



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY					
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory					
Council Meeting Date:		07/23/2012			
Department:		Public Safety Communications			
Department Head		Ron Timmons			
Agenda Coordinator (include phone #): Jim Raney #7954					
CAPTION					
<p>A Resolution of the City Council of the City of Plano, Texas approving the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano and the City of Allen, Texas and the City of The Colony, Texas permitting specified use of the Plano and Allen Public Safety Radio System by the City of The Colony, Texas; authorizing its execution by the City Manager, or in his absence, his authorized designee, and providing an effective date.</p>					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	2012-13, 2013-14, 2014-15, 2015-16, 2016-17	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	0	0	0
Encumbered/Expended Amount		0	0	0	0
This Item		0	0	72,250	72,250
BALANCE		0	0	72,250	72,250
FUND(s): INTERGOVERNMENTAL RADIO FUND (237)					
<p>COMMENTS: Approval of this item will result in total estimated revenues of \$72,250 over a five-year period to the Interlocal Radio System Access Fund. Plano's annual share is projected at \$9,633, or \$48,165 over the contract period. Allen is projected to receive \$4,817 annually, for a total of \$24,085.</p> <p>STRATEGIC PLAN GOAL: Interlocal agreements for the use of the Allen and Plano Radio Communications System relate to the City's Goals of Financially Strong City with Service Excellence and Partnering for Community Benefit.</p>					
SUMMARY OF ITEM					
<p>Staff requests Council approval of a Five (5) year Interlocal cooperation agreement between the Cities of Allen and Plano and The Colony for the use of the Allen and Plano Radio Communications System.</p>					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Resolution and Agreement					

A Resolution of the City Council of the City of Plano, Texas approving the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano and the City of Allen, Texas and the City of The Colony, Texas permitting specified use of the Plano and Allen Public Safety Radio System by the City of The Colony, Texas; authorizing its execution by the City Manager, or in his absence, his authorized designee, and providing an effective date.

WHEREAS, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, authorizes governmental entities to contract with each other to perform governmental functions and services under the terms thereof; and

WHEREAS, the cities of Allen and Plano jointly own, operate, and maintain a public safety radio communications system (the “System”) for the purpose of providing radio communications in support of governmental operations; and

WHEREAS, the City of The Colony wishes to become a user of the System for its governmental operations; and

WHEREAS, the City Council has been presented a proposed Interlocal Cooperation Agreement by and between the City of Plano, the City of Allen, and the City of The Colony containing terms and conditions for the use of the System by the City of The Colony, a copy of which is attached hereto as Exhibit “A” and incorporated herein by reference (the “Agreement”); and

WHEREAS, upon full review and consideration of the Agreement, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager or, in his absence, his authorized designee, shall be authorized to execute it on behalf of the City of Plano;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. The terms and conditions of the Agreement, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section II. The City Manager, or in his absence, his authorized designee, is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

Section III. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this the 23rd day of July, 2012.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

**AGREEMENT BETWEEN THE CITIES OF ALLEN AND PLANO AND
THE CITY OF THE COLONY FOR THE USE OF THE ALLEN AND
PLANO RADIO COMMUNICATIONS SYSTEM**

The CITIES OF PLANO, TEXAS, AND ALLEN, TEXAS, both Texas home-rule municipalities (hereinafter referred to as "Cities"), and the CITY OF THE COLONY, TEXAS, a Texas home-rule municipality (hereinafter referred to as "The Colony"), agree as follows:

WHEREAS, the Cities and The Colony are political subdivisions within the State of Texas, each of which engages in the provision of governmental services for the benefit of their citizens; and

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

WHEREAS, the cities of Allen and Plano jointly own, operate, and maintain the radio communications system exclusive of the radios owned individually by each city (hereinafter referred to as "System") for the purpose of providing radio communications in support of its governmental operations; and

WHEREAS, The Colony wishes to use certain portions of the System for its governmental operations; and

WHEREAS, the use of the System in the provision of governmental services benefits the public health and welfare, promotes efficiency and effectiveness of local governments, and is of mutual concern to the contracting parties; and

WHEREAS, The Colony and the Cities have current funds available to satisfy any fees and costs required pursuant to this Agreement.

NOW, THEREFORE, the Cities and The Colony, for and in consideration of the recitals set forth above and terms and conditions below, agree as follows:

I. TERM

The term of this Agreement is for a period of five (5) years, beginning on the 1st day of January 2013, and ending on the 30th day of September 2017, with an optional three (3) year automatic renewal, unless terminated earlier by either party in accordance with the terms of this Agreement. Unless terminated by the Cities or The Colony, as set forth hereafter, this agreement shall automatically renew yearly without further action until its automatic termination on the 30th day of September, 2020. The first year of the contract will be pro-rated.

II. OBLIGATIONS OF THE COLONY

2.01 The Colony shall use the System in accordance with this Agreement to provide integration of communications by The Colony between its users on the System for governmental operations.

2.02 When using the System, The Colony shall abide by all applicable federal and state laws and regulations, including any regulations of the Allen and Plano Radio System. When The Colony uses the System for interoperability with Talkgroups (hereinafter defined) other than those provided by this Agreement, The Colony will also abide by the user rules of those Talkgroups.

2.03 The Colony must provide a written request to the Plano System Manager to activate radios (hereinafter referred to as "Subscriber Units") on the System. Such request must include the model and serial number of the Subscriber Unit, the name of the user, and identifying Talkgroups required in the Subscriber Unit.

2.04 The Colony is responsible for furnishing its own Subscriber Units, which must be compatible with the APCO P-25 Digital system, and for maintenance of the Subscriber Units. The Colony is responsible for all software and hardware required to program these Subscriber Units should it choose a different manufacturer than the cities of Allen and Plano.

2.05 The Colony shall use reasonable efforts to acquire equipment necessary to utilize the System in accordance with all applicable local, state, and federal law. In the event The Colony is unable to obtain equipment necessary to utilize the System prior to January 1, 2013, The Colony shall provide written notice to the Cities prior to that date. In the event The Colony provides written notice to the Cities prior to January 1, 2013, in accordance with this Section 2.05, this Agreement shall terminate automatically without further obligation of the parties.

III. OBLIGATIONS OF CITIES

3.01 The Cities will lease to The Colony four (4) Talkgroups, which are a primary level of communication for users on the System (hereinafter referred to as "Talkgroup"), comparable to a channel on a conventional radio system, for the exclusive use of The Colony. Talkgroups will be established for The Colony by Plano.

3.02 The Plano System Manager will not activate radios on The Colony Talkgroups nor make changes to The Colony radios without first receiving authorization from the designated representative of The Colony, unless in the opinion of Plano, such action is necessary to eliminate harmful interference.

3.03 Plano is also responsible for:

- (1) Coordinating Talkgroups among system users;
- (2) Grouping of Talkgroups to allow transmitting and receiving on all associated Talkgroups as required by The Colony;
- (3) The operation, maintenance, and control of the System.

IV. FEES

The fees assessed against The Colony and due annually for services and use of the System are as follows:

(1)	Lease radio airtime (per radio, per month)	\$ 8.56
(2)	Lease Talkgroup (per Talkgroup, per month)	\$ 62.97
(3)	Administrative and Technical fee (per month)	\$96.30

None of the charges listed above include the cost of maintenance of mobiles, portables, or control stations/points.

The Cities may increase these fees at the beginning of each fiscal year by an amount not to exceed seven percent (7%) of the previous year's fees. The Cities will provide 120 days' notice to The Colony before increasing the fees.

Total Fees for Annual Service

Based on the fees set out above, the Cities will calculate the annual fee due based upon the total number of radios and Talkgroups and submit an invoice to The Colony on or before October 1st of each year. This amount is subject to change when The Colony adds or deletes the number of radios and/or Talkgroups in service. The Colony must notify the Plano System Manager in writing of any addition or deletion of radios and/or Talkgroups. The amount owed for annual fees for additions of radio/Talkgroups will be prorated for the year added, invoiced immediately, and amounts will be due within 30 days of receipt of the invoice for the addition(s). The amount owed for annual fees will be adjusted for deletions the next contract year. No refunds will be given for payments made for radios/Talkgroups deleted after annual payment until the next contract year.

V. PAYMENT DUE

The Colony agrees to pay the Cities the annual fees specified under Article IV within thirty (30) days of the receipt of the invoice. Should The Colony add radios or Talkgroups to the service within a term, The Colony agrees to pay the additional fee(s) due within thirty (30) days of invoice. All payments for expenses incurred as a result of the performance of this Agreement shall be made only from current revenues legally available to each respective party.

VI. TERMINATION

- 6.01 Termination of this Agreement may occur by any of the following:
- (1) Either party may terminate this Agreement at any time by giving one hundred and eighty (180) days advance written notice. The Colony shall pay for all fees incurred through the effective date of termination.
 - (2) If the Cities permanently discontinue the operation of its System, this Agreement shall terminate on the date of discontinuance without further notice, and no fees will be reimbursed by the Cities to The Colony.

VII. RELEASE AND HOLD HARMLESS

To the extent allowed by law, each party does hereby agree to waive all claims

against, release, and hold harmless the other party and its respective officials, officers, agents, employees, in both their public and private capacities, from any and all liability, claims, suits, demands, losses, damages, attorneys fees, including all expenses of litigation or settlement, or causes of action which may arise by reason of 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 this Agreement. In the event that a claim is filed, each party is responsible for its proportionate share of liability.

VIII. IMMUNITY

In the execution of this Agreement, none of the parties waive, nor shall be deemed hereby to have waived, its sovereign immunity or any legal or equitable defense to any form of liability. The parties by entering into this Agreement 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.

IX. ASSIGNMENT

The Colony agrees to retain control and to give full attention to the fulfillment of this Agreement; The Colony cannot assign or sublet this Agreement without the prior written consent of the Cities. Further, The Colony cannot sublet any part or feature of the work to anyone objectionable to the Cities. The Colony also agrees that the subletting of any portion or feature of the work, or materials required in the performance of this Agreement, does not relieve The Colony from its full obligations to the Cities as provided by this Agreement.

X. ENTIRE AGREEMENT

This Agreement represents the entire and integrated agreement between the Cities and The Colony, and supersedes all prior negotiations, representations and/or agreements, either written or oral. The parties may amend this Agreement only by written instrument signed by The Colony and the Cities, except that execution of an amendment for assignment or subletting only requires the signature of the Cities.

XI. NOTICES

Unless notified otherwise in writing, all notices are required to be given to either party in writing and delivered in person or send via certified mail to the other party at the following respective addresses:

The Colony Representative:

Police Chief
City of The Colony
5151 N Colony Blvd
The Colony, Texas 75056
972-625-8273

Plano Representative:

Director, Public Safety Communications
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358
972-941-7931

Allen Representative:

Police Chief
City of Allen
205 W. McDermott
Allen, Texas 75013
214-509-4200

XII. AUTHORITY TO SIGN/CITY COUNCIL AUTHORIZATION

The undersigned officer 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. Cities have executed this Agreement pursuant to duly authorized action of the City Council of Plano on _____, 2012, and the City of Allen on _____, 2012. The Colony has this Agreement pursuant to duly authorized action of the City Council of The Colony on _____, 2012.

XIII. 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. However, upon the occurrence of such event, either party may terminate this Agreement by giving the other party thirty (30) days written notice.

XIV. 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 Collin County, Texas, and, if legal action is necessary, exclusive venue shall lie in Collin County, Texas.

XV. INTERPRETATION OF AGREEMENT

Although this Agreement is drafted by the Cities, this is a negotiated document. Should any part of this Agreement be in dispute, the parties agree that the Agreement shall not be construed more favorably for either party.

XVI. 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 the parties. It is further agreed that one (1) or more instances of forbearance by either party in the exercise of its respective rights under this Agreement shall in no way constitute a waiver thereof.

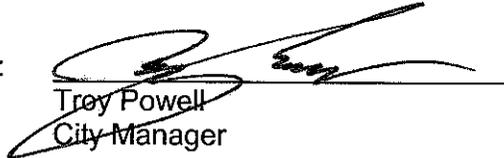
XVII. SUCCESSORS AND ASSIGNS

The parties each bind themselves, their respective successors, executors, administrators and assigns to the other party to this contract. Neither party will assign, sublet, subcontract or transfer any interest in this Agreement without the prior written consent of the other party. No assignment, delegation of duties or subcontract under this Agreement will be effective without the written consent of all parties.

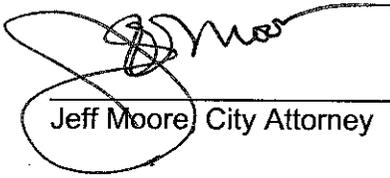
EXECUTED on the dates indicated below:

CITY OF THE COLONY, TEXAS

BY:


Troy Powell
City Manager

APPROVED AS TO FORM:



Jeff Moore, City Attorney

CITY OF PLANO, TEXAS

BY:

Bruce D. Glasscock
City Manager

APPROVED AS TO FORM:

Diane C. Wetherbee, City Attorney

CITY OF ALLEN, TEXAS

BY:

Peter H. Vargas, City Manager

APPROVED AS TO FORM:

Peter G. Smith, City Attorney

ACKNOWLEDGEMENTS

STATE OF TEXAS

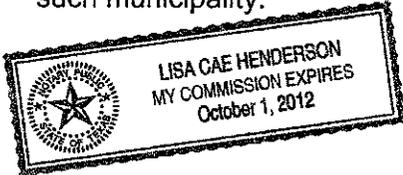
§

COUNTY OF DENTON

§

§

This instrument was acknowledged before me on the 21st day of June, 2012, by _____, **Troy Powell**, City Manager of the **CITY OF THE COLONY, TEXAS**, a home-rule municipality, on behalf of such municipality.



Lisa Cae Henderson
Notary Public, State of Texas

STATE OF TEXAS

§

COUNTY OF COLLIN

§

§

This instrument was acknowledged before me on the _____ day of _____, 2012, by **BRUCE D. GLASSCOCK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of such municipal corporation.

Notary Public, State of Texas

STATE OF TEXAS

§

COUNTY OF COLLIN

§

§

This instrument was acknowledged before me on the _____ day of _____, 2012, by **PETER H. VARGAS**, City Manager of the **CITY OF ALLEN, TEXAS**, a home-rule municipality, on behalf of such Municipality.

Notary Public, State of Texas