



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular <input type="checkbox"/> Statutory
Council Meeting Date:	10/11/10
Department:	Public Safety Communications
Department Head	Ronald Timmons
Agenda Coordinator (include phone #): <b>Trang Tran x7930</b>	

**CAPTION**

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Agreement by and between the City of Plano, Texas and the Texas Health Center for Diagnostics and Surgery for the use of the Radio Communications System owned by the Cities of Allen and Plano; authorizing its execution by the City Manager, or his authorized designee; and providing an effective date.

**FINANCIAL SUMMARY**

NOT APPLICABLE       OPERATING EXPENSE       REVENUE       CIP

FISCAL YEAR: <b>2010-2011,</b> <b>2011-2012,</b> <b>2012-2013,</b> <b>2013-2014,</b> <b>2014-2015</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	0	0	0	<b>0</b>
Encumbered/Expended Amount	0	0	0	<b>0</b>
This Item	0	1,822	7,288	<b>9,110</b>
<b>BALANCE</b>	0	1,822	7,288	<b>9,110</b>

**FUND(s):      INTERGOVERNMENTAL RADIO FUND (017.237)**

**COMMENTS:** Approval of this item will result in total estimated revenues of \$13,665 over a five-year period to the Interlocal Radio System Access Fund. Plano's annual share is projected at \$1,822, or \$9,110 over the contract period. Allen is projected to receive \$911 annually, for a total of \$4,555.

**STRATEGIC PLAN GOAL:** Interlocal agreements for the use of the Allen and Plano Radio Communications System relate to the City's Goal of "Financially Strong City with Service Excellence" and "Partnering for Community Benefit".

**SUMMARY OF ITEM**

Staff requests Council approval of an Agreement between the Cities of Allen and Plano and the Texas Health Center for Diagnostics and Surgery for the use of the Allen and Plano Radio Communications System. This agreement is for a five year period beginning on October 1, 2010 and ending on September 30, 2015.



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

List of Supporting Documents: Resolution, Agreement	Other Departments, Boards, Commissions or Agencies

**A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Agreement by and between the City of Plano, Texas and the Texas Health Center for Diagnostics and Surgery for the use of the Radio Communications System owned by the Cities of Allen and Plano; authorizing its execution by the City Manager, or his authorized designee; and providing an effective date.**

**WHEREAS**, the City Council has before it the proposed Agreement by and between the Cities of Allen and Plano, Texas, and the Texas Health Center for Diagnostics and Surgery attached hereto as Exhibit "A", providing terms and conditions for the use of the Cities of Plano and Allen's radio communications system by the Texas Health Center for Diagnostics and Surgery; and

**WHEREAS**, the proposed Agreement serves a valid public purpose of interest to the City in that the use of the radio system allows emergency personnel to communicate thereby protecting the health, safety and welfare of residents; 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 of the Agreement should be approved, and that the City Manager or his authorized designee to execute the Agreement on behalf of the City of Plano;

**NOW, THEREFORE, BE IT RESOLVED 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, are hereby in all things approved.

**Section II.** The City Manager or 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 the first day of October 2010.

**DULY PASSED AND APPROVED** the 11<sup>th</sup> day of October, 2010.

\_\_\_\_\_  
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 TEXAS HEALTH CENTER FOR DIAGNOSTICS AND SURGERY FOR USE OF THE ALLEN AND PLANO RADIO COMMUNICATIONS SYSTEM**

The CITIES OF PLANO, TEXAS AND ALLEN, TEXAS both municipal corporations, (hereinafter referred to as "Cities"), and the TEXAS HEALTH CENTER FOR DIAGNOSTICS AND SURGERY a hospital for-profit corporation (hereinafter referred to as "THCDS"), agree as follows:

**WHEREAS**, The Cities of Allen, and Plano jointly own, operate, and maintain an 800 MHz trunked communications system (hereinafter referred to as "System") for the purpose of providing radio communications in support of its governmental operations; and

**WHEREAS**, THCDS wishes to use the Cities System to provide Communications with-in THCDS, Buildings and/or Facilities on a day-to-day basis and will have the ability to coordinate with Plano Dispatch in time of emergency.

**WHEREAS**, the Cities hereby consent to such use of the System by THCDS, and recognizes that such use benefits THCDS, and the public health and welfare.

**NOW, THEREFORE**, the Cities and THCDS, 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 1<sup>st</sup> day of October 2010, and ending on the 30<sup>th</sup> day of September 2015, 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 either the Cities or THCDS, as set forth hereafter, this agreement shall automatically renew yearly without further action until its automatic termination on the 30<sup>th</sup> day of September 2018.

### **II. OBLIGATIONS OF PARTIES**

**2.01** Plano shall provide THCDS with radio identification numbers (aliases). and/or Radio Talkgroups (channels) on the Plano system.

**2.02** THCDS shall use the System in accordance with this Agreement to provide interoperability of communications to Plano Dispatch in an emergency and THCDS and its users on the System only for conducting day-to-day operations specifically identified herein.

**2.03** When using the System, THCDS shall abide by all applicable federal, state, and local laws, rules, and regulations, including any rules and regulations of the Allen and Plano Radio System. When THCDS is using the System for interoperability with Talkgroups other than those provided for by this Agreement, THCDS shall also abide by the rules for such Talkgroups.

**2.04** THCDS must make written requests to the Plano System Manager for the activation of radios on the System, which must include the model and serial number of the radio, the name of the user, and the required Talkgroups.

**2.05** THCDS shall be responsible for furnishing/purchasing its own radios. Radio Manager must approve radio type and model.

**2.06** THCDS programming of additional units will be performed by the City of Plano Radio shop.

**2.07** THCDS may operate no more than two (2) mobile/portable units on their Talkgroup at any one time.

**2.08** THCDS shall operate on Allen and Plano system ONLY for purposes related to their provision of emergency and day-to-day services. Any other use by THCDS is prohibited.

### **III. FEES**

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

(1)	Lease radio airtime (per month, per radio)	\$ 8.56
(2)	Lease Talkgroup (per month, per Talkgroup)	\$ 62.97
(3)	Contract services (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 renewal period by an amount not to exceed seven percent (7%) of the previous year's fees. The Cities will provide 120 days notice to THCDS 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 THCDS on or before October 1<sup>st</sup> of each year. This amount is subject to change when THCDS adds or deletes the number of radios and/or Talkgroups in service. THCDS 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.

#### **IV. PAYMENT DUE**

THCDS agrees to pay the Cities the annual fees specified under Article III. Within thirty (30) days of the receipt of the invoice. Should THCDS add radios or Talkgroups to the service within a term, THCDS agrees to pay the additional fees(s) due within thirty (30) days of invoice.

#### **V. TERMINATION**

**5.01** Termination of this Agreement may occur by any of the following:

- (a) Either party may terminate this Agreement at any time by giving sixty (60) days advance written notice. THCDS shall pay for all fees incurred through the effective date of termination.
- (b) If the Cities permanently discontinue operation of the System, this Agreement shall terminate on the date of discontinuance without further notice, and no fees will be reimbursed by the Cities to THCDS.

#### **VI. INDEMNIFICATION**

**THE CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE CONTRACTOR IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE CITY DOES NOT WAIVE ANY**

**GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.**

**CONTRACTOR AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF CONTRACTOR'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CONTRACTOR'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. CONTRACTOR SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF CONTRACTOR FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND CONTRACTOR SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.**

#### **VII. ASSIGNMENT AND SUBLETTING**

THCDS agrees to retain control and to give full attention to the fulfillment of this Agreement; THCDS cannot assign or sublet this Agreement without the prior written consent of a majority of the Cities. Further, THCDS cannot sublet any part or feature of the work to anyone objectionable to the Cities. THCDS 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 THCDS from its full obligations to the Cities as provided by this Agreement.

#### **VIII. ENTIRE AGREEMENT**

This Agreement represents the entire and integrated agreement between the Cities and THCDS 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 THCDS and the Cities, except that execution of an amendment for assignment or subletting only requires the signature of a majority of the Cities.

#### **IX. NOTICES**

Unless notified otherwise in writing, all notices required to be given to either party shall be in writing and delivered in person or sent by certified mail to the respective parties at the following addresses:

THCDS Representative:

Randy J. Hostettler  
Facilities Director  
Texas Health Center for Diagnostics  
and Surgery  
6020 West Parker Road  
Plano, Texas 75093  
(972) 403-2823

Plano Representative:

Director of Public Safety Communications  
City of Plano  
1520 K Avenue  
Plano, TX 75074  
(972) 941-7931

Allen Representative:

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

#### **X. 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 \_\_\_\_\_, 2010, and the City of Allen on \_\_\_\_\_, 2010. THCDS has executed this Agreement on \_\_\_\_\_, 2010.

#### **XI. 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.

#### **XII. 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.

### **XIII. 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.

### **XIV. 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.

### **XV. 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 both parties.

**EXECUTED** on the dates indicated below:

#### **TEXAS HEALTH CENTER FOR DIAGNOSTICS AND SURGERY**

BY: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CITY OF PLANO, TEXAS**

BY: \_\_\_\_\_  
Thomas H. Muehlenbeck  
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

**ACKNOWLEDGMENTS**

STATE OF TEXAS           §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2010, by \_\_\_\_\_, \_\_\_\_\_, of **TEXAS HEALTH CENTER FOR DIAGNOSTICS AND SURGERY**, a hospital for-profit corporation, on behalf of such corporation.

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

STATE OF TEXAS           §  
  §  
COUNTY OF COLLIN       §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2010, by **THOMAS H. MUEHLENBECK**, 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 \_\_\_\_\_, 2010, by **PETER VARGAS**, City Manager, of the **CITY OF ALLEN, TEXAS**, a home-rule municipality, on behalf of such municipality.

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