fees and console programming of the zone controller only. The Park Cities must provide the System Owners the console design parameters, Motorola equipment list and installation services for review. This fee shall be paid when the Park Cities request that System Owners program the console to be added to the System.
11. All payments to System Owners under this Agreement must be made payable to Garland, which shall hold such payments in trust for the benefit of the System Owners.
12. The System Owners authorize the Park Cities the use of twenty-five (25) Talk Groups and up to one thousand (1,000) Subscriber radios on the System.
13. The Park Cities agree to maintain a Motorola ASTRO 25 System Upgrade Agreement II (SUA II) for all fixed network equipment. In the event the SUA II is not maintained, the System Owners will notify the Park Cities that the fixed network equipment will be disconnected from the zone controller. The Park Cities shall be responsible for the loss of functionality when disconnected from the zone controller.
14. The Park Cities shall retain a maintenance agreement on Subscriber radios, consoles and other fixed network equipment.
15. The use of telephone interconnect is not authorized.
16. Due to radio infrastructure resource allocations required by the "Private Call" function, the Park Cities shall not utilize "Private Call" on the System.
17. Patching shall be done only as necessary for a specific event or emergency. Should continuous patching to other systems or agencies become necessary, the Park Cities shall obtain prior written approval from the Governance Board described in the Garland/Mesquite Radio System ILA.



**18. System Priorities.** The Parties agree that priority of radio transmissions on the System shall be as follows (from highest to least priority):

- a. Emergency Activation
- b. Police/Fire
- c. General Government

It is the Park Cities' responsibility to provide the System Owners a list identifying which Subscriber radios fall within each of these categories.



## **TOWN OF HIGHLAND PARK**

### **Agenda Briefing**

Council Meeting: June 24, 2019

Department: Department of Public Safety

Director: Rick Pyle

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#### **TITLE**

Consider approval of a contract with Motorola for the purchase of a P25 compliant radio system.

#### **BACKGROUND**

This contract provides for the purchase between the Town of Highland Park and Motorola. This agenda item is provided as an opportunity for the Town Council to review and discuss the status of the Town and the City of University Park (the "City") pursuing the acquisition of a new public safety radio system. Black & Veatch (the "Consultant") was previously retained by the Town and the City to assist in the evaluation of options (Phase III) and development of Interlocal Agreements for the replacement and upgrade of the public safety radio system ("System") meeting the federal P25 standards. The Town Council previously gave direction to staff to pursue the development of various agreements with Garland, Mesquite, Rowlett, and Sachse ("GMRS") for the purchase and operation of the System. As part of Phase III, the Consultant will also assist with the oversight of system installation, implementation, system performance verification, and system acceptance testing prior to system cut-over. Based on the technical complexity and the critical functionality of the system, staff for both the Town and the City propose to continue with the Consultant to provide these services for both agencies until the completion of the public safety radio system project. The Town Attorney, in cooperation with the City's Attorney, reviewed this and the other agreements/contracts.

P25 is a standards development process for the design, manufacturing, and evaluation of interoperable digital two-way land mobile radio systems communications products created by and for public safety professionals. The P25 standard is a critical component to achieve interoperability among different agencies. Both federal and state guidelines set an objective that radio communications for all first responders be P25 compliant. The Town's current radio system is not P25 compliant.

The current HPDPS radio system, purchased in 2011, is not public safety grade, is outdated, and scheduled for replacement. The system was purchased as an interim system until a P25 solution could be identified. The Consultant previously recommended that the Town partner with the City and join the GMRS system as the most cost effective alternative available. Following this course of action provides a radio system that is interoperable with all area agencies, enhances clarity, provides wider area coverage, delivers deeper building penetration, and provides encryption capabilities. As part of the Town's and the City's work, the two entities will upgrade their existing antennae sites. These sites will then be combined to form a cell. This cell will tie into the GMRS system, resulting in all partner cities gaining increased coverage and reliability.

#### **RECOMMENDATION**

Staff agrees with and recommends approval of this contract and proceeding with acquisition of the System. The University Park City Council approved the purchase, the associated ILAs, and the Motorola contract

at its Council meeting on June 18, 2019. This item was reviewed by the Town Council at its Study Session on June 18, 2019.

## **FINANCIAL IMPACT**

Motorola has proposed three cost options, each differing based on the Town pre-funding annual maintenance. These proposals, which cover a 10-year period, include:

<u>Option</u>	<u>Cost</u>	<u>Maintenance Period Covered</u>	<u>Future Maintenance Cost</u>
Option 1	\$3.58 Million	2 years	\$2.15 Million
Option 2	\$4.04 Million	5 years	\$1.58 Million
Option 3	\$5.48 Million	10 years	\$0

Note: the numbers presented above do not include annual subscription fees to be paid to GMRS. These annual fees amount to \$30,097 in Year 1 and \$11,398 per year for Years 2 through 10.

Since added to the Town's Capital Improvement Plan ("CIP"), funding for the communication system has been expected to come from some form of capital lease or lease-purchase program. The CIP sets out annual payments for the system over a 10-year period. The capital lease planned in the CIP was set up to fund only the initial cost of the system (Option 1), with maintenance programmed from the annual operating budget beginning in Year 3. Since the purchase price of the equipment and related maintenance have increased over time, the CIP and the 10-year financial model will need to be adjusted to accommodate the current pricing. Alternatives to financing the system through a capital lease include cash financing through available fund balances and current resources, or other forms of debt such as Tax Anticipation Notes ("TANs"). Option pricing from Motorola includes discounts tied to pre-funding the annual maintenance, with Option 2 reducing the overall cost of the system by \$110,000, and Option 3 saving the Town \$250,000.

It is important to recognize that whether financing comes from a capital lease or TANs, the Town will be required to report the debt in its annual financial statements. While TANs will likely have a lower interest rate than a capital lease, the amortization period is limited to 7 years. Should the issuance of debt be pursued, Town Staff would engage a financial advisor to assist with the process.

## **ATTACHMENTS:**

<b>File Name</b>	<b>Description</b>
HP_Motorola_Contract_(1).pdf	HP Motorola Contract

PROPOSAL  
HIGHLAND PARK AND UNIVERSITY PARK

# PARCS: PARK CITIES AREA-WIDE RADIO COMMUNICATIONS SYSTEM PROPOSAL



**MOTOROLA SOLUTIONS**

PS-000086787





Motorola Solutions, Inc.  
1717 McKinney Ave. Suite 800  
Dallas, TX 75202

May 16<sup>th</sup>, 2019

Highland Park  
4700 Drexel Drive, 2<sup>nd</sup> Floor  
Highland Park, Texas 75205

Attn: Chief Paul Sandman, Assistant Director of Public Safety

Dear Chief Sandman,

Motorola Solutions, Inc. ("Motorola") is pleased to have the opportunity to provide Highland Park with quality communications equipment and services. The Motorola project team has taken great care to propose a solution that will address your needs and provide exceptional value.

The System Design, as outlined within the System Description and Statement of Work, consists of the ASTRO 25 Project 25 Phase 2 TDMA Trunked Radio System technology with Six Channels (5 TDMA and 1 FDMA Control Channel) with 2 Channels supporting dynamic dual mode for FDMA users. This is a simulcast system with 3 RF sites located within Highland Park and University Park city limits. It also includes a Geo-redundant Prime site and 3 dispatch centers. This design, in connecting to and using the Garland, Mesquite, Rowlett, and Sachse (GMRS) P25 Core and pricing contract allows the Highland Park the best value while becoming part of a regional system for interoperability needs. In joining the GMRS System, the city will receive substantial functionality benefits as outlined in the attached proposal.

Motorola is prepared to offer Highland Park an additional pricing incentive beyond the discounts offered in GMRS Contract. That pricing incentive will be honored until June 25<sup>th</sup>, 2019. The complete list of incentives and discounts is highlighted on the pricing page of this proposal.

This proposal is subject to the terms and conditions of the enclosed System Purchase Agreement and is valid until June 25<sup>th</sup>, 2019. Highland Park can accept by returning to Motorola a signed copy of the aforementioned agreement. Motorola is also pleased to address any questions Highland Park may have regarding this proposal, and we look forward to an opportunity to meet with you to discuss our solution. Please direct any questions to your Crosspoint Communications account executive, Bobby Thompson at (469) 236-3743 or your Motorola account executive, Collin Wetzel at (312) 256-3260.

Motorola appreciates your interest in our company's products, and services. We look forward to partnering with the Highland Park in making this exciting project a successful reality.

Sincerely,

A handwritten signature in black ink, appearing to read 'Neil Thomas', written over a horizontal line.

Neil Thomas  
MSSI Vice President  
North America Government Markets  
Motorola Solutions Inc

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## **Communications System Agreement**

Motorola Solutions, Inc. ("Motorola") and the Town of Highland Park, Texas ("Customer") enter into this "Agreement," pursuant to which Customer will purchase and Motorola will sell the System, as described below. Motorola and Customer may be referred to individually as a "Party" and collectively as the "Parties." For good and valuable consideration, the Parties agree as follows:

### **Section 1 CONTRACT DOCUMENTS / EXHIBITS**

The exhibits listed below are incorporated into and made a part of this Agreement. In interpreting this Agreement and resolving any ambiguities, the main body of this Agreement takes precedence over the exhibits and any inconsistency between Exhibits A through G will be resolved in their listed order.

WHEREAS, Houston-Galveston Area Council ("H-GAC"), acting as the agent for various local governmental entities who are "End Users" under interlocal agreements (including the Customer) has solicited proposals for radio communications equipment and conducted discussions with Motorola concerning its proposal and, where applicable, in accordance with the competitive procurement procedures of Texas law; and

WHEREAS, H-GAC and Motorola entered into that certain Contract dated as of May 1, 2018 (the "Contract"), which provided that End Users may purchase radio communications equipment from Motorola pursuant to certain terms contained therein; and

WHEREAS, pursuant to Article 6 of the Contract, Motorola and Customer now wish to enter into this Communications System Agreement to delineate the specific terms of the purchase of radio communications equipment and services from Motorola by the Customer.

Exhibit A	Motorola "Software License Agreement"
Exhibit B	"Pricing Summary" and "Payment Schedule"
B-1	"Pricing Summary" see Motorola's proposal dated May 16, 2019
B-2	"Payment Schedule" undated
Exhibit C	"Technical and Implementation Documents"
C-1	"System Description" see Motorola's proposal dated May 16, 2019
C-2	"Equipment List" see Motorola's proposal dated May 16, 2019
C-3	"Statement of Work" see Motorola's proposal dated May 16, 2019
C-4	"Acceptance Test Plan" or "ATP" see Motorola's proposal dated May 16, 2019
C-5	"Performance Schedule" see Motorola's proposal dated May 16, 2019
C-6	"Contract Attachment 1 – Document of Understanding" dated May 16, 2019
Exhibit D	Service Statement(s) of Work and "Service Terms and Conditions"
Exhibit E	System Upgrade Agreement Statement of Work
Exhibit F	"System Acceptance Certificate"
Exhibit G	Motorola/H-GAC Contract dated May 1, 2018

### **Section 2 DEFINITIONS**

Capitalized terms used in this Agreement have the following meanings, though other capitalized terms not included in this section shall have the meanings that may be ascribed to them in other parts of the Agreement:

2.1. "Acceptance Tests" means those tests described in the Acceptance Test Plan.

2.2. "Administrative User Credentials" means an account that has total access over the operating system, files, end user accounts and passwords at either the System level or box level. Customer's personnel with access to the Administrative User Credentials may be referred to as the Administrative User.

2.3. "Beneficial Use" means when an end user begins using the system on a day to day basis for operational purposes, which can occur before final acceptance. System Warranty begins upon beneficial

use or at the time of system acceptance, whichever occurs first. Motorola will provide a formal notification to the Town and the City prior to the commencement of the warranty period

2.4. "Confidential Information" means all information consistent with the fulfillment of this agreement that is (i) disclosed under this agreement in oral, written, graphic, machine recognizable, and/or sample form, being clearly designated, labeled or marked as confidential or its equivalent or (ii) obtained by examination, testing or analysis of any hardware, software or any component part thereof provided by discloser to recipient. Confidential information that is disclosed orally must be identified as confidential at the time of disclosure and confirmed by the discloser by submitting a written document to the recipient within thirty (30) days after such disclosure. The written document must contain a summary of the Confidential Information disclosed with enough specificity for identification purpose and must be labeled or marked as confidential or its equivalent. Confidential Information does not include information that: is or becomes publically known through no wrongful act of the receiving Party; is already known to the receiving Party without restriction when it is disclosed; is or is or becomes, rightfully and without breach of this Agreement, in the receiving Party's possession without any obligation restricting disclosure; is independently developed by the receiving Party without breach of this Agreement; or is explicitly approved for release by written authorization of the disclosing Party, or is required to be disclosed by law, subpoena or court order. Notwithstanding any other provision of this Agreement, the Parties understand that Customer is required to comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) ("TPIA" or the "Act") when responding to information requests made under the Act. Pursuant to the requirements of TPIA, if Customer receives a request for information which Motorola has marked or identified as being confidential, trade secret, commercial, financial or proprietary information, Customer will respond to the request in accordance with the procedures set forth in Section 552.305 of the Act. Specifically, Customer will notify Motorola of its receipt of the request and request and attorney general opinion identifying the exception(s) to disclosure believed to apply. The Parties acknowledge that TPIA requires a brief to be submitted to the attorney general explaining the claimed exceptions apply to the information in issue. Customer shall not be obligated to submit the brief supporting the claimed exceptions. Motorola shall be solely responsible for submitting the brief and the documents in issue to the attorney general. Should the attorney general render a decision indicating that all or part if the information must be disclosed, Customer shall be permitted to disclose the information unless Motorola successfully contests the attorney general decision in accordance with the requirements of TPIA. Nothing in the Agreement shall require Customer to institute or participate in any litigation relating to an open records request for information that Motorola considers to be confidential.

2.5. "Contract Price" means the price for the System, excluding applicable sales or similar taxes and freight charges, and including ten (10) years of post warranty maintenance, support and upgrades ("Lifecycle Support Plan").

2.6. "Effective Date" means that date upon which the last Party executes this Agreement.

2.7. "Equipment" means the equipment that Customer purchases from Motorola under this Agreement. Equipment that is part of the System is described in the Equipment List.

2.8. "Force Majeure" means an event, circumstance, or act of a third party that is beyond a Party's reasonable control (e.g., an act of God, an act of the public enemy, an act of a government entity, strikes or other labor disturbances, hurricanes, earthquakes, fires, floods, epidemics, embargoes, war, and riots).

2.9. "Infringement Claim" means a third party claim alleging that the Equipment manufactured by Motorola or the Motorola Software directly infringes a United States patent or copyright.

2.10. "Motorola Software" means Software that Motorola or its affiliated company owns.

2.11. "Non-Motorola Software" means Software that another party owns.

2.12. "Open Source Software" means software with either freely obtainable source code, license for modification, or permission for free distribution.



2.13. "Proprietary Rights" means the patents, patent applications, inventions, copyrights, trade secrets, trademarks, trade names, mask works, know-how, and other intellectual property rights in and to the Equipment and Software, including those created or produced by Motorola under this Agreement and any corrections, bug fixes, enhancements, updates or modifications to or derivative works from the Software whether made by Motorola or another party.

2.14. "Software" means the Motorola Software and Non-Motorola Software, in object code format that is furnished with the System or Equipment.

2.15. "Specifications" means the functionality, quality, and performance requirements that are described in the Technical and Implementation Documents

2.16. "Subsystem" means a major part of the System that performs specific functions or operations. Subsystems are described in the Technical and Implementation Documents.

2.17. "System" means the Equipment, Software, and incidental hardware and materials that are combined together into an integrated system; the System is described in the Technical and Implementation Documents.

2.18. "System Acceptance" means written and signed acknowledgement by Customer that the Acceptance Tests have been successfully completed, subject to the obligation of Customer to not unreasonably withhold or delay such acknowledgement.

2.19. "Warranty Period" means two (2) years from the date of System Acceptance or Beneficial Use, whichever occurs first, except for Subscriber Units, in which case the Warranty Period shall mean four (4) years from the date of delivery.

### **Section 3      SCOPE OF AGREEMENT AND TERM**

3.1. **SCOPE OF WORK.** Motorola will provide, install and test the System, and perform its other contractual responsibilities, all in accordance with this Agreement. Customer will perform its contractual responsibilities in accordance with this Agreement. The Parties acknowledge that the Technical and Implementation Exhibits describe a complete System.

3.2. **CHANGE ORDERS.** Either Party may request changes within the general scope of this Agreement. If a requested change causes an increase or decrease in the cost or time required to perform this Agreement, the Parties will agree to an equitable adjustment of the Contract Price, Performance Schedule, or both, and will reflect the adjustment in a change order. Neither Party is obligated to perform requested changes unless both Parties execute a written change order.

3.3. **TERM.** Unless terminated in accordance with other provisions of this Agreement or extended by mutual agreement of the Parties, the term of this Agreement begins on the Effective Date and continues until completion of ten (10) years of Lifecycle Support Plan.

3.4. **ADDITIONAL EQUIPMENT OR SOFTWARE.** For five (5) years after the Effective Date, Customer may order additional Equipment or Software. Each order must refer to this Agreement and must specify the pricing and delivery terms. Notwithstanding any additional or contrary terms in the order, the applicable provisions of this Agreement (except for pricing, delivery, passage of title and risk of loss to Equipment, warranty commencement, and payment terms) will govern the purchase and sale of the additional Equipment or Software. Title and risk of loss to additional Equipment will pass at delivery, warranty will commence upon delivery, and payment is due within twenty (30) days after the invoice date. Motorola will send Customer an invoice as the additional Equipment is shipped or Software is licensed. Alternatively, Customer may register with and place orders through Motorola Online ("MOL"), and this Agreement will be the "Underlying Agreement" for those MOL transactions rather than the MOL On-Line Terms and Conditions of Sale. MOL registration and other information may be found at <http://www.motorola.com/businessandgovernment/> and the MOL telephone number is (800) 814-0601.

3.5. **MAINTENANCE SERVICE.** During the Warranty Period, in addition to warranty services, Motorola will provide maintenance services for the Equipment and support for the Motorola Software pursuant to the Statement of Work set forth in Exhibit D. Those services and support are included in the Contract Price. If Customer wishes to purchase additional maintenance and support services for the Equipment during the Warranty Period, or any maintenance and support services not included in the ten (10) years of Lifecycle Support Plan for the Equipment after the Warranty Period, the description of and pricing for the services will be set forth in a separate document. If Customer wishes to purchase extended support for the Motorola Software after the Warranty Period, it may do so by ordering software subscription services. Unless otherwise agreed by the parties in writing, the terms and conditions applicable to the ten (10) years of Lifecycle Support Plan and those other maintenance, support or software subscription services will be Motorola's standard Service Terms and Conditions, together with the appropriate statements of work.

3.6. **MOTOROLA SOFTWARE.** Any Motorola Software, including subsequent releases, is licensed to Customer solely in accordance with the Software License Agreement. Customer hereby accepts and agrees to abide by all of the terms and restrictions of the Software License Agreement.

3.7. **NON-MOTOROLA SOFTWARE.** Any Non-Motorola Software is licensed to Customer in accordance with the standard license, terms, and restrictions of the copyright owner on the Effective Date unless the copyright owner has granted to Motorola the right to sublicense the Non-Motorola Software pursuant to the Software License Agreement, in which case it applies and the copyright owner will have all of Licensor's rights and protections under the Software License Agreement. Motorola makes no representations or warranties of any kind regarding Non-Motorola Software. Non-Motorola Software may include Open Source Software. All Open Source Software is licensed to Customer in accordance with, and Customer agrees to abide by, the provisions of the standard license of the copyright owner and not the Software License Agreement. Upon request by Customer, Motorola will use commercially reasonable efforts to determine whether any Open Source Software will be provided under this Agreement; and if so, identify the Open Source Software and provide to Customer a copy of the applicable standard license (or specify where that license may be found); and provide to Customer a copy of the Open Source Software source code if it is publicly available without charge (although a distribution fee or a charge for related services may be applicable).

3.8. **SUBSTITUTIONS.** At no additional cost to Customer, and upon Customer's written approval, Motorola may substitute any Equipment, Software, or services to be provided by Motorola, if the substitute meets or exceeds the Specifications and is of equivalent or better quality to the Customer. Any substitution will be reflected in a change order.

3.9. **OPTIONAL EQUIPMENT OR SOFTWARE.** This paragraph applies only if a "Priced Options" exhibit is shown in Exhibit B, or if the parties amend this Agreement to add a Priced Options exhibit. During the term of the option as stated in the Priced Options exhibit (or if no term is stated, then for one (1) year after the Effective Date), Customer has the right and option to purchase the equipment, software, and related services that are described in the Priced Options exhibit. Customer may exercise this option by giving written notice to Motorola which must designate what equipment, software, and related services Customer is selecting (including quantities, if applicable). To the extent they apply, the terms and conditions of this Agreement will govern the transaction; however, the parties acknowledge that certain provisions must be agreed upon, and they agree to negotiate those in good faith promptly after Customer delivers the option exercise notice. Examples of provisions that may need to be negotiated are: specific lists of deliverables, statements of work, acceptance test plans, delivery and implementation schedules, payment terms, maintenance and support provisions, additions to or modifications of the Software License Agreement, hosting terms, and modifications to the acceptance and warranty provisions.

3.10. **SYSTEM UPGRADES.** During the ten (10) years of Lifecycle Support Plan, the applicable provisions of this Agreement (except for passage of title and risk of loss to Equipment, warranty commencement, and Exhibit C) will govern the implementation of the System Upgrades. Title and risk of loss to Equipment will pass at delivery, and warranty will commence upon delivery.

#### **Section 4      PERFORMANCE SCHEDULE**

The Parties will perform their respective responsibilities in accordance with the Performance Schedule. Customer affirms that a purchase order or notice to proceed is not required for contract performance or for subsequent years of service, if any, and that sufficient funds have been appropriated in accordance with applicable law. The Customer will pay all invoices as received from Motorola and any changes in scope will be subject to the change order process as described in this Agreement. At the time of execution of this Agreement, the Customer will provide all necessary reference information to include on invoices for payment in accordance with this Agreement.

## **Section 5      CONTRACT PRICE, PAYMENT AND INVOICING**

5.1.      **CONTRACT PRICE.** The Contract Price in U.S. dollars is \$5,541,418, which includes the H-GAC administrative fee. A Pricing Summary is included with the Payment Schedule in Exhibit B. The System price is \$3,956,464 and the ten (10) year Lifecycle Support Plan price is \$1,584,954, based on initial System design. Motorola has priced the services, Software, and Equipment as an integrated system. If applicable, a pricing summary is included with the Payment Schedule. Motorola has priced the services, Software, and Equipment as an integrated system. A reduction in Software or Equipment quantities, or services may affect the overall Contract Price, including discounts if applicable. Motorola will pay H-GAC's administrative fee in accordance with the payment terms of the Motorola/H-GAC Contract dated May 1, 2018. At the end of the first year from the Effective Date and each year after, a CPI percentage change calculation shall be performed. Should the annual inflation rate increase greater than 3% during the previous year, Motorola shall have the right to increase the current years and all future years' maintenance prices by the consumer price increase ("CPI") increase amount exceeding 3%. The All Urban Consumers Dallas-Fort Worth, TX Consumer Price Index (Series ID CUURA316SA0, CUUSA316SA0, All Items, Not seasonally adjusted with Base Period 1982-1984=100) shall be used as the measure of CPI for this price adjustment. The CPI percentage change calculation will take place once the annual average for each new year has been posted by the Bureau of Labor Statistics.

5.2.      **INVOICING AND PAYMENT.** Motorola will submit invoices to Customer according to the Payment Schedule. Except for a payment that is due on the Effective Date, Customer will make payments to Motorola within thirty (30) days after Customer's receipt of an invoice. Customer will make payments when due in the form of a wire transfer, check, or cashier's check from a U.S. financial institution. Overdue invoices will bear simple interest at the maximum allowable rate under the Texas Prompt Payment Act. For reference, the Federal Tax Identification Number for Motorola Solutions, Inc. is 36-1115800.

5.3.      **FREIGHT, TITLE, AND RISK OF LOSS.** Freight charges are included in the Contract Price. Title to the Equipment will pass to Customer upon shipment. Title to Software will not pass to Customer at any time. Risk of loss will pass to Customer upon delivery of the Equipment to the Customer. Motorola will pack and ship all Equipment in accordance with good commercial practices.

5.4.      **INVOICING AND SHIPPING ADDRESSES.** Invoices will be sent to the Customer at the following address:

Town of Highland Park Attn. Paul Sandman  
4700 Drexel Drive, Dallas, TX 75202

The address which is the ultimate destination where the Equipment will be delivered to Customer is:

Town of Highland Park Attn. Paul Sandman  
4700 Drexel Drive, Dallas, TX 75202

The Equipment will be shipped to the Customer at the following address (insert if this information is known):

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Customer may change this information by giving written notice to Motorola.

## **Section 6        SITES AND SITE CONDITIONS**

6.1.    **ACCESS TO SITES.** In addition to its responsibilities described elsewhere in this Agreement, Customer will provide a designated project manager; all necessary construction and building permits, zoning variances, licenses, and any other approvals that are necessary to develop or use the sites and mounting locations; and access to the work sites or vehicles identified in the Technical and Implementation Documents as reasonably requested by Motorola so that it may perform its duties in accordance with the Performance Schedule and Statement of Work. If the Statement of Work so indicates, Motorola may assist Customer in the local building permit process.

6.2.    **SITE CONDITIONS.** To the extent applicable and unless the Statement of Work states to the contrary, Customer will ensure that these work sites have adequate: physical space; air conditioning and other environmental conditions; adequate and appropriate electrical power outlets, distribution, equipment and connections; and adequate telephone or other communication lines (including modem access and adequate interfacing networking capabilities), all for the installation, use and maintenance of the System. Before installing the Equipment or Software at a work site, Motorola may inspect the work site and advise Customer of any apparent deficiencies or non-conformities with the requirements of this Section. This Agreement is predicated upon normal soil conditions as defined by the version of E.I.A. standard RS-222 in effect on the Effective Date.

6.3.    **SITE ISSUES.** If a Party determines that the sites identified in the Technical and Implementation Documents are no longer available or desired, or if subsurface, structural, adverse environmental or latent conditions at any site differ from those indicated in the Technical and Implementation Documents, the Parties will promptly investigate the conditions and will select replacement sites or adjust the installation plans and specifications as necessary. If change in sites or adjustment to the installation plans and specifications causes a change in the cost or time to perform, the Parties will equitably amend the Contract Price, Performance Schedule, or both, by a change order.

## **Section 7        TRAINING**

Any training to be provided by Motorola to Customer will be described in the Statement of Work. Customer will notify Motorola immediately if a date change for a scheduled training program is required. If Motorola incurs additional costs because Customer reschedules a training program less than thirty (30) days before its scheduled start date, Motorola may recover these additional costs unless the delay was caused by Motorola.

## **Section 8        SYSTEM ACCEPTANCE**

8.1.    **COMMENCEMENT OF ACCEPTANCE TESTING.** Motorola will provide to Customer at least ten (10) days notice before the Acceptance Tests commence. System testing will occur only in accordance with the Acceptance Test Plan.

8.2.    **SYSTEM ACCEPTANCE.** System Acceptance will occur upon successful completion of the Acceptance Tests and after any problems with the System that occurred during testing have been resolved. Upon System Acceptance, the Parties will memorialize this event by promptly executing a System Acceptance Certificate. If the Acceptance Test Plan includes separate tests for individual Subsystems or phases of the System, acceptance of the individual Subsystem or phase will occur upon the successful completion of the Acceptance Tests for the Subsystem or phase, and the Parties will promptly execute an acceptance certificate for the Subsystem or phase. If Customer believes the System has failed the completed Acceptance Tests, Customer will provide to Motorola a written notice that includes the specific details of the failure. If Customer does not provide to Motorola a failure notice within thirty (30) days after completion of the Acceptance Tests, System Acceptance will be deemed to have occurred as of the completion of the Acceptance Tests unless Motorola knew or should have known of System performance deficiencies or defects and did not disclose them to Customer. Minor omissions or variances in the System that do not materially impair the operation of the System as a whole will not postpone System Acceptance or Subsystem acceptance, but will be corrected according to a mutually agreed schedule.



8.3. **BENEFICIAL USE.** Customer acknowledges that Motorola's ability to perform its implementation and testing responsibilities may be impeded if Customer begins using the System before System Acceptance. Therefore, Customer will not commence Beneficial Use before System Acceptance without Motorola's prior written authorization, which will not be unreasonably withheld. Motorola is not responsible for System performance deficiencies that occur during unauthorized Beneficial Use. Upon commencement of Beneficial Use, Customer assumes responsibility for its use and operation of the System.

8.4 **FINAL PROJECT ACCEPTANCE.** Final Project Acceptance will occur after System Acceptance when all deliverables and other work have been completed. When Final Project Acceptance occurs, the parties will promptly memorialize this final event by so indicating on the System Acceptance Certificate.

## **Section 9 REPRESENTATIONS AND WARRANTIES**

9.1. **SYSTEM FUNCTIONALITY.** Motorola represents that the System will perform in accordance with the Specifications in all material respects. Upon System Acceptance, this System functionality representation is fulfilled. Motorola is not responsible for System performance deficiencies that are caused by ancillary equipment not furnished by Motorola which is attached to or used in connection with the System or for reasons or parties beyond Motorola's control, such as natural causes; the construction of a building that adversely affects the microwave path reliability or radio frequency (RF) coverage; the addition of frequencies at System sites that cause RF interference or intermodulation; or Customer changes to load usage or configuration outside the Specifications.

9.2. **EQUIPMENT WARRANTY.** During the Warranty Period, Motorola warrants that the Equipment under normal use and service will be free from material defects in materials and workmanship. If System Acceptance is delayed beyond six (6) months after shipment of the Equipment by events or causes within Customer's control, and which delays were unreasonably caused by Customer, this warranty expires eighteen (18) months after the shipment of the Equipment.

9.3. **MOTOROLA SOFTWARE WARRANTY.** Unless otherwise stated in the Software License Agreement, during the Warranty Period, Motorola warrants the Motorola Software in accordance with the terms of the Software License Agreement and the provisions of this Section 9 that are applicable to the Motorola Software. If System Acceptance is delayed beyond six (6) months after shipment of the Motorola Software by events or causes within Customer's control, this warranty expires eighteen (18) months after the shipment of the Motorola Software. TO THE EXTENT, IF ANY, THAT THERE IS A SEPARATE LICENSE AGREEMENT PACKAGED WITH, OR PROVIDED ELECTRONICALLY WITH, A PARTICULAR PRODUCT THAT BECOMES EFFECTIVE ON AN ACT OF ACCEPTANCE BY THE END USER, THEN THAT AGREEMENT SUPERCEDES THIS SOFTWARE LICENSE AGREEMENT AS TO THE END USER OF EACH SUCH PRODUCT.

9.4. **EXCLUSIONS TO EQUIPMENT AND MOTOROLA SOFTWARE WARRANTIES.** These warranties do not apply to: (i) defects or damage resulting from: use of the Equipment or Motorola Software in other than its normal, customary, and authorized manner; accident, liquids, neglect, or acts of God; testing, maintenance, disassembly, repair, installation, alteration, modification, or adjustment not provided or authorized in writing by Motorola; (ii) breakage of or damage to antennas unless caused directly by defects in material or workmanship; (iii) Equipment that has had the serial number removed or made illegible; (iv) batteries (because they carry their own separate limited warranty) or consumables; (v) freight costs to ship Equipment to the repair depot; (vi) scratches or other cosmetic damage to Equipment surfaces that does not affect the operation of the Equipment; and (vii) normal or customary wear and tear.

9.5. **WARRANTY CLAIMS.** To assert a warranty claim, Customer must notify Motorola in writing of the claim before the date which is thirty (30) calendar days after expiration of the Warranty Period. Upon receipt of this notice, Motorola will investigate the warranty claim. If Customer has submitted a valid warranty claim, Motorola will (at its option and at no additional charge to Customer) repair the defective Equipment or Motorola Software, replace it with the same or equivalent product, or refund the price of the defective Equipment or Motorola Software. That action will be the full extent of Motorola's liability for the warranty claim. Repaired or replaced product is warranted for the balance of the original applicable warranty period. All replaced products or parts will become the property of Motorola.

9.6. ORIGINAL END USER IS COVERED. These express limited warranties are extended by Motorola to the original user purchasing the System for commercial, industrial, or governmental use only, and are assignable and transferable by Customer to any other governmental entity to which Customer sells or transfers any Equipment, Software or other components purchased by Customer under this Agreement, but only if such Equipment, Software or other components continue to be used to support the System.

9.7. DISCLAIMER OF OTHER WARRANTIES. THESE WARRANTIES ARE THE COMPLETE WARRANTIES FOR THE EQUIPMENT AND MOTOROLA SOFTWARE PROVIDED UNDER THIS AGREEMENT AND ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## **Section 10 DELAYS**

10.1. FORCE MAJEURE. Neither Party will be liable for its non-performance or delayed performance if caused by a Force Majeure. A Party that becomes aware of a Force Majeure that will significantly delay performance will notify the other Party promptly (but in no event later than fifteen days) after it discovers the Force Majeure. If a Force Majeure occurs, the Parties will execute a change order to extend the Performance Schedule for a time period that is reasonable under the circumstances.

10.2. PERFORMANCE SCHEDULE DELAYS CAUSED BY CUSTOMER. If Customer (including its other contractors) delays the Performance Schedule, it will make the promised payments according to the Payment Schedule as if no delay occurred; and the Parties will execute a change order to extend the Performance Schedule and, if requested, compensate Motorola for all reasonable charges incurred because of the delay. Delay charges may include costs incurred by Motorola or its subcontractors for additional freight, warehousing and handling of Equipment; extension of the warranties; travel; suspending and re-mobilizing the work; additional engineering, project management, and standby time calculated at then current rates; and preparing and implementing an alternative implementation plan.

## **Section 11 DISPUTES**

The Parties will use the following procedure to address any dispute arising under this Agreement (a "Dispute").

11.1. GOVERNING LAW. This Agreement will be governed by and construed in accordance with the laws of the State of Texas. The provisions and obligations of this Agreement are performable in Dallas County, Texas such that exclusive venue for any action arising out of this Agreement shall be in Dallas County, Texas.

11.2. DISPUTE RESOLUTION. Either Party may initiate the Dispute resolution procedures by sending a written notice of Dispute ("Notice of Dispute") to the other Party, substantially describing the nature of the dispute. The Parties will attempt to resolve the Dispute promptly through good faith negotiations including 1) timely escalation of the Dispute to executives who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for the matter and 2) direct communication between the executives.

11.3. LITIGATION, VENUE and JURISDICTION. If a Dispute remains unresolved for sixty (60) days after receipt of the Notice of Dispute, either Party may then submit the Dispute to a court of competent jurisdiction in Dallas County, Texas. Each Party irrevocably agrees to submit to the exclusive jurisdiction of the courts in such state over any claim or matter arising under or in connection with this Agreement.

11.4. CONFIDENTIALITY. All communications pursuant to subsections 11.2 and 11.3 will be treated as compromise and settlement negotiations for purposes of applicable rules of evidence and any additional confidentiality protections provided by applicable law. The use of these Dispute resolution procedures will not be construed under the doctrines of laches, waiver or estoppel to affect adversely the rights of either Party.

## **Section 12      DEFAULT AND TERMINATION**

**12.1    DEFAULT BY A PARTY.** If either Party fails to perform a material obligation under this Agreement, the other Party may consider the non-performing Party to be in default (unless a Force Majeure causes the failure) and may assert a default claim by giving the non-performing Party a written and detailed notice of default. Except for a default by Customer for failing to pay any amount when due under this Agreement which must be cured immediately, the defaulting Party will have thirty (30) days after receipt of the notice of default to either cure the default or, if the default is not curable within thirty (30) days, provide a written cure plan. The defaulting Party will begin implementing the cure plan immediately after receipt of notice by the other Party that it approves the plan. If Customer is the defaulting Party, Motorola may stop work on the project until it approves the Customer's cure plan. If Motorola is the defaulting Party, Customer may withhold payments until it approves Motorola's cure plan.

**12.2.   FAILURE TO CURE.** If a defaulting Party fails to cure the default as provided above in Section 12.1, unless otherwise agreed in writing, the non-defaulting Party may terminate any unfulfilled portion of this Agreement. In the event of termination for default, the defaulting Party will promptly return to the non-defaulting Party any of its Confidential Information. If Customer is the non-defaulting Party, terminates this Agreement as permitted by this Section, and completes the System through a third Party, Customer may as its exclusive remedy recover from Motorola reasonable costs incurred to complete the System to a capability not exceeding that specified in this Agreement less the unpaid portion of the Contract Price. Customer will mitigate damages and provide Motorola with detailed invoices substantiating the charges.

**12.3    TERMINATION FOR CONVENIENCE.** Customer may terminate this Agreement (in whole or part) at any time for its convenience by providing Motorola a formal written notice at least thirty days in advance of the effective date of the termination. The notice must explicitly state the effective date of the termination and whether the Agreement termination is in whole or in part, and if in part, which part is being terminated. If Customer exercises this right to terminate for convenience, it will be liable to pay Motorola for the portion of the Contract Price attributable to the Equipment and/or Software delivered, and all services performed, on or before the effective date of the termination and reasonable costs and expenses that Motorola incurs as a result of the early termination of the Agreement, including costs and expenses associated with cancellation of subcontracts, restocking fees, and removal of installation or test equipment. Notwithstanding the above, Customer shall have no right to terminate this Agreement for the purchase of or procuring any of the same or substantially similar Equipment, Software or services from another vendor, or if Motorola has given Customer a notice of default and such default has not been cured.

## **Section 13      INDEMNIFICATION**

**13.1.   GENERAL INDEMNITY BY MOTOROLA.** Motorola will indemnify and hold Customer harmless from any and all liability, expense, judgment, suit, cause of action, or demand for personal injury, death, or direct damage to tangible property which may accrue against Customer to the extent it is caused by the negligence or willful misconduct of Motorola, its subcontractors, or their employees or agents, while performing their duties under this Agreement, if Customer gives Motorola prompt, written notice of any claim or suit of which it becomes aware. Customer will cooperate with Motorola in its defense or settlement of the claim or suit. This section sets forth the full extent of Motorola's general indemnification of Customer from liabilities that are in any way related to Motorola's performance under this Agreement.

**13.1.1   PAYMENT OF SUPPLIERS AND SUBCONTRACTORS / INDEMNIFICATION.** Motorola agrees that it shall be responsible for the payment of, and will pay, all subcontractors and suppliers it uses in connection with this Agreement. Motorola further agrees that, in addition to the indemnification provided under Section 13.1 of this Agreement, that it shall indemnify and hold harmless the Customer and all of its present, future and former agents, employees, officials and representatives in their official, individual and representative capacities from and against any and all claims, demands, causes of action, judgments, liens and expenses (including attorney's fees, whether contractual or statutory), costs and damages (whether common law or statutory, and whether actual, punitive, consequential or incidental), of any conceivable character, arising from the failure

of Motorola to pay its subcontractors or suppliers for services or equipment supplied in connection with this Agreement.

### **13.2. PATENT AND COPYRIGHT INFRINGEMENT.**

**13.2.1.** Motorola will defend at its expense any suit brought against Customer to the extent it is based on a third-party claim alleging that the Equipment manufactured by Motorola or the Motorola Software ("Motorola Product") infringes a United States patent or copyright ("Infringement Claim"), and will indemnify Customer for those costs and damages finally awarded against Customer for an Infringement Claim. Motorola's duties to defend and indemnify are conditioned upon: Customer promptly notifying Motorola in writing of the any such Infringement Claim of which it becomes aware; Motorola having sole control of the defense of the suit and all negotiations for its settlement or compromise; and Customer providing to Motorola reasonable cooperation and, if requested by Motorola, reasonable assistance in the defense of the Infringement Claim, provided that Customer is not obligated to incur any additional or abnormal expenses in providing such assistance. In addition to Motorola's obligation to defend, and subject to the same conditions, Motorola will pay all damages finally awarded against Customer by a court of competent jurisdiction for an Infringement Claim or agreed to, in writing, by Motorola in settlement of an Infringement Claim.

**13.2.2.** If an Infringement Claim occurs, or in Motorola's opinion is likely to occur, Motorola may at its option and expense: (a) procure for Customer the right to continue using the Motorola Product; (b) replace or modify the Motorola Product so that it becomes non-infringing while providing functionally equivalent performance; or (c) accept the return of the Motorola Product and grant Customer a credit for the Motorola Product, less a reasonable charge for depreciation. The depreciation amount will be calculated based upon generally accepted accounting standards.

**13.2.3.** Motorola will have no duty to defend or indemnify for any Infringement Claim that is based upon: (a) the combination of the Motorola Product with any software, apparatus or device not furnished by Motorola; (b) the use of ancillary equipment or software not furnished by Motorola and that is attached to or used in connection with the Motorola Product; (c) Motorola Product designed or manufactured in accordance with Customer's designs, specifications, guidelines or instructions, if the alleged infringement would not have occurred without such designs, specifications, guidelines or instructions; (d) a modification of the Motorola Product by a party other than Motorola; (e) use of the Motorola Product in a manner for which the Motorola Product was not designed or that is inconsistent with the terms of this Agreement; or (f) the failure by Customer to install an enhancement release to the Motorola Software that is intended to correct the claimed infringement.

**13.2.4.** This Section 13 provides Customer's sole and exclusive remedies and Motorola's entire liability in the event of an Infringement Claim. Customer has no right to recover and Motorola has no obligation to provide any other or further remedies, whether under another provision of this Agreement or any other legal theory or principle, in connection with an Infringement Claim. In addition, the rights and remedies provided in this Section 13 are subject to and limited by the restrictions set forth in Section 14.

### **Section 14 LIMITATION OF LIABILITY**

Except for personal injury or death, or liability for patent or copyright infringement under Section 13, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, indemnification, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the Contract Price. **ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT, THE SALE OR USE OF THE EQUIPMENT OR SOFTWARE, OR THE PERFORMANCE OF SERVICES BY MOTOROLA PURSUANT TO THIS AGREEMENT.** This limitation of liability provision survives the expiration or termination of the Agreement and applies notwithstanding any contrary provision.



## **Section 15      CONFIDENTIALITY AND PROPRIETARY RIGHTS**

### **15.1.    CONFIDENTIAL INFORMATION.**

15.1.1. Each party is a disclosing party ("Discloser") and a receiving party ("Recipient") under this agreement. Subject to and in accordance with applicable open records laws, during the term of this agreement and for a period of three (3) years from the expiration or termination of this agreement, Recipient will (i) not disclose Confidential Information to any third party; (ii) restrict disclosure of Confidential Information to only those employees (including, but not limited to, employees of any wholly owned subsidiary, a parent company, any other wholly owned subsidiaries of the same parent company), contractors, subcontractors, attorneys, agents or consultants who must be directly involved with the Confidential Information for the purpose of carrying out rights, duties and obligations under, and who are bound by confidentiality terms substantially similar to those in, this agreement; (iii) not copy, reproduce, reverse engineer, de-compile or disassemble any Confidential Information; (iv) use the same degree of care as for its own information of like importance, but at least use reasonable care, in safeguarding against disclosure of Confidential Information; (v) promptly notify Discloser upon discovery of any unauthorized use or disclosure of the Confidential Information and take reasonable steps to regain possession of the Confidential Information and prevent further unauthorized actions or other breach of this agreement; and (vi) only use the Confidential Information as needed to fulfill this agreement.

15.1.2. Recipient is not obligated to maintain as confidential, Confidential Information that Recipient can demonstrate by documentation (i) is now available or becomes available to the public without breach of this agreement; (ii) is explicitly approved for release by written authorization of Discloser; (iii) is lawfully obtained from a third party or parties without a duty of confidentiality; (iv) is known to the Recipient prior to such disclosure; or (v) is independently developed by Recipient without the use of any of Discloser's Confidential Information or any breach of this agreement.

15.1.3. All Confidential Information remains the property of the discloser and will not be copied or reproduced without the express written permission of the Discloser, except for copies that are absolutely necessary in order to fulfill this Agreement and except as required by any applicable open records laws. Within ten (10) days of receipt of Discloser's written request, Recipient will return all Confidential Information to Discloser along with all copies and portions thereof, or certify in writing that all such Confidential Information has been destroyed. However, Recipient may retain one (1) archival copy of the Confidential Information that it may use only in case of a dispute concerning this Agreement. No license, express or implied, in the Confidential Information is granted other than to use the Confidential Information in the manner and to the extent authorized by this Agreement. The Discloser warrants that it is authorized to disclose any Confidential Information it discloses pursuant to this Agreement.

15.2. **PRESERVATION OF MOTOROLA'S PROPRIETARY RIGHTS.** Motorola, the third party manufacturer of any Equipment, and the copyright owner of any Non-Motorola Software own and retain all of their respective Proprietary Rights in the Equipment and Software, and nothing in this Agreement is intended to restrict their Proprietary Rights. All intellectual property developed, originated, or prepared by Motorola in connection with providing to Customer the Equipment, Software, or related services remain vested exclusively in Motorola, and this Agreement does not grant to Customer any shared development rights of intellectual property. Except as explicitly provided in the Software License Agreement, Motorola does not grant to Customer, either directly or by implication, estoppel, or otherwise, any right, title or interest in Motorola's Proprietary Rights. Customer will not modify, disassemble, peel components, decompile, otherwise reverse engineer or attempt to reverse engineer, derive source code or create derivative works from, adapt, translate, merge with other software, reproduce, distribute, sublicense, sell or export the Software, or permit or encourage any third party to do so. The preceding sentence does not apply to Open Source Software which is governed by the standard license of the copyright owner.

## **Section 16      GENERAL**

16.1. **TAXES.** The Contract Price does not include any excise, sales, lease, use, property, or other taxes, assessments or duties, all of which will be paid by Customer except as exempt by law. If Motorola is

required to pay any of these taxes, Motorola will send an invoice to Customer and Customer will pay to Motorola the amount of the taxes (including any interest and penalties) within thirty (30) days after the date of the invoice. Customer will be solely responsible for reporting the Equipment for personal property tax purposes, and Motorola will be solely responsible for reporting taxes on its income or net worth.

16.2. **ASSIGNABILITY AND SUBCONTRACTING.** Except as provided herein, neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent will not be unreasonably withheld. Any attempted assignment, delegation, or transfer without the necessary consent will be void. Notwithstanding the foregoing, Motorola may assign this Agreement to any of its affiliates or its right to receive payment without the prior consent of Customer. Motorola may subcontract any of the work, but subcontracting will not relieve Motorola of its duties under this Agreement. Customer may reject any subcontractor deemed by Customer, in the exercise of its reasonable discretion, to be less qualified than Motorola to perform the services that Motorola desires to subcontract, provided that any subcontractor listed in the Agreement is deemed as qualified unless proven otherwise by substandard performance by the subcontractor under this Agreement.

16.3. **WAIVER.** Failure or delay by either Party to exercise a right or power under this Agreement will not be a waiver of the right or power. For a waiver of a right or power to be effective, it must be in a writing signed by the waiving Party. An effective waiver of a right or power will not be construed as either a future or continuing waiver of that same right or power, or the waiver of any other right or power.

16.4. **SEVERABILITY.** If a court of competent jurisdiction renders any part of this Agreement invalid or unenforceable, that part will be severed and the remainder of this Agreement will continue in full force and effect.

16.5. **INDEPENDENT CONTRACTORS.** Each Party will perform its duties under this Agreement as an independent contractor. The Parties and their personnel will not be considered to be employees or agents of the other Party. Nothing in this Agreement will be interpreted as granting either Party the right or authority to make commitments of any kind for the other. This Agreement will not constitute, create, or be interpreted as a joint venture, partnership or formal business organization of any kind.

16.6. **HEADINGS AND SECTION REFERENCES.** The section headings in this Agreement are inserted only for convenience and are not to be construed as part of this Agreement or as a limitation of the scope of the particular section to which the heading refers. This Agreement will be fairly interpreted in accordance with its terms and conditions and not for or against either Party.

16.7. **ENTIRE AGREEMENT.** This Agreement, including all Exhibits, constitutes the entire agreement of the Parties regarding the subject matter of the Agreement and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to this subject matter. This Agreement may be executed in multiple counterparts, and shall have the same legal force and effect as if the Parties had executed it as a single document. The Parties may sign in writing, or by electronic signature, including by email. An electronic signature, or a facsimile copy or computer image, such as a PDF or tiff image, of a signature, shall be treated as and shall have the same effect as an original signature. In addition, an electronic signature, a true and correct facsimile copy or computer image of this Agreement shall be treated as and shall have the same effect as an original signed copy of this document. This Agreement may be amended or modified only by a written instrument signed by authorized representatives of both Parties. The preprinted terms and conditions found on any Customer purchase order, acknowledgment or other form will not be considered an amendment or modification of this Agreement, even if a representative of each Party signs that document.

16.8. **NOTICES.** Notices required under this Agreement to be given by one Party to the other must be in writing and either personally delivered or sent to the address shown below by certified mail, return receipt requested and postage prepaid (or by a recognized courier service, such as Federal Express, UPS, or DHL), or by facsimile with correct answerback received, and will be effective upon receipt:

Motorola Solutions, Inc.  
Attn: Law Department

Customer: Highland Park DPS  
Attn: Paul Sandman

500 W. Monroe Street, 43<sup>rd</sup> Floor  
Chicago, IL 60661

4700 Drexel Drive, Dallas Tx 75205  
214-559-9357  
psandman@hpdps.org

16.9. **COMPLIANCE WITH APPLICABLE LAWS.** Each Party will comply with all applicable federal, state, and local laws, regulations and rules concerning the performance of this Agreement or use of the System. Customer will obtain and comply with all Federal Communications Commission ("FCC") licenses and authorizations required for the installation, operation and use of the System before the scheduled installation of the Equipment. Although Motorola might assist Customer in the preparation of its FCC license applications, neither Motorola nor any of its employees is an agent or representative of Customer in FCC or other matters.

16.10. **AUTHORITY TO EXECUTE AGREEMENT.** Each Party represents that it has obtained all necessary approvals, consents and authorizations to enter into this Agreement and to perform its duties under this Agreement; the person executing this Agreement on its behalf has the authority to do so; upon execution and delivery of this Agreement by the Parties, it is a valid and binding contract, enforceable in accordance with its terms; and the execution, delivery, and performance of this Agreement does not violate any bylaw, charter, regulation, law or any other governing authority of the Party.

16.11. **ADMINISTRATOR LEVEL ACCOUNT ACCESS.** Motorola will provide Customer with Administrative User Credentials. Customer agrees to only grant Administrative User Credentials to those personnel with the training or experience to correctly use the access. Customer is responsible for protecting Administrative User Credentials from disclosure and maintaining Credential validity by, among other things, updating passwords when required. Customer may be asked to provide valid Administrative User Credentials when in contact with Motorola System support. Customer understands that changes made as the Administrative User can significantly impact the performance of the System. Customer agrees that it will be solely responsible for any negative impact on the System or its users by any such changes. System issues occurring as a result of changes made by an Administrative User may impact Motorola's ability to perform its obligations under the Agreement or its Maintenance and Support Agreement. In such cases, a revision to the appropriate provisions of the Agreement, including the Statement of Work, may be necessary. To the extent Motorola provides assistance to correct any issues caused by or arising out of the use of or failure to maintain Administrative User Credentials, Motorola will be entitled to bill Customer and Customer will pay Motorola on a time and materials basis for resolving the issue.

16.12. **SURVIVAL OF TERMS.** The following provisions will survive the expiration or termination of this Agreement for any reason: Section 3.4 (Additional Equipment or Software); Section 3.5 (Maintenance Service); Section 3.6 (Motorola Software); Section 3.7 (Non-Motorola Software); if any payment obligations exist, Sections 5.1 and 5.2 (Contract Price and Invoicing and Payment); Subsection 9 (Representation and Warranties); Subsection 9.7 (Disclaimer of Implied Warranties); Section 11 (Disputes); Section 13 (Indemnification); Section 14 (Limitation of Liability); and Section 15 (Confidentiality and Proprietary Rights); and all of the General provisions in Section 16.

The Parties hereby enter into this Agreement as of the Effective Date.

**Motorola Solutions, Inc.**

**Town of Highland Park, Texas**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

Title: \_\_\_\_\_

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





## **Exhibit A**

### **SOFTWARE LICENSE AGREEMENT**

This Exhibit A Software License Agreement ("Agreement") is between Motorola Solutions, Inc., ("Motorola"), and Town of Highland Park, Texas ("Licensee").

For good and valuable consideration, the parties agree as follows:

#### **Section 1      DEFINITIONS**

1.1 "Designated Products" means products provided by Motorola to Licensee with which or for which the Software and Documentation is licensed for use.

1.2 "Documentation" means product and software documentation that specifies technical and performance features and capabilities, and the user, operation and training manuals for the Software (including all physical or electronic media upon which such information is provided).

1.3 "Open Source Software" means software with either freely obtainable source code, license for modification, or permission for free distribution.

1.4 "Open Source Software License" means the terms or conditions under which the Open Source Software is licensed.

1.5 "Primary Agreement" means the agreement to which this exhibit is attached.

1.6 "Security Vulnerability" means a flaw or weakness in system security procedures, design, implementation, or internal controls that could result in a security breach such that data is compromised, manipulated or stolen or the system damaged.

1.7 "Software" (i) means proprietary software in object code format, and adaptations, translations, de-compilations, disassemblies, emulations, or derivative works of such software; (ii) means any modifications, enhancements, new versions and new releases of the software provided by Motorola; and (iii) may contain one or more items of software owned by a third party supplier. The term "Software" does not include any third party software provided under separate license or third party software not licensable under the terms of this Agreement.

#### **Section 2      SCOPE**

Motorola and Licensee enter into this Agreement in connection with Motorola's delivery of certain proprietary Software or products containing embedded or pre-loaded proprietary Software, or both, in order to effectuate the implementation of services under the Primary Agreement. This Agreement contains the terms and conditions of the license Motorola is providing to Licensee, and Licensee's use of the Software and Documentation.

#### **Section 3      GRANT OF LICENSE**

3.1. Subject to the provisions of this Agreement and the payment of applicable license fees, Motorola grants to Licensee a personal, limited, perpetual non-transferable (except as permitted in Section 7) and non-exclusive license under Motorola's copyrights embodied in the Software to use the Software, in object code form, and the Documentation solely in connection with Licensee's use of the Designated Products. This Agreement does not grant any rights to source code.

3.2. If the Software licensed under this Agreement contains or is derived from Open Source Software, the terms and conditions governing the use of such Open Source Software contained in the Open Source Software Licenses of the copyright owner shall govern the use of such Open Source Software, and not this

Agreement. If there is a conflict between the terms and conditions of this Agreement and the terms and conditions of the Open Source Software Licenses governing Licensee's use of the Open Source Software, the terms and conditions of the license grant of the applicable Open Source Software Licenses will take precedence over the license grants in this Agreement. If requested by Licensee, Motorola will use commercially reasonable efforts to: (i) determine whether any Open Source Software is provided under this Agreement; (ii) identify the Open Source Software and provide Licensee a copy of the applicable Open Source Software License (or specify where that license may be found); and, (iii) provide Licensee a copy of the Open Source Software source code, without charge, if it is publicly available (although distribution fees may be applicable).

#### **Section 4        LIMITATIONS ON USE**

4.1. Licensee may use the Software only for Licensee's internal business purposes and only in accordance with the Documentation. Any other use of the Software is strictly prohibited. Without limiting the general nature of these restrictions, Licensee will not make the Software available for use by third parties on a "time sharing," "application service provider," or "service bureau" basis or for any other similar commercial rental or sharing arrangement.

4.2. Licensee will not, and will not allow or enable any third party it is aware is attempting to do so to: (i) reverse engineer, disassemble, peel components, decompile, reprogram or otherwise reduce the Software or any portion to a human perceptible form or otherwise attempt to recreate the source code; (ii) modify, adapt, create derivative works of, or merge the Software; (iii) copy, reproduce, distribute, lend, or lease the Software or Documentation to any third party, grant any sublicense or other rights in the Software or Documentation to any third party, or take any action that would cause the Software or Documentation to be placed in the public domain; (iv) remove, or in any way alter or obscure, any copyright notice or other notice of Motorola's proprietary rights; (v) provide, copy, transmit, disclose, divulge or make the Software or Documentation available to, or permit the use of the Software by any third party (unless the third party has executed a separate software license agreement with Motorola permitting such use) or on any machine except as expressly authorized by this Agreement; (vi) use, or permit the use of, the Software in a manner that would result in the production of a copy of the Software solely by activating a machine containing the Software. Licensee may make one copy of Software to be used solely for archival, back-up, or disaster recovery purposes; *provided* that Licensee may not operate that copy of the Software at the same time as the original Software is being operated. Licensee may make as many copies of the Documentation as it may reasonably require for the internal use of the Software.

4.3. Unless otherwise authorized by Motorola in writing, Licensee will not, and will not enable or allow any third party it is aware is attempting to do so to: (i) install a licensed copy of the Software on more than one unit of a Designated Product; or (ii) copy onto or transfer Software installed in one unit of a Designated Product onto one other device. Licensee may temporarily transfer Software installed on a Designated Product to another device if the Designated Product is inoperable or malfunctioning, if Licensee provides written notice to Motorola of the temporary transfer and identifies the device on which the Software is transferred. Temporary transfer of the Software to another device must be discontinued when the original Designated Product is returned to operation and the Software must be removed from the other device. Licensee must provide prompt written notice to Motorola at the time temporary transfer is discontinued.

4.4. When using Motorola's Radio Service Software ("RSS"), Licensee must purchase a separate license for each location at which Licensee uses RSS. Licensee's use of RSS at a licensed location does not entitle Licensee to use or access RSS remotely. Licensee may make one copy of RSS for each licensed location. Licensee shall provide Motorola with a list of all locations at which Licensee uses or intends to use RSS upon Motorola's request.

4.5. Motorola or an independent third party ("Auditor") may inspect Licensee's premises, books and records, as are applicable and reasonably necessary, and upon reasonable prior notice to Licensee, during Licensee's normal business hours and subject to Licensee's facility and security regulations, to verify Licensee's compliance with this Agreement. Motorola is responsible for the payment of all expenses and costs of the Auditor. Any information obtained by Motorola and the Auditor will be kept in strict confidence

by Motorola and the Auditor and used solely for the purpose of verifying Licensee's compliance with the terms of this Agreement.

## **Section 5 OWNERSHIP AND TITLE**

Motorola, its licensors, and its suppliers retain all of their proprietary rights in any form in and to the Software and Documentation, including, but not limited to, all rights in patents, patent applications, inventions, copyrights, trademarks, trade secrets, trade names, and other proprietary rights in or relating to the Software and Documentation (including any corrections, bug fixes, enhancements, updates, modifications, adaptations, translations, de-compilations, disassemblies, emulations to or derivative works from the Software or Documentation, whether made by Motorola or another party, or any improvements that result from Motorola's processes or, provision of information services). No rights are granted to Licensee under this Agreement by implication, estoppel or otherwise, except for those rights which are expressly granted to Licensee in this Agreement. All intellectual property developed, originated, or prepared by Motorola in connection with providing the Software, Designated Products, Documentation or related services, remains vested exclusively in Motorola, and Licensee will not have any shared development or other intellectual property rights.

## **Section 6 LIMITED WARRANTY; DISCLAIMER OF WARRANTY**

6.1. The commencement date and the term of the Software warranty will be as stated in the Primary Agreement (the "Warranty Period"). If Licensee is not in breach of any of its obligations under this Agreement, Motorola warrants that the unmodified Software, when used properly and in accordance with the Documentation and this Agreement, will be free from a reproducible defect that eliminates the functionality or successful operation of a feature critical to the primary functionality or successful operation of the Software. Whether a defect occurs will be determined by Motorola solely with reference to the Documentation. Motorola does not warrant that Licensee's use of the Software or the Designated Products will be uninterrupted, error-free, completely free of Security Vulnerabilities, or that the Software or the Designated Products will meet Licensee's particular requirements. Motorola makes no representations or warranties with respect to any third party software included in the Software.

6.2 Motorola's sole obligation to Licensee and Licensee's exclusive remedy under this warranty is to remedy any material Software defect covered by this warranty. These efforts will involve either replacing the media or attempting to correct significant, demonstrable program or documentation errors or Security Vulnerabilities. If Motorola cannot correct the defect within a reasonable time, then Motorola will replace the defective Software with functionally-equivalent Software, license to Licensee substitute Software which will accomplish the same objective, or terminate the license and refund the Licensee's paid license fee.

6.3. Warranty claims made by the Town under this Agreement must be made in the same manner as for making warranty claims described in the Primary Agreement.

6.4. The express warranties set forth in this Section 6 are in lieu of, and Motorola disclaims, any and all other warranties (express or implied, oral or written) with respect to the Software or Documentation, including, without limitation, any and all implied warranties of condition, title, non-infringement, merchantability, or fitness for a particular purpose or use by Licensee (whether or not Motorola knows, has reason to know, has been advised, or is otherwise aware of any such purpose or use), whether arising by law, by reason of custom or usage of trade, or by course of dealing. In addition, Motorola disclaims any warranty to any person other than Licensee with respect to the Software or Documentation.

## **Section 7 TRANSFERS**

Licensee will not transfer the Software or Documentation to any third party without Motorola's prior written consent. Motorola's consent may be withheld at its discretion and may be conditioned upon transferee paying all applicable license fees and agreeing to be bound by this Agreement. If the Designated Products are Motorola's radio products and Licensee transfers ownership of the Motorola radio products to a third party, Licensee may assign its right to use the Software (other than RSS and Motorola's FLASHport® software) which is embedded in or furnished for use with the radio products and the related Documentation;



*provided* that Licensee transfers all copies of the Software and Documentation to the transferee, and Licensee and the transferee sign a transfer form to be provided by Motorola upon request, obligating the transferee to be bound by this Agreement.

## **Section 8      TERM AND TERMINATION**

8.1      Licensee's right to use the Software and Documentation will begin when the Primary Agreement is signed by both parties and will continue for the life of the Designated Products with which or for which the Software and Documentation have been provided by Motorola, unless Licensee materially breaches this Agreement, in which case this Agreement and Licensee's right to use the Software and Documentation may be terminated immediately upon notice by Motorola.

8.2      Within thirty (30) days after termination of this Agreement, Licensee must certify in writing to Motorola that all copies of the Software have been removed or deleted from the Designated Products and that all copies of the Software and Documentation have been returned to Motorola or destroyed by Licensee and are no longer in use by Licensee.

8.3      Licensee acknowledges that Motorola made a considerable investment of resources in the development, marketing, and distribution of the Software and Documentation and that Licensee's breach of this Agreement will result in irreparable harm to Motorola for which monetary damages would be inadequate. If Licensee breaches this Agreement, Motorola may terminate this Agreement and be entitled to all available remedies at law or in equity (including immediate injunctive relief and repossession of all non-embedded Software and associated Documentation unless Licensee is a Federal agency of the United States Government).

## **Section 9      UNITED STATES GOVERNMENT LICENSING PROVISIONS**

This Section applies if Licensee is the United States Government or a United States Government agency. Licensee's use, duplication or disclosure of the Software and Documentation under Motorola's copyrights or trade secret rights is subject to the restrictions set forth in subparagraphs (c)(1) and (2) of the Commercial Computer Software-Restricted Rights clause at FAR 52.227-19 (JUNE 1987), if applicable, unless they are being provided to the Department of Defense. If the Software and Documentation are being provided to the Department of Defense, Licensee's use, duplication, or disclosure of the Software and Documentation is subject to the restricted rights set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 (OCT 1988), if applicable. The Software and Documentation may or may not include a Restricted Rights notice, or other notice referring to this Agreement. The provisions of this Agreement will continue to apply, but only to the extent that they are consistent with the rights provided to the Licensee under the provisions of the FAR or DFARS mentioned above, as applicable to the particular procuring agency and procurement transaction.

## **Section 10     CONFIDENTIALITY**

Licensee acknowledges that the Software and Documentation contain Motorola's valuable proprietary and Confidential Information and are Motorola's trade secrets, and that the provisions in the Primary Agreement concerning Confidential Information apply.

## **Section 11     LIMITATION OF LIABILITY**

The Limitation of Liability provision is described in the Primary Agreement.

## **Section 12     NOTICES**

Notices are described in the Primary Agreement.

## **Section 13     GENERAL**

13.1. **COPYRIGHT NOTICES.** The existence of a copyright notice on the Software will not be construed as an admission or presumption of publication of the Software or public disclosure of any trade secrets associated with the Software.

13.2. **COMPLIANCE WITH LAWS.** Licensee acknowledges that the Software is subject to the laws and regulations of the United States and Licensee will comply with all applicable laws and regulations, including export laws and regulations of the United States. Licensee will not, without the prior authorization of Motorola and the appropriate governmental authority of the United States, in any form export or re-export, sell or resell, ship or reship, or divert, through direct or indirect means, any item or technical data or direct or indirect products sold or otherwise furnished to any person within any territory for which the United States Government or any of its agencies at the time of the action, requires an export license or other governmental approval. Violation of this provision is a material breach of this Agreement.

13.3. **ASSIGNMENTS AND SUBCONTRACTING.** Motorola may assign its rights or subcontract its obligations under this Agreement, or encumber or sell its rights in any Software, without prior notice to or consent of Licensee.

13.4. **GOVERNING LAW.** This Agreement will be governed by and construed in accordance with the laws of the State of Texas. The provisions and obligations of this Agreement are performable in Dallas County, Texas such that exclusive venue for any action arising out of this Agreement shall be in Dallas County, Texas.

13.5. **THIRD PARTY BENEFICIARIES.** Except as otherwise provided in the Primary Agreement, this Agreement is entered into solely for the benefit of Motorola and Licensee; no third party has the right to make any claim or assert any right under this Agreement; and no third party is deemed a beneficiary of this Agreement.

13.6. **SURVIVAL.** Sections 4, 5, 6.3, 7, 8, 9, 10, 11 and 13 survive the termination of this Agreement.

13.7. **SECURITY.** Motorola uses reasonable means in the design and writing of its own Software and the acquisition of third party Software to limit Security Vulnerabilities. While no software can be guaranteed to be free from Security Vulnerabilities, if a Security Vulnerability is discovered, Motorola will take the steps set forth in Section 6 of this Agreement.

#### **Exhibit B-1**

**PRICING SUMMARY**

SEE MOTOROLA'S PROPOSAL DATED MAY 16, 2019

**Exhibit B-2**

## **PAYMENT SCHEDULE**

### **For System Purchase:**

Except for a payment that is due on the Effective Date, Customer will make payments to Motorola within thirty (30) days after the date of each invoice. Customer will make payments when due in the form of a check, cashier's check, or wire transfer drawn on a U.S. financial institution and in accordance with the following milestones.

- 10% Upon Execution of Contract
- 5% Upon Completion of Design Review
- 15% Upon Completion of System Staging
- 20% Upon Shipment of Staged Equipment
- 20% Upon Completion of Equipment Installation
- 20% Upon Completion of Acceptance Test Plan/Begin of Beneficial Use
- 10% Upon Final Acceptance

Motorola reserves the right to make partial shipments of equipment and to request payment upon shipment of such equipment. In addition, Motorola reserves the right to invoice for installations or civil work completed on a site-by-site basis, when applicable.

### **For Lifecycle Support Plan (based on initial System design)**

Motorola will invoice Customer annually in advance of each year of the plan. Customer will make payments to Motorola within thirty (30) days after the date of each invoice. Customer will make payments when due in the form of a check, cashier's check, or wire transfer drawn on a U.S. financial institution in accordance with the following schedule.

**Exhibit C**

**TECHNICAL AND IMPLEMENTATION DOCUMENTS**

SEE MOTOROLA'S PROPOSAL DATED MAY 16, 2019



## **Exhibit D**

### **Service Terms and Conditions**

Motorola Solutions, Inc. ("Motorola") and the Town of Highland Park, Texas ("Customer") hereby agree as follows:

#### **Section 1      APPLICABILITY**

These Service Terms and Conditions apply after the initial Warranty Period expires when Motorola provides maintenance, support, installation or other services under a Statement of Work contained in Exhibit D of the Communications System Agreement ("CSA") to which these Service Terms and Conditions are attached.

#### **Section 2      DEFINITIONS AND INTERPRETATION**

2.1. "Agreement" means these Service Terms and Conditions, the Statement of Work for the applicable maintenance services provided; and any other attachments, all of which are incorporated herein by this reference. In interpreting this Agreement and resolving any ambiguities, these Service Terms and Conditions take precedence over any Statement of Work, and the Statement of Work takes precedence over any attachments, unless the Statement of Work or attachment states otherwise.

2.2. "Equipment" means the equipment that is specified in the attachments or is subsequently added to this Agreement.

2.3. "Services" means those installation, maintenance, support, training, and other services described in this Agreement.

#### **Section 3      TERM**

The term of this Agreement begins on the day immediately following the end of initial Warranty Period as defined and described in the CSA.

#### **Section 4      SCOPE OF SERVICES**

4.1. Motorola will provide the Services described in this Agreement or in a more detailed statement of work or other document attached to this Agreement. At Customer's request, Motorola may also provide additional services at Motorola's then-applicable rates for the services.

4.2. If Motorola is providing Services for Equipment, Motorola parts or parts of equal quality will be used; the Equipment will be serviced at levels set forth in the manufacturer's product manuals; and routine service procedures that are prescribed by Motorola will be followed.

4.3. If Customer purchases from Motorola additional equipment that becomes part of the same system as the initial Equipment, the additional equipment may be added to this Agreement and will be billed at the applicable rates after the warranty for that additional equipment expires.

4.4. All Equipment must be in good working order on the Start Date or when additional equipment is added to the Agreement. Upon reasonable request by Motorola, Customer will provide a complete serial and model number list of the Equipment. Customer must promptly notify Motorola in writing when any Equipment is lost, damaged, stolen or taken out of service. Customer's obligation to pay Service fees for this Equipment will terminate at the end of the month in which Motorola receives the written notice.

4.5. Customer must specifically identify any Equipment that is labeled intrinsically safe for use in hazardous environments.

4.6. If Equipment cannot, in Motorola's reasonable opinion, be properly or economically serviced for any reason, Motorola may modify the scope of Services related to that Equipment; remove that Equipment from the Agreement; or increase the price to Service that Equipment.

4.7. Customer will attempt to promptly notify Motorola of any Equipment failure. Motorola will respond to Customer's notification in a manner consistent with the level of Service purchased as indicated in this Agreement.

## **Section 5 EXCLUDED SERVICES**

5.1. Service excludes the repair or replacement of Equipment that has become defective or damaged from use in other than the normal, customary, intended, and authorized manner; use not in compliance with applicable industry standards; excessive wear and tear; or accident, liquids, power surges, neglect, acts of God or other force majeure events.

5.2. Unless specifically included in this Agreement, Service excludes items that are consumed in the normal operation of the Equipment, such as batteries or magnetic tapes.; upgrading or reprogramming Equipment; accessories, belt clips, battery chargers, custom or special products, modified units, or software; and repair or maintenance of any transmission line, antenna, microwave equipment, tower or tower lighting, duplexer, combiner, or multicoupler. Motorola has no obligations for any transmission medium, such as telephone lines, computer networks, the internet or the worldwide web, or for Equipment malfunction caused by the transmission medium.

## **Section 6 TIME AND PLACE OF SERVICE**

Service will be provided at the location specified in this Agreement. When Motorola performs service at Customer's location, Customer will provide Motorola, at no charge, a work environment with no known hazards, adequate shelter, heat, light, and power and with full and free access to the Equipment. Waivers of liability from Motorola or its subcontractors will not be imposed as a site access requirement, subject to applicable confidentiality agreements or obligations. Subject to applicable confidentiality agreements or obligations, Customer will provide all information pertaining to the hardware and software elements of any system with which the Equipment is interfacing so that Motorola may perform its Services. Unless otherwise stated in this Agreement, the hours of Service will be 8:30 a.m. to 4:30 p.m., local time, excluding weekends and holidays. Unless otherwise stated in this Agreement, the price for Services exclude any charges or expenses associated with helicopter or other unusual access requirements. Customer shall never be obligated to reimburse Motorola for such charges and expenses except upon prior written authorization of Customer.

## **Section 7 CUSTOMER CONTACT**

Each party will provide the other with designated points of contact (list of names and phone numbers) that will be available twenty-four (24) hours per day, seven (7) days per week, and an escalation procedure to enable each party's personnel to maintain contact, as needed, with the other.

## **Section 8 PAYMENT**

Unless alternative payment terms are stated in this Agreement, Motorola will invoice Customer annually in advance for each payment period. All other charges will be billed monthly, and Customer must pay each invoice in U.S. dollars within thirty (30) days of receipt of an invoice. If Customer is a tax exempt entity, Customer will provide Motorola with proof of exemption in writing within thirty (30) days of Motorola's written request for such proof.

At the end of the first year of the term of this Agreement as described in Section 3, a CPI percentage change calculation shall be performed. If the annual inflation rate increases greater than 3% during the previous year, Motorola shall have the right to increase the current year and all future years' maintenance prices by the consumer price increase ("CPI") increase amount exceeding 3%. The All Urban Consumers – Dallas-Fort Worth, TX CUURA316SAO, all items, not seasonally adjusted with Base Period 1982-1984=100) will be used as the measure of CPI for this price adjustment. The CPI percentage change calculation will take place once the annual average for each new year has been posted by the Bureau of Labor Statistics.

## **Section 9      WARRANTY**

Motorola warrants that its Services under this Agreement will be free of defects in materials and workmanship for a period of ninety (90) days from the date the performance of the Services are completed. In the event of a breach of this warranty, Customer's sole remedy is to require Motorola to re-perform the non-conforming Service or to refund, on a pro-rata basis, the fees paid for the non-conforming Service. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## **Section 10     DEFAULT/TERMINATION**

10.1. If either party defaults in the performance of this Agreement, the other party will give to the non-performing party a written and detailed notice of the default. The non-performing party will have thirty (30) days thereafter to provide a written plan to cure the default that is acceptable to the other party and begin implementing the cure plan immediately after plan approval. If the non-performing party fails to provide or implement the cure plan, then the injured party, in addition to any other rights available to it under law, may immediately terminate this Agreement effective upon giving a written notice of termination to the defaulting party.

10.2. Any termination of this Agreement will not relieve either party of obligations previously incurred pursuant to this Agreement, including payments which may be due and owing at the time of termination. All sums owed by Customer to Motorola will become due and payable immediately upon termination of this Agreement. Upon the effective date of termination, Motorola will have no further obligation to provide Services.

10.3 Customer may terminate this Agreement (in whole or part) at any time for its convenience by providing Motorola a formal written notice at least thirty days in advance of the effective date of the termination. The notice must explicitly state the effective date of the termination and whether the Agreement termination is in whole or in part, and if in part, which part is being terminated. If Customer exercises this right to terminate for convenience, it will be liable to pay Motorola as described in Section 10.4.

10.4. If Customer has pre-paid for any services, Motorola will return promptly any payments received for services that have been terminated under this Section.

10.4 Parties agree that the annual fees for the Services are based upon the assumption that this Agreement will be renewed each year for all of the 9 one-year automatic renewals permitted under the CSA; and if the Agreement is terminated before the end of such period for Customer's convenience under Section 10.3, then a termination fee will be assessed equal to the total of (1) the annual multi-year discount set forth in the pricing section applied to the last three (3) years of service payments and (2) if a major upgrade has been delivered in the first year of the two year SUA II cycle, then the price of the SUA II for the second year of the terminated cycle ("Termination Fee"). The Termination Fee will be payable upon early termination and is not a penalty, but rather is a charge to compensate Motorola for Customer's failure to exercise all the automatic renewals on which the maintenance pricing was based.

## **Section 11     LIMITATION OF LIABILITY**

Except for personal injury or death, and in regard to its indemnification obligations under Sections 18, 19, and 20 of these Service Terms and Conditions, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of the post-warranty services and upgrades purchased herein. **ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT OR THE PERFORMANCE OF SERVICES BY MOTOROLA PURSUANT TO THIS AGREEMENT.** No action for contract breach or otherwise relating to the transactions contemplated by this Agreement may be brought more than four (4) years after the accrual of the cause of action. This limitation of liability will survive the expiration or termination of this Agreement and applies notwithstanding any contrary provision.

## **Section 12 EXCLUSIVE TERMS AND CONDITIONS**

12.1. This Agreement supersedes all prior and concurrent agreements and understandings between the parties, whether written or oral, related to the Services, and there are no agreements or representations concerning the subject matter of this Agreement except for those expressed herein. The Agreement may not be amended or modified except by a written agreement signed by authorized representatives of both parties.

12.2. Customer agrees to reference this Agreement on any purchase order issued in furtherance of this Agreement, however, an omission of the reference to this Agreement will not affect its applicability. In no event will either party be bound by any terms contained in a Customer purchase order, acknowledgement, or other writings unless: the purchase order, acknowledgement, or other writing specifically refers to this Agreement; clearly indicate the intention of both parties to override and modify this Agreement; and the purchase order, acknowledgement, or other writing is signed by authorized representatives of both parties.

## **Section 13 PROPRIETARY INFORMATION; CONFIDENTIALITY; INTELLECTUAL PROPERTY RIGHTS**

13.1. Any information or data in the form of specifications, drawings, reprints, technical information or otherwise furnished to Customer under this Agreement will remain Motorola's property, will be deemed proprietary, and to the extent permitted by law, will be kept confidential, and will be promptly returned at Motorola's request. Customer may not disclose, without Motorola's written permission or as required by law, any confidential information or data to any person, or use confidential information or data for any purpose other than performing its obligations under this Agreement. The obligations set forth in this Section survive the expiration or termination of this Agreement.

13.2. Unless otherwise identified by Customer to Motorola in writing, no commercial or technical information disclosed by Customer to Motorola will be deemed secret or confidential. Motorola will have no obligation to provide Customer with access to its confidential and proprietary information, including cost and pricing data.

13.3. This Agreement does not grant directly or by implication, estoppel, or otherwise, any ownership right or license under any Motorola patent, copyright, trade secret, or other intellectual property, including any intellectual property created as a result of or related to the Equipment sold or Services performed under this Agreement.

13.4 Notwithstanding any other provision of this Agreement, the Parties understand that Customer is required to comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code)("TPIA" or the "Act") when responding to information requests made under the Act. Pursuant to the requirements of TPIA, if Customer receives a request for information which Motorola has marked or identified as being confidential, trade secret, commercial, financial or proprietary information, Customer will respond to the request in accordance with the procedures set forth in Section 552.305 of the Act. Specifically, Customer will notify Motorola of its receipt of the request and request and attorney general opinion identifying the exception(s) to disclosure believed to apply. The Parties acknowledge that TPIA requires a brief to be submitted to the attorney general explaining the claimed exceptions apply to the information in issue. Customer shall not be obligated to submit the brief supporting the claimed exceptions. Motorola shall be solely responsible for submitting the brief and the documents in issue to the attorney general. Should the attorney general render a decision indicating that all or part if the information must be disclosed, Customer shall be permitted to disclose the information unless Motorola successfully contests the attorney general decision in accordance with the requirements of TPIA. Nothing in the Agreement shall require Customer to institute or participate in any litigation relating to an open records request for information that Motorola considers to be confidential.

## **Section 14 FCC LICENSES AND OTHER AUTHORIZATIONS**

Customer is solely responsible for obtaining licenses or other authorizations required by the Federal Communications Commission or any other federal, state, or local government agency in connection with the provision of services under the Agreement, and for complying with all applicable rules and regulations of governmental agencies. Neither Motorola nor any of its employees is an agent or representative of Customer in any governmental matters.

## **Section 15 COVENANT NOT TO EMPLOY**

During the term of this Agreement and continuing for a period of two (2) years thereafter, Customer will not hire, engage on contract, solicit the employment of, or recommend employment to any third party of any employee of Motorola or its subcontractors without the prior written authorization of Motorola. This provision applies only to those employees of Motorola or its subcontractors who are responsible for rendering services under this Agreement and shall not apply to employees of Motorola or its subcontractors who apply for employment or seek to contract with Customer. If this provision is found to be overly broad under applicable law, it will be modified as necessary to conform to applicable law.

## **Section 16 MATERIALS, TOOLS AND EQUIPMENT**

All tools, equipment, dies, gauges, models, drawings or other materials paid for or furnished by Motorola for the purpose of this Agreement will be and remain the sole property of Motorola. Motorola may leave such property on the premises of Customer for the convenience of Motorola, without charge, and the property may be removed from Customer's premises by Motorola at any time during normal business hours without restriction; provided, however, that Customer shall have no duty to safeguard such property and shall not be liable for any loss or damage to the property.

## **Section 17 GENERAL TERMS**

17.1. If any court renders any portion of this Agreement unenforceable, the remaining terms will continue in full force and effect.

17.2. This Agreement and the rights and duties of the parties will be governed and interpreted by the laws of the State of Texas. The provisions and obligations of this Agreement are performable in Dallas County, Texas, such that exclusive venue for any action arising out of this Agreement shall be in Dallas County, Texas.

17.3. Failure to exercise any right will not operate as a waiver of that right, power, or privilege.

17.4. Neither party is liable for delays or lack of performance resulting from any causes that are beyond that party's reasonable control, such as strikes, material shortages, or acts of God.

17.5. Motorola may subcontract any of the work, but subcontracting will not relieve Motorola of its duties under this Agreement.

17.6. Except as provided herein, neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent will not be unreasonably withheld. Any attempted assignment, delegation, or transfer without the necessary consent will be void. Notwithstanding the foregoing, Motorola may assign this Agreement to any of its affiliates or its right to receive payment without the prior consent of Customer, provided that the assignment is to an entity at least as financially sound and capable of performing as Motorola Solutions, Inc., and that any assignment shall not relieve Motorola Solutions, Inc. of any obligation under this Agreement.

17.7. THIS AGREEMENT MAY BE RENEWED FOR AN ADDITIONAL ONE (1) YEAR TERM FOR EACH OF THE SUCCEEDING TEN (10) YEARS ON THE ANNIVERSARY DATE UNLESS ONE PARTY NOTIFIES THE OTHER IN WRITING OF ITS INTENTION TO DISCONTINUE THE AGREEMENT NOT LESS THAN THIRTY (30) DAYS OF THAT ANNIVERSARY DATE. At the anniversary date, Motorola may adjust the price of the Services as permitted in Section 8, if applicable.

17.8. If Motorola provides Services after the termination or expiration of this Agreement, the terms and conditions in effect at the time of the termination or expiration will apply to those Services and Customer agrees to pay for those services on a time and materials basis at Motorola's then effective hourly rates.

17.9 Notices. Any notice required or desired to be given from one party to the other party to this Agreement shall be in writing and shall be given and shall be deemed to have been served and received (whether actually received or not) if (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and



addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

Customer: Highland Park DPS  
Attn: Paul Sandman  
4700 Drexel Drive  
Dallas Tx 75205

MOTOROLA:  
Attn: Law Department  
500 W. Monroe Street, 43<sup>rd</sup> Floor  
Chicago, IL 60661

17.10 Non-Collusion. Motorola represents that it has not given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any person as an inducement to or in order to obtain the work to be provided to the Customer under this Agreement. Motorola further agrees that it shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from the Customer under this Agreement) for any of the services performed by Motorola under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to Motorola, Motorola shall immediately report that fact to the Customer and, at the sole option of the Customer, the Customer may elect to accept the consideration for itself or to take the value of such consideration as a credit against the compensation otherwise owing to Motorola under this Agreement.

17.11 Paragraph Headings; Construction. The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the negotiation and preparation of this Agreement and this Agreement shall not be construed either more or less strongly against or for either party.

17.12 Binding Effect. Except as limited herein, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal and legal representatives, successors and assigns.

17.13 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

17.14 Exhibits/Attachments. All exhibits and attachments to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

17.15 Entire Agreement. It is understood and agreed that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements or understandings between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally and no written modification of this Agreement shall be effective unless executed by both parties.

17.16 Relationship of Parties; Third-Party Beneficiaries. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.

17.17 Disclosure of Business Relationships/Affiliations; Conflict of Interest Questionnaire. Motorola represents that it is in compliance with the applicable filing and disclosure requirements of Chapter 176 of the Texas Local Government Code.

17.18 **Dispute Resolution.** In accordance with the provisions of Subchapter I, Chapter 271, TEX. LOCAL GOV'T CODE, the parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this agreement, the parties will first attempt to resolve the dispute by taking the following steps: (1) A written notice substantially describing the nature of the dispute shall be delivered by the dissatisfied party to the other party (the "Notice of Dispute"), which notice shall request a written response to be delivered to the dissatisfied party not less than 5 days after receipt of the notice of dispute. (2) If the response does not reasonably resolve the dispute, in the opinion of the dissatisfied party, the dissatisfied party shall give notice to that effect to the other party whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the dispute. (3) If those persons cannot or do not resolve the dispute, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the dispute. Notwithstanding any other provision of this section, if the dispute has not been resolved within sixty (60) days of delivery of the Notice of Dispute, either party may avail itself of its remedies at law or in equity, including instituting a lawsuit in a court of competent jurisdiction and in accordance with Section 17.2.

#### **18. INDEMNIFICATION**

**Motorola agrees to indemnify and hold harmless Customer, and all of its present, future and former employees, officials and representatives in their official, individual and representative capacities from and against any and all claims, demands, causes of action judgments, liens and expenses (including attorney's fees, whether contractual or statutory), costs and direct damages due to or arising from injuries to persons (including death) or to property (both real and personal) to the extent resulting from the negligence of Motorola, its officers, employees and subcontractors in connection with or incidental to this Agreement. For purposes of this section, direct damages shall include any consequential, indirect or punitive damage award against Customer in favor of a third party to the extent arising from the negligence of Motorola, its employees, agents or subcontractors in connection with or incidental to this Agreement.**

#### **19. PAYMENT OF SUPPLIERS AND SUBCONTRACTORS/INDEMNIFICATION**

**Motorola agrees that it shall be responsible for the payment of, and will pay, all subcontractors and suppliers it uses in connection with this Agreement. Motorola further agrees that, in addition to the indemnification provided under Section 18 of this Agreement, that it shall indemnify and hold harmless the Customer, and all of its present, future and former employees, officials and representatives in their official, individual and representative capacities from and against any and all claims, demands, causes of action, judgments, liens and expenses (including attorney's fees, whether contractual or statutory), costs and direct damages arising from the failure of Motorola to pay its subcontractors or suppliers for services or equipment supplied in connection with this agreement. For purposes of this section, direct damages shall include any consequential, indirect or punitive damage award against Customer in favor of a third party arising from or incidental to the failure of Motorola to pay its subcontractors or suppliers for services or equipment supplied in connection with this Agreement.**

#### **20. PATENT AND COPYRIGHT INFRINGEMENT.**

**20.1. Motorola will defend at its expense any suit brought against Customer to the extent it is based on a third-party claim alleging that the Equipment manufactured by Motorola or the Motorola Software ("Motorola Product") infringes a United States patent or copyright ("Infringement Claim"), and will indemnify Customer for those costs and damages finally awarded against Customer for an Infringement Claim. Motorola's duties to defend and indemnify are conditioned upon: Customer promptly notifying Motorola in writing of the any such Infringement Claim of which it becomes aware; Motorola having sole control of the defense of the suit and all negotiations for its settlement or compromise; and Customer providing to Motorola reasonable cooperation and, if requested by Motorola, reasonable assistance in the defense of the Infringement Claim, provided that Customer is not obligated to incur any additional or abnormal expenses in providing such assistance. In addition to Motorola's obligation to defend, and subject to the same conditions, Motorola will pay**

all damages finally awarded against Customer by a court of competent jurisdiction for an Infringement Claim or agreed to, in writing, by Motorola in settlement of an Infringement Claim.

20.2. If an Infringement Claim occurs, or in Motorola's opinion is likely to occur, Motorola may at its option and expense: (a) procure for Customer the right to continue using the Motorola Product; (b) replace or modify the Motorola Product so that it becomes non-infringing while providing functionally equivalent performance; or (c) accept the return of the Motorola Product and grant Customer a credit for the Motorola Product, less a reasonable charge for depreciation. The depreciation amount will be calculated based upon generally accepted accounting standards.

20.3. Motorola will have no duty to defend or indemnify for any Infringement Claim that is based upon: (a) the combination of the Motorola Product with any software, apparatus or device not furnished by Motorola; (b) the use of ancillary equipment or software not furnished by Motorola and that is attached to or used in connection with the Motorola Product; (c) Motorola Product designed or manufactured in accordance with Customer's designs, specifications, guidelines or instructions, if the alleged infringement would not have occurred without such designs, specifications, guidelines or instructions; (d) a modification of the Motorola Product by a party other than Motorola; (e) use of the Motorola Product in a manner for which the Motorola Product was not designed or that is inconsistent with the terms of this Agreement; or (f) the failure by Customer to install an enhancement release to the Motorola Software that is intended to correct the claimed infringement.

20.4. This Section 20 provides Customer's sole and exclusive remedies and Motorola's entire liability in the event of an Infringement Claim. Customer has no right to recover and Motorola has no obligation to provide any other or further remedies, whether under another provision of this Agreement or any other legal theory or principle, in connection with an Infringement Claim.

## Exhibit E

### System Upgrade Agreement Statement of Work

#### 1.0 Description of Service and Obligations

- 1.1 As system releases become available, Motorola agrees to provide the Customer with the software, hardware and implementation services required to execute up to one system infrastructure upgrade in a two-year period for their ASTRO 25 system. At the time of the system release upgrade, Motorola will provide applicable patches and service pack updates when and if available. Currently, Motorola's service includes 3rd party SW such as Microsoft Windows and Server OS, Red Hat Linux, Sun Solaris and any Motorola software service packs that may be available. Motorola will only provide patch releases that have been analyzed, pre-tested, and certified in a dedicated ASTRO 25 test lab to ensure that they are compatible and do not interfere with the ASTRO 25 network functionality.
- 1.2 The Customer will have, at its option, the choice of upgrading in either Year 1 or Year 2 of the coverage period. To be eligible for the ASTRO 25 SUA II, the ASTRO 25 system must be at system release 7.7 or later.
- 1.3 ASTRO 25 system releases are intended to improve the system functionality and operation from previous releases and may include some minor feature enhancements. At Motorola's option, system releases may also include significant new feature enhancements that Motorola may offer for purchase. System release software and hardware shall be pre-tested and certified in Motorola's Systems Integration Test lab.
- 1.4 The price quoted for the SUAII requires the Customer to choose a certified system upgrade path from the list of System Release Upgrade Paths available to the Customer as per the system release upgrade chart referenced and incorporated in Appendix A. Should the Customer elect an upgrade path other than one listed in Appendix A, the Customer agrees that additional costs may be incurred to complete the implementation of the certified system upgrade. In this case, Motorola agrees to provide a price quotation for any additional materials and services necessary.
- 1.5 ASTRO 25 SUA II entitles a Customer to past software versions for the purpose of downgrading product software to a compatible release version.
- 1.6 The following ASTRO 25 certified system release software for the following products are covered under this ASTRO 25 SUA II:
  - 1.6.1 Servers
  - 1.6.2 Workstations
  - 1.6.3 Firewalls
  - 1.6.4 Routers
  - 1.6.5 LAN switches
  - 1.6.6 MCC 7XXX Dispatch Consoles
  - 1.6.7 GTR8000 Base Stations
  - 1.6.8 GCP8000 Site Controllers
  - 1.6.9 GCM8000 Comparators
  - 1.6.10 Motorola Solutions Logging Interface Equipment
  - 1.6.11 PBX switches for Telephone Interconnect
  - 1.6.12 NICE and Verint Logging Solutions (if purchased)

- 1.7 Product programming software such as Radio Service Software (“RSS”), Configuration Service Software (“CSS”), and Customer Programming Software (“CPS”) are also covered under this SUA II.
- 1.8 ASTRO 25 SUA II makes available the subscriber radio software releases that are shipping from the factory during the SUA II coverage period. New subscriber radio options and features not previously purchased by the Customer are excluded from ASTRO 25 SUA II coverage. Additionally, subscriber software installation and reprogramming are excluded from the ASTRO 25 SUA II coverage.
- 1.9 Motorola will provide certified hardware version updates and/or replacements necessary to upgrade the system with an equivalent level of functionality up to once in a two-year period. Hardware will be upgraded and/or replaced if required to maintain the existing feature and functionality. Any updates to hardware versions and/or replacement hardware required to support new features or those not specifically required to maintain existing functionality are not included. Unless otherwise stated, platform migrations such as, but not limited to, stations, consoles, backhaul, civil, network changes and additions, and managed services are not included.
- 1.10 The following hardware components, if originally provided by Motorola, are eligible for full product replacement when necessary per the system release upgrade :
  - 1.10.1 Servers
  - 1.10.2 Workstations
  - 1.10.3 Routers
  - 1.10.4 LAN Switches
- 1.11 The following hardware components, if originally provided by Motorola, are eligible for board-level replacement when necessary per the system release upgrade. A “board-level replacement” is defined as any Field Replaceable Unit (“FRU”) for the products listed below:
  - 1.11.1 GTR 8000 Base Stations
  - 1.11.2 GCP 8000 Site Controllers
  - 1.11.3 GCM 8000 Comparators
  - 1.11.4 MCC 7XXX Dispatch Consoles
- 1.12 The ASTRO 25 SUA II does not cover all products. Refer to section 3.0 for exclusions and limitations.
- 1.13 Motorola will provide implementation services necessary to upgrade the system to a future system release with an equivalent level of functionality up to once in a two-year period. Any implementation services that are not directly required to support the certified system upgrade are not included. Unless otherwise stated, implementation services necessary for system expansions, platform migrations, and/or new features or functionality that are implemented concurrent with the certified system upgrade are not included.
- 1.14 As system releases become available, Motorola will provide up to once in a two-year period the following software design and technical resources necessary to complete system release upgrades:
  - 1.14.1 Review infrastructure system audit data as needed.
  - 1.14.2 Identify additional system equipment needed to implement a system release, if applicable.



- 1.14.3 Complete a proposal defining the system release, equipment requirements, installation plan, and impact to system users.
  - 1.14.4 Advise Customer of probable impact to system users during the actual field upgrade implementation.
  - 1.14.5 Program management support required to perform the certified system upgrade.
  - 1.14.6 Field installation labor required to perform the certified system upgrade.
  - 1.14.7 Upgrade operations engineering labor required to perform the certified system upgrade.
- 1.15 ASTRO 25 SUA II pricing is based on the system configuration outlined in Appendix B. This configuration is to be reviewed annually from the contract effective date. Any change in system configuration may require an ASTRO 25 SUA II price adjustment.
- 1.16 The ASTRO 25 SUA II applies only to system release upgrades within the ASTRO 25 7.x platform.
- 1.17 Motorola will issue Software Maintenance Agreement (“SMA”) bulletins on an annual basis and post them in soft copy on a designated extranet site for Customer access. Standard and optional features for a given ASTRO 25 system release are listed in the SMA bulletin.

## **2.0 Upgrade Elements and Corresponding Party Responsibilities**

- 2.1 Upgrade Planning and Preparation: All items listed in this section are to be completed at least 6 months prior to a scheduled upgrade.
- 2.1.1 Motorola responsibilities
    - 2.1.1.1 Obtain and review infrastructure system audit data as needed.
    - 2.1.1.2 Identify additional system equipment needed to implement a system release, if applicable.
    - 2.1.1.3 Complete a proposal defining the system release, equipment requirements, installation plan, and impact to system users.
    - 2.1.1.4 Advise Customer of probable impact to system users during the actual field upgrade implementation.
    - 2.1.1.5 Inform Customer of high speed internet connection requirements.
    - 2.1.1.6 Assign program management support required to perform the certified system upgrade.
    - 2.1.1.7 Assign field installation labor required to perform the certified system upgrade.
    - 2.1.1.8 Assign upgrade operations engineering labor required to perform the certified system upgrade.
    - 2.1.1.9 Deliver release impact and change management training to the primary zone core owners, outlining the changes to their system as a result of the upgrade path elected. This training needs to be completed at least 12 weeks prior to the scheduled upgrade. This training will not be provided separately for user agencies who reside on a zone core owned by another entity. Unless specifically stated in this document, Motorola will provide this training only once per system.

### **2.1.2 Customer responsibilities**

- 2.1.2.1 Contact Motorola to schedule and engage the appropriate Motorola resources for a system release upgrade.
  - 2.1.2.2 Provide high-speed internet connectivity at the zone core site(s) for use by Motorola to perform remote upgrades and diagnostics. Specifications for the high-speed connection are provided in Appendix C. High-speed internet connectivity must be provided at least 12 weeks prior to the scheduled upgrade. In the event access to a high-speed connection is unavailable, Customer may be billed additional costs to execute the system release upgrade.
  - 2.1.2.3 Assist in site walks of the system during the system audit when necessary.
  - 2.1.2.4 Provide a list of any FRUs and/or spare hardware to be included in the system release upgrade when applicable.
  - 2.1.2.5 Purchase any additional software and hardware necessary to implement optional system release features or system expansions.
  - 2.1.2.6 Provide or purchase labor to implement optional system release features or system expansions.
  - 2.1.2.7 Participate in release impact training at least 12 weeks prior to the scheduled upgrade. This applies only to primary zone core owners. It is the zone core owner's responsibility to contact and include any user agencies that need to be trained or to act as a training agency for those users not included.
- 2.2 System Readiness Checkpoint: All items listed in this section must be completed at least 30 days prior to a scheduled upgrade.
- 2.2.1 Motorola responsibilities
    - 2.2.1.1 Perform appropriate system backups.
    - 2.2.1.2 Work with the Customer to validate that all system maintenance is current.
    - 2.2.1.3 Work with the Customer to validate that all available patches and antivirus updates have been updated on the customer's system.
  - 2.2.2 Customer responsibilities
    - 2.2.2.1 Validate system maintenance is current.
    - 2.2.2.2 Validate that all available patches and antivirus updates to their system have been completed.
- 2.3 System Upgrade
- 2.3.1 Motorola responsibilities
    - 2.3.1.1 Perform system infrastructure upgrade in accordance with the system elements outlined in this SOW.
  - 2.3.2 Customer responsibilities
    - 2.3.2.1 Inform system users of software upgrade plans and scheduled system downtime.
    - 2.3.2.2 Cooperate with Motorola and perform all acts that are reasonable or necessary to enable Motorola to provide software upgrade services.
- 2.4 Upgrade Completion
- 2.4.1 Motorola responsibilities
    - 2.4.1.1 Validate all certified system upgrade deliverables are complete as

- contractually required.
- 2.4.1.2 Deliver post upgrade implementation training to the customer as needed, up to once per system.
- 2.4.1.3 Obtain upgrade completion sign off from the customer.
- 2.4.2 Customer Responsibilities
  - 2.4.2.1 Cooperate with Motorola in efforts to complete any post upgrade punch list items as needed.
  - 2.4.2.2 Cooperate with Motorola to provide relevant post upgrade implementation training as needed. This applies only to primary zone core owners. It is the zone core owner's responsibility to contact and include any user agencies that need to be trained or to act as a training agency for those users not included.
  - 2.4.2.3 Provide Motorola with upgrade completion sign off.

### **3.0 Exclusions and Limitations**

- 3.1 The parties agree that Systems that have non-standard configurations that have not been certified by Motorola Systems Integration Testing are specifically excluded from the ASTRO 25 SUA II unless otherwise agreed in writing by Motorola and included in this SOW.
- 3.2 The parties acknowledge and agree that the ASTRO 25 SUA II does not cover the following products:
  - MCC5500 Dispatch Consoles
  - MIP5000 Dispatch Consoles
  - Plant/E911 Systems
  - MOTOBRIDGE Solutions
  - ARC 4000 Systems
  - Motorola Public Sector Applications Software ("PSA")
  - Custom SW, CAD, Records Management Software
  - Data Radio Devices
  - Mobile computing devices such as Laptops
  - Non-Motorola two-way radio subscriber products
  - Genesis Products
  - Point-to-point products such as microwave terminals and association multiplex equipment
- 3.3 ASTRO 25 SUA II does not cover any hardware or software supplied to the Customer when purchased directly from a third party, unless specifically included in this SOW.
- 3.4 ASTRO 25 SUA II does not cover software support for virus attacks or other applications that are not part of the ASTRO 25 system, or unauthorized modifications or other misuse of the covered software. Motorola is not responsible for management of anti-virus or other security applications (such as Norton).
- 3.5 Upgrades for equipment add-ons or expansions during the term of this ASTRO 25 SUA II are not included in the coverage of this SOW unless otherwise agreed to in writing by Motorola.

#### **4.0 Special provisions**

- 4.1 Customer acknowledges that if its System has a Special Product Feature, additional engineering may be required to prevent an installed system release from overwriting the Special Product Feature. Upon request, Motorola will determine whether a Special Product Feature can be incorporated into a system release and whether additional engineering effort is required. If additional engineering is required Motorola will issue a change order for the change in scope and associated increase in the price for the ASTRO 25 SUA II.
- 4.2 Customer will only use the software (including any System Releases) in accordance with the applicable Software License Agreement.
- 4.3 ASTRO 25 SUA II services do not include repair or replacement of hardware or software that is necessary due to defects that are not corrected by the system release, nor does it include repair or replacement of defects resulting from any nonstandard, improper use or conditions; or from unauthorized installation of software.
- 4.4 ASTRO 25 SUA II coverage and the parties' responsibilities described in this Statement of Work will automatically terminate if Motorola no longer supports the ASTRO 25 7.x software version in the Customer's system or discontinues the ASTRO 25 SUA II program; in either case, Motorola will refund to Customer any prepaid fees for ASTRO 25 SUA II services applicable to the terminated period.
- 4.5 If Customer cancels a scheduled upgrade within less than 12 weeks of the scheduled on site date, Motorola reserves the right to charge the Customer a cancellation fee equivalent to the cost of the pre-planning efforts completed by the Motorola Solutions Upgrade Operations Team.
- 4.6 The SUA II annualized price is based on the fulfillment of the two year term. If Customer terminates, except if Motorola is the defaulting party, Customer will be required to pay for the balance of payments owed if a system release upgrade has been taken prior to the point of termination.

## Appendix A – ASTRO 25 System Release Upgrade Paths

ASTRO System Release	Certified Upgrade Paths	
Pre-7.14	Upgrade to Current Shipping Release	
7.14	N/A	7.16 <sup>+</sup>
7.15	7.16 <sup>+</sup>	7.17.X <sup>*</sup>
7.16	N/A	7.18
7.17.X <sup>*</sup>	N/A	A.2019.1 (Planned)

<sup>+</sup> Available upgrade path, but not recommended due to the Software Support Policy

<sup>\*</sup> Includes planned incremental releases

- The information contained herein is provided for information purposes only and is intended only to outline Motorola's presently anticipated general technology direction. The information in the roadmap is not a commitment or an obligation to deliver any product, product feature or software functionality and Motorola reserves the right to make changes to the content and timing of any product, product feature or software release.
- The most current system release upgrade paths can be found in the most recent SMA bulletin.



## Appendix B - System Pricing Configuration

This configuration is to be reviewed annually from the contract effective date.. Any change in system configuration may require an ASTRO 25 SUA II price adjustment.

<b>Core</b>	
Master Site Configuration	0
Zones in Operation (Including DSR and Dark Master Sites)	0
Zone Features: IV&D, TDMA, Telephone Interconnect, CNI, HPD, CSMS, IA, POP25, Text Messaging, Outdoor Location, ISSI 8000, InfoVista, KMF/OTAR	1
<b>RF System</b>	
Voice RF Sites & RF Simulcast Sites (including Prime Sites)	3
Repeaters/Stations (FDMA)	0
Repeaters/Stations (TDMA)	18
HPD RF Sites	0
HPD Stations	0
<b>Dispatch Console System</b>	
Dispatch Sites	3
Gold Elite Operator Positions	0
MCC 7500 Operator Positions (GPIOM)	0
MCC 7500 Operator Positions (VPM)	9
Conventional Channel Gateways (CCGW)	3
Conventional Site Controllers (GCP 8000 Controller)	3
<b>Logging System</b>	
Number of AIS Servers	2
Number of Voice Logging Recorder	1
Number of Logging Replay Clients	0
<b>Network Management and MOSCAD NFM</b>	
Network Management Clients	2
MOSCAD NFM Systems	0
MOSCAD NFM RTUs	6
MOSCAD NFM Clients	0
<b>Fire Station Alerting (FSA)</b>	
FSA Systems	0
FSA RTUs	0
FSA Clients	0
<b>Fire Station Alerting (FSA)</b>	
Voice Subscribers non-APX	0
Voice Subscribers APX	0
HPD Subscribers	0
<b>Computing and Networking Hardware (for SUA / SUA II, actual replacement qty may be less than shown)</b>	
Workstations - High Performance	0
Workstations - Mid Performance	11
Servers - High Performance	0
Servers - Mid Performance	0
LAN Switch - High Performance	0
LAN Switch - Mid Performance	15
Routers	15

## **Appendix C – High-Speed Connectivity Specifications**

### **Connectivity Requirements**

- The minimum supported link between the core and the zone is a full T1
- Any link must realize or a sustained transfer rate of 175 kbps / 1.4 Mbps or better, bidirectional
- Interzone links must be fully operational when present
- Link reliability must satisfy these minimum QoS levels:
  - Port availability must meet or exceed 99.9% (three nines)
  - Round trip network delay must be 100 ms or less between the core and satellite (North America) and 400 ms or less for international links
  - Packet loss shall be no greater than 0.3%
  - Network jitter shall be no greater than 2 ms

**Exhibit F**  
**System Acceptance Certificate**

**Customer Name:** \_\_\_\_\_

**Project Name:** \_\_\_\_\_

This System Acceptance Certificate memorializes the occurrence of System Acceptance. Motorola and Customer acknowledge that:

1. The Acceptance Tests set forth in the Acceptance Test Plan have been successfully completed.
2. The System is accepted.

Customer Representative:

Motorola Representative:

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

**FINAL PROJECT ACCEPTANCE:**

Motorola has provided and Customer has received all deliverables, and Motorola has performed all other work required for Final Project Acceptance.

Customer Representative:

Motorola Representative:

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

**Exhibit G**

**Motorola/H-GAC Contract dated May 1, 2018**

### Proposed System Pricing

	Total
<b>Core</b>	\$ -
ASTRO System, Site and Network Management Licenses*	\$ 319,494
Intelligent Middleware - Licenses Added to GMRS hardware	\$ 63,365
Key Variable Loader/OTEK	\$ 39,943
WAVE - 20 Mobile User and 5 TG licenses - Licenses Added to GMRS hardware	\$ 37,543
<b>Dispatch HP</b>	\$ -
NM Client	\$ 4,302
Console Equipment	\$ 343,848
AIS	\$ 34,873
Spares	\$ 29,386
Control Station Combiner	\$ 6,476
Site Work - Architectural and Engineering Services	\$ 19,087
<b>Dispatch UP</b>	\$ -
NM Client	\$ 4,302
Console Equipment	\$ 286,693
Spares	\$ 29,386
Control Station Combiner	\$ 6,476
AIS+logging recorder	\$ 133,672
Site Work - Architectural and Engineering Services	\$ 19,087
<b>Dispatch UP Peek</b>	\$ -
Console Equipment	\$ 202,045
Control Station Combiner	\$ 5,359
AIS+logging recorder	\$ -
Site Work - Architectural and Engineering Services	\$ 19,087
<b>Simulcast Site HP Holland</b>	
RF Site Equipment	\$ 348,376
Antenna System	\$ 56,308
12x10 Shelter with Outdoor Generator	\$ 392,557
Parking lot structure removal at Holland water tank	\$ 24,590
Upgrade proposed 12x10 shelter to 12x16 (per site)	
<b>Simulcast Site UP Fondren</b>	
RF Site Equipment	\$ 348,376
Antenna System	\$ 56,308
12x10 Shelter with Outdoor Generator	\$ 372,364
Upgrade proposed 12x10 shelter to 12x16 (per site)	\$ -
<b>Simulcast Site UP NW Highway</b>	
RF Site Equipment	\$ 348,376
Antenna System	\$ 56,308
12x10 Shelter with Outdoor Generator	\$ 372,364
Upgrade proposed 12x10 shelter to 12x16 (per site)	\$ -
<b>Simulcast Prime Site</b>	
Simulcast Prime Site	\$ 394,385
<b>Simulcast Prime Site (Geo-Red)</b>	
Simulcast Prime Site (Geo-Red)	\$ 282,992
<b>Microwave</b>	
Spares	\$ 20,846



Average Per Link #1	\$ 185,973
Average Per Link #2	\$ 185,973
Average Per Link #3	\$ 185,973
Average Per Link #4	\$ 185,973
Average Per Link #5	\$ 185,973
Average Per Link #6	\$ 185,973
Average Per Link #7	\$ 185,973
<b>Radio Management</b>	
Radio Management - Licenses Added to GMRS hardware for all proposed quantity of subscriber units	\$ 22,000
<b>Simulcast System Spares</b>	
Prime Site	\$ 4,660
RF Site	\$ 13,216
<b>Fire Station Alerting radios</b>	
Fire Station Alerting radios	\$ 31,203
<b>Subscriber</b>	
Subscribers/Consolettes UP	\$ 1,167,731
Subscribers/Consolettes HP	\$ 815,482
In Building CATP costs	\$ 111,041
Tower remediation	\$ 214,285
System Integration Services	\$ 1,647,826
Freight	\$ 81,095
Payment and Performance Bond	\$ 37,446
Year 2 of Maintenance	\$ 349,308
Extended Warranty- 3-5 Year Maintenance	\$ 1,203,829
<b>Sub Total</b>	<b>\$ 11,679,508</b>
<i>GMRS Contract Subscriber Discount</i>	
	<i>\$ (536,034)</i>
<i>System Incentive on Subscribers</i>	
	<i>\$ (390,738)</i>
<i>System Incentive on Infrastructure and Services</i>	
	<i>\$ (1,422,505)</i>

<i>Additional Incentive-Ten Year Lifecycle Services as proposed included base system contract</i>	
	<i>\$ (100,000)</i>
<b>System Total</b>	
	<b>\$ 9,230,230</b>
<b>Additional BAFO Incentives- Signed contract(s) and PO's issued by June 25,2019</b>	
Upgrade Microwave to 155 Mbps from 50 Mbps (valued at approx \$16,200)	Included at no additional charge
3 Year Warranty Coverage for all accessories (valued at approx \$25,000)	
Compliance with 60 day burn in period (valued at approx \$28,000)	
Include motion detectors with floodlights at shelters (valued at approx \$15,000)	
<i>One-Time Incentive for Ten Year Lifecycle Contract &amp; PO's issued by June 25,2019</i>	<i>\$ (275,000)</i>
<i>Shelter Upgrade Incentive</i>	<i>\$ (27,033)</i>
<i>2 Year Standard Warranty Incentive w/ Ten year Lifecycle Agreement</i>	<i>\$ (349,308)</i>
<i>5 Year Standard Warranty Incentive w/ Ten year Lifecycle Agreement</i>	<i>\$ (220,000)</i>
<b>System Total- 5 Year Warranty after all Incentives</b>	
	<b>\$ 8,358,889</b>

Note: Optional items listed below are not included in the base project.

**OPTIONAL ITEMS**

	Discounted Total
Conventional Subsystem	\$ 214,566
Add Dynamic Dual Mode to all remaining channels on the system	\$ 86,400
Compasscom GPS mapping application-No Longer Available*	N/A
Separate KMF server configuration	\$ 78,843
IMW Hardware	\$ 32,990
Upgrade proposed outdoor generator to enclosed generator (per site)	\$ 26,698
Add (1) WAVE mobile communicator license	\$ 319
Add (1) WAVE talkgroup license	\$ 3,235
Radio Management single server/client hardware	\$ 30,576
Add (1) Radio Management subscriber license	\$ 80
BDA for holding cell	\$ 92,310

\* ASTRO System, Site and Network Management Licenses included are listed below:

License	Qty
ENH: TRUNKED ENHANCED DATA	1
ADD: ASTRO 25 FDMA SITE LICENSE	3
ADD: P25 PHASE 2 TDMA TRKNG OP SITE LIC	3
ADD: PHASE 2 DYNAMIC TG ASGNMT SITE LIC	3
ADD: MCC7500 CONSOLE LICENSES (QTY 5)	3
ADD: P25 PHASE 2 TDMA SW BASE RADIO LIC	15
ADD: PHASE 2 DYNAMIC CH BASE RADIO LIC	6
ADD:500 RADIO USER LICENSES	1
ENH: 500 ENHANCED TRUNKED DATA USER LICENSES	1
ADD: 500 RADIO ALIAS UPDATE LICENSES	1
ADD: 50 TALK GROUP TEXT LICENSES	1
ADD: MCC7500/MCC7100 CONSOLE GROUP TEXT LICENSES	9
ADD: PROVISIONING MANAGER	1
ADD: UNIFIED EVENT MANAGER (UEM)	1
ADD: EMAIL ALARM NOTIFICATIONS	1
ADD: ZONEWATCH GRID & CTRL	1
ADD: RADIO CONTROL MANAGER	1
ADD: ANTI-MALWARE DEF UPDATE LIC	11
MCAfee WINDOWS AV CLIENT	10
ADD : LOCATION ON PTT 500 USER LICENSE	1
ADD: ENHANCED DATA-P25 TRNK SITE	3
ADD: CLASSIC DATA-P25 TRNK SITE	3

### June 2019- 5 Year Warranty- Base System Pricing - Highland Park

	HP Total
Subscribers	\$ 815,482
FNE- Fixed Network Equipment	\$ 3,480,816
Consoles	\$ 437,972
Year 2 Maintenance- Standard Warranty of 2 years	\$ -
Years 3-5 Maintenance add to FNE ( No SUA)	\$ 571,330
Payment and Performance Bond	\$ 17,724
Added Incentive for Standard Warranty of 5 years ( June 2019 Contract only)	\$ (110,000)
<b>Subscriber Incentives</b>	<b>\$ (381,082)</b>
<b>System Incentives</b>	<b>\$ (875,778)</b>
<b>Project Total</b>	<b>\$ 3,956,464</b>
Maintenance & Lifecycle- 10 year plan	\$ 1,584,954
<b>Contract Total</b>	<b>\$ 5,541,418</b>

### 10 Year Lifecycle Support Plan Pricing

	HP	
	Maintenance	SUA/II
Year 1	Included	Included
Year 2	Included	\$ 52,565
Year 3	Included	\$ 53,090
Year 4	Included	\$ 53,621
Year 5	Included	\$ 54,157
Year 6	\$ 205,073	\$ 54,699
Year 7	\$ 211,506	\$ 55,246
Year 8	\$ 218,132	\$ 55,799
Year 9	\$ 224,957	\$ 56,356
Year 10	\$ 231,705	\$ 58,047
<b>Sub Totals</b>	<b>\$ 1,091,373</b>	<b>\$ 493,581</b>
<b>10 YR Total</b>	<b>\$1,584,954</b>	