

**Public Safety Communications Equipment Loan
Interlocal Cooperation Agreement
between the
City of Austin and Entity**

This Interlocal Cooperation Agreement ("Agreement") is between City of Austin ("City"), a Texas home-rule and municipal corporation, and [insert Entity name] ("_____"), a _____ or political subdivision of the State of Texas.

Whereas, the City has identified certain local, regional, state, and federal public safety agencies and departments that could utilize City-owned public safety electronic vehicular equipment and communications equipment for the benefit of and interoperability with the City's public safety departments, and;

Whereas, the Wireless Communication Services Division of Communications and Technology Management manages and maintains the City's inventory of public safety electronic vehicular equipment and communications equipment, and;

Whereas, from time to time, certain local, regional, state, and federal public safety agencies and departments desire to borrow, and City public safety departments (police, fire, EMS) as well as CTM desire to loan City-owned public safety electronic vehicular equipment and communications equipment (radios, repeaters, combiners, mobile data computers, modems, wireless access points, routers, light bars, sirens, and related items) on a temporary basis either in times of emergency need or for purposes of mutual or automatic aid and interoperability, and;

Whereas, the Austin City Council authorized the negotiation and execution of this Interlocal Agreement on [date], 2011;

Now, therefore, the parties hereto, in consideration of these promises and mutual obligations herein undertaken, do agree as follows:

Section 1. Definitions

1.1 1.1 "City" means the City of Austin, Texas.

1.2 "Entity" means the _____.

1.3 "Loaned Equipment" means City-owned public safety electronic vehicular equipment and communications equipment including but not limited to mobile and portable radios, base stations, consolettes, repeaters, combiners, multicouplers, antennas and antenna systems, mobile data computers, station alerting equipment, modems, mounting hardware, cameras and camera systems, lightbars, sirens, controllers, and related hardware, software, and accessories. Equipment pertaining to this agreement is specified in Exhibit A.

1.4 “Public Safety” means the provision of law enforcement, emergency medical services, fire suppression and prevention, and emergency management by local government entities.

1.5 “Parties” means City of Austin and Entity.

1.6 “WCSD” means the Wireless Communication Services Division of Communications and Technology Management.

1.7 “WCSM” means the City of Austin Wireless Communication Services Manager.

Section 2. Purpose

This Agreement is to permit the City, through WCSD, to provide Loaned Equipment to Entity on a temporary basis in time of emergency or for purposes of mutual aid and interoperability with City of Austin public safety departments.

Section 3. Entity Duties

3.1 Entity’s use of Loaned Equipment shall comply with the City’s operational, security, and maintenance requirements and any future amendments as described below. Failure of Entity to comply with these requirements shall be grounds for immediate return of Loaned Equipment to WCSD.

3.2 Operational Requirements. Entity shall operate its Loaned Equipment according to standard operating guidelines and standard operating procedures dictated by the relevant City of Austin public safety department(s) with whom Entity is cooperating for purposes of emergency response and/or mutual aid.

3.3 Security Requirements. Entity shall make all Loaned Equipment secure and safe from theft, loss, or misuse. Entity shall store all Loaned Equipment securely and make it accessible only by authorized users and authorized WCSD and WCSD-designated technical personnel.

3.3.1 Entity shall not program, or allow to be programmed, for interoperability or any other purpose, any Loaned Equipment without prior written approval of the WCSM.

3.4 Maintenance Requirements. Entity shall keep Loaned Equipment in good working order and maintained according to the City’s maintenance schedule. Entity shall make all Loaned Equipment available to WCSD and WCSD-designated technical personnel as needed during normal business hours for maintenance. Any repairs needed to Loaned Equipment will be coordinated by WCSD.

3.5 Loss, Theft, Damage. Entity is responsible for loss, theft, or damage to Loaned Equipment. In the event of loss or theft, Entity shall reimburse City for the replacement cost. In the event of damage, Entity shall pay the costs for repair unless those costs are

equal to or exceed the replacement cost, in which case Entity shall reimburse City the replacement cost of the damaged equipment.

Section 4. Entity Cost

4.1 Entity is responsible for any and all costs related to the operation of Loaned Equipment, including recurring charges for network access for wireless broadband data and utility costs for installed fixed equipment such as base radios, consolettes, and repeaters. City will not be responsible for these costs.

4.2 Entity shall reimburse City its costs for time and materials for delivery, installation, programming, maintenance, and repair of all Loaned Equipment. Charges will be invoiced to Entity at City's current labor rate (currently \$68.20 an hour with a \$34 trip charge; time-and-a-half for overtime), with materials charged at City's cost plus 15%.

4.3 City shall provide Entity with a monthly invoice no later than ten (10) days after the end of the month in which any services are performed. The invoice shall include the work order number, date(s) of service, parts required for service including the part number, description, quantity, and cost for each part; a subtotal of the cost of all parts; the number of hours required to complete the service; the cost for labor; and the total cost for the work order.

Section 5. City Duties

5.1 The WCSM will serve as the primary contact for Entity regarding Loaned Equipment.

5.2 The WCSM or his designee will coordinate with Entity or Entity's designee regarding installation, programming, maintenance, and repair of Loaned Equipment.

5.3 The WCSM shall provide Entity with periodic reports to update Entity about changes, if any, to operational, security, and maintenance requirements for Loaned Equipment. The WCSM shall also include Entity in meeting notices for the Greater Austin-Travis County Regional Radio System Advisory Team, which meets periodically to review and discuss GATRRS matters.

Section 6. Agreement Term

This Agreement shall become effective on the date executed by all parties and shall remain in effect until September 30, 2012. Following this initial term, the Agreement shall automatically renew on a year to year basis each October 1st (Renewal Date), for a total of four additional annual terms, unless terminated earlier in accordance with Section 8 of this Agreement.

Section 7. No Ownership of Loaned Equipment.

This Agreement or Entity's use of Loaned Equipment does not transfer or otherwise alter any ownership rights held by the City in Loaned Equipment.

Section 8. Termination

8.1 Either Party may terminate this Agreement upon thirty (30) calendar days prior written notice to the other Party.

8.2 Either Party shall have the right to terminate this Agreement during any term for the other Party's failure to follow the terms and conditions of this Agreement. The terminating Party must deliver written notice to the Party alleged to be in default via certified mail. The notice shall be effective within thirty (30) days, unless otherwise specified, after the date of the receipt of such notice. During this time period, the Party alleged to be in default may cure the event of default or provide evidence sufficient to prove to the other Party's reasonable satisfaction that such default does not exist or will be cured in a time satisfactory to the Party alleging the default.

Section 9. Current Revenues

This Agreement is authorized by the Interlocal Cooperation Act, which is Chapter 791 of the Texas Government Code. Each party's monetary obligations, if any, under this Agreement are payable only and solely from the current revenues appropriated and available for the performance of such obligations.

Section 10. Assignment

A party to this Agreement may not assign or transfer its interests under this Agreement.

Section 11. Entirety of the Agreement

This Agreement constitutes the entire Agreement and understanding between the parties and supersedes all previous agreements, understandings, discussions, or representations concerning its subject matter. This Agreement may not be amended in whole or in part except in a written amendment executed by both parties to this Agreement.

Section 12. Jurisdiction and Venue

The parties agree that this Agreement is governed by the laws of the State of Texas and that venue for a dispute arising from this Agreement shall be in Austin, Travis County, Texas.

Section 13. Severability

If a term or provision of this Agreement is determined to be void or unenforceable by a court of competent jurisdiction, the remainder of this Agreement remains effective to the extent permitted by law.

Section 14. Notices

Any notice, request, or other communication required or appropriate to be given under this Agreement shall be in writing and shall be considered delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, addressed to the person designated for receipt of notice, postage prepaid and Return Receipt Requested. Notices delivered by facsimile shall be considered three (3) business days after transmittal or when received by the addressee, whichever is earlier. Hand-delivered Notices are considered delivered upon receipt by the addressee which may be noted in a courier confirmation report. The Parties may make routine communications by first class mail, fax, or other commercially accepted means. Notices to the City and Entity shall be addressed as follows:

Entity

City of Austin

Charles Brotherton
(or successor)

Wireless Communication Services Manager

1006 Smith Road

Austin, Texas 78721

Phone: (512) 927-3209

Facsimile: (512) 927-3253

15. Limitation of Liability

In no event shall the parties to this Agreement be liable to the another party for any special, consequential, incidental or punitive damages on any claim arising out of or concerning this Agreement.

16. DISCLAIMER

CITY DISCLAIMS ANY WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ONLY TO THE EXTENT ALLOWED BY LAW. CITY DOES NOT WARRANT THAT ENTITY'S USE OF LOANED EQUIPMENT WILL RESULT IN UNINTERRUPTED OR ERROR-FREE INTEROPERABILITY AND SEAMLESS COMMUNICATIONS WITH CITY'S AND OTHER AGENCIES' PUBLIC SAFETY AGENCIES. DETERMINATION OF THE FUNCTIONALITY OF LOANED EQUIPMENT IS FOR ENTITY TO MAKE. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT.

17. Governmental Immunity

Nothing in this Agreement shall waive, modify, or amend any legal defense available at law or equity to either party; nor to create any legal rights or claims on behalf of any third party. Neither the City nor [insert other government entity name] waives, modifies, or alters the availability of the defense of governmental (sovereign) immunity under the laws of the State of Texas.

Section 18. Execution of this Agreement

Parties to this Agreement shall submit certified documentation of approval by its governing body authorized to execute this Agreement. This Agreement may be executed (by original or facsimile) by the parties in one or more counterparts, each of which shall be considered one and the same agreement.

Section 19. Force Majeure

Neither party shall be liable for any default or delay in the performance of its obligations under this Agreement if, while and to the extent such default or delay is caused by acts of God, unusual weather conditions, fire, riots, sabotage, acts of domestic or foreign terrorism, or any other cause beyond the reasonable control of such Party ("Force Majeure"). Force Majeure does not include economic or market conditions, which affect a party's cost, but not its ability to perform. The party invoking Force Majeure shall give prompt, timely and adequate notice to the other party, by facsimile transmission or telephone confirmed promptly thereafter in writing, and shall use due diligence to remedy the event of Force Majeure, as soon as reasonably possible. In the event of default or delay in Agreement performance due to any of the foregoing causes, then the time for completion of the services will be extended by a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

Section 20. Confidentiality

If Entity is permitted to access certain City's or licensor's confidential information (including software, inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which City or its licensors consider confidential) (Confidential Information) in connection with this Agreement, Entity acknowledges and agrees that the Confidential Information is the valuable property of the City and its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure City and its licensors. Entity (including its employees, subcontractors, agents, or representatives) agrees it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without prior written consent of City, or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of a court or other governmental authority with proper jurisdiction. In all cases, Entity agrees to promptly notify the City before disclosing Confidential Information to permit the City reasonable time to seek an appropriate protective order. Entity agrees to use protective measures no less stringent than Entity uses in its business to protect its own confidential and proprietary information. In all circumstances, Entity's

protective measures must ensure the continued confidentiality of the Confidential Information.

21. Texas Public Information Act

Entity acknowledges that City is required to comply with Chapter 552 of the Texas Government Code (Public Information Act or Act). Under the Public Information Act, this Agreement, and documents related to this Agreement, which are in City's possession, or to which City has access, are presumed to be public and the City may release these records to the public, unless an exception described in the Act applies to a document.

[The remainder of this page is intentionally left blank.]

ENTITY CERTIFICATE

The undersigned officer of Entity, a _____ hereby certifies that _____ is the _____ of _____, Texas and duly chosen, qualified, and authorized representative of _____, Texas.

And in such capacity have the authority to execute the Public Safety Communications Equipment Interlocal Agreement by virtue of official action of the Entity _____ of _____, Texas, duly adopted and recorded in the official minutes of the governing body of _____, Texas, in conformity with the laws of the State of Texas.

The undersigned officer further certifies that all acts, conditions, and things required to exist and to be done precedent to and to render this Public Safety Communications Equipment Interlocal Agreement valid have been properly done and performed and have happened in regular and due time, form, and manner, as required by law; that due provision has been made for the payment of sums due pursuant to this Interlocal Agreement.

The undersigned officer further certifies that the representations contained in this Certificate remain true and correct on the date of this Certificate.

CITY OF AUSTIN CERTIFICATE

The undersigned officer of the City of Austin, Texas, a Texas municipal corporation, hereby certifies that Marc A. Ott is the City Manager of Austin, Texas and duly chosen, qualified, and authorized representative of the City of Austin, Texas.

And in such capacity has the authority to execute the Public Safety Communications Equipment Interlocal Agreement by virtue of official action of the City Council of the City of Austin, Texas, duly adopted and recorded in the official minutes of the governing body of the City of Austin, Texas, in conformity with the laws of the State of Texas.

The undersigned officer further certifies that all acts, conditions, and things required to exist and to be done precedent to and to render this Public Safety Communications Equipment Interlocal Agreement valid have been properly done and performed and have happened in regular and due time, form, and manner, as required by law; that due provision has been made for the payment of sums due pursuant to this Interlocal Agreement.

The undersigned officer further certifies that the representations contained in this Certificate remain true and correct on the date of this Certificate.

NOTICES

Each individual signing this Agreement on behalf of a party warrants that he or she is legally authorized to do so and that the party is legally authorized to perform the obligations undertaken.

This Agreement states the entire agreement of the parties, and an amendment to it is not effective unless in writing and signed by all parties.

This Agreement is executed in duplicate originals.

CITY OF AUSTIN

By _____
Stephen Elkins
Chief Information Officer

Date _____

ENTITY

By _____

Date _____

Exhibits

Exhibit A. Equipment

Exhibit A
Equipment

(Include all City of Austin assets loaned to Entity by make, model, serial number, City of Austin inventory asset tag, and value.)

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