

**Interlocal Cooperation Agreement
Between the City of Austin
and
Williamson County for Management Services**

This Interlocal Cooperation Agreement is between City of Austin (City), a Texas home-rule and municipal corporation, and Williamson County, Texas (County), a political subdivision of the State of Texas.

Whereas, on November 17, 2005, the Austin City Council approved the acceptance of a U.S. Department of Justice, Office of Community Oriented Police Services grant in the amount of \$6,000,000, subject to a \$2,000,000 local grant match for the upgrade of the Austin/Travis County Regional Radio System operating software and purchase of radio system infrastructure for County;

Whereas, on November 17, 2005, the Austin City Council authorized the negotiation and execution of an Interlocal Agreement with the County to implement the County radio system upgrade and to require a \$1,850,000 local grant match from the County;

Whereas, in April, 2006, the City and County entered into the Interlocal Agreement to upgrade the County radio system to a new digital radio communication zone on the Austin/Travis County Regional Radio System and to require the County local match;

Whereas, in Fiscal Year 2007, the City provided the County with management, administrative, and oversight services for the County radio infrastructure upgrade project;

Whereas, in 2007, the parties executed a 12-month Interlocal Agreement with four extension options for the City to provide these management services for an annual amount payable to the City;

Whereas; the Williamson County Radio Communications System was successfully upgraded to a new P25 digital 800Mhz trunked public safety radio communications system in accordance with the 2005 US Department of Justice grant specifications and was placed into operation in January 2008;

Whereas; County continues to build upon and expand the original radio communications system with additional tower sites and other infrastructure creating a continued reliance on the City of Austin for management services support;

Whereas, the 2007 Interlocal Agreement expired on September 30, 2011, and the parties desire to enter into another agreement under similar terms and conditions;

Now therefore, the parties in consideration of promises and mutual obligations as stated herein, do agree as follow:

Section 1. Definitions

1.1 "Agreement" means this Interlocal Agreement between the parties for the provision of City management services to the County for the Williamson County Radio Communications System.

1.2 "Austin/Travis County Regional Radio System" or "RRS" means the multi-channelled regional 800 MHz trunked radio system serving Austin and Travis County, Texas, funded by the City of Austin, Travis County, Austin ISD, Capital Metropolitan Transportation Authority, the University of Texas at Austin, the Texas Legislative Council, and House of Representatives in accordance with the 800 MHz Trunked Voice Radio System Implementation Interlocal Agreement.

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

1.4 "County" means Williamson County, Texas.

1.5 "Fiscal Year" means the fiscal year adopted by the City. The Fiscal Year in effect as of the execution of this Agreement commences on October 1st of each year and ends the following September 30th.

1.6 "Management Services" means City of Austin management, administrative, and oversight services for the Williamson County Radio Communications System.

1.7 "Public Safety" means the provision of law enforcement, emergency medical service, fire suppression and prevention, and emergency management by local government entities.

1.8 "Williamson County Radio Communications System" or "WCRCS" is the digital radio infrastructure that was constructed under the COPS grant and the subject of this Agreement.

Section 2. Purpose

2.1 This Agreement sets forth the agreement between the parties for the provision of City Management Services to the County for the WCRCS infrastructure that consists of multiple radio system towers, antenna systems, tower shelters, consoles, microwave systems, repeaters, and related equipment.

2.2 Austin and Travis County have interlocal agreements in place that provides a cost sharing mechanism to fund the Austin/Travis County Regional Radio System, as does Williamson County for the Williamson County Radio Communications System (WCRCS). This Agreement does not modify or supersede the terms of these existing interlocal agreements. The ownership of the RRS, WCRCS and other Williamson County local government radio systems are not affected by this Agreement.

Section 3. Agreement Effective Date; Term

This Agreement is effective on the date this Agreement is signed by the last of the parties. The initial Agreement term shall be for a 12-month period. The initial 12-month term of this Agreement shall be deemed to have commenced on October 1, 2011. This Agreement shall automatically renew for up to a maximum of four additional 12-month terms on October 1st of each year, unless amended or terminated in accordance with other provisions of this Agreement.

Section 4. Contract Price

In consideration for services to be provided by the City for a 12-month period, the County's total amount payable to City for each Agreement term is \$135,000 (Total Contract Price).

Section 5. County Payment

On or before the expiration of an Agreement term, the City shall submit an invoice for the Total Contract Price for the management services to the System Manager of the WCRCS, 508 Holly St., Georgetown, Texas 78626. All invoices received by the County shall be paid in full within thirty (30) days of the County's receipt of the invoice. If payment is not timely made, interest shall accrue on the unpaid balance pursuant to Section 2251.025 of Chapter 2251 of the Texas Government Code. If the City does not submit a timely invoice, this does not negate or waive County's payment obligation or City right to payment.

Section 6. Designation of Management Services Manager

6.1 The City Management Services Manager will be designated by the City's Chief Information Officer. Correspondence may be sent to Attention: Management Services Manager: Williamson County Radio Communications System Project, Financial and Administrative Services Department, Communications and Technology Management, Wireless Communication Services Office, 1006 Smith Road, Austin, Texas 78721. The City's Project Manager shall represent the interests of the City in resolving any and all issues that may arise incidental to and during the performance of this Agreement.

6.2 The County's Project Manager is the System Manager of the WCRCS. This individual shall represent the County as the Project Manager for this Agreement and be the County's designated point of contact for the City Management Services Manager.

6.3 Should the identity of the City Management Services Manager or County Project Manager change, each party will identify a qualified and competent replacement and promptly notify the other party of the change.

Section 7. City Management Service Manager Duties

7.1 The City Management Services Manager is responsible for the day to day supervision of the City personnel providing Management Services for the WCRCS.

7.2 The City's Management Services Manager shall meet with the County Project Manager as may be reasonably required to discuss any service issues or provide timely responses to issues related to Management Services as raised by the County Project Manager.

7.3 The City Management Services Manager shall provide the County Project Manager with a quarterly status report that summarizes the Management Services provided by the City in the prior quarter. The said report shall be due within ten days from the end of each quarter.

7.4 The City Management Services Manager shall be responsible for the preparation and submission of the City invoice to County and provide proper accounting to City Financial Services Department of County payment received.

7.5 The City Management Services Manager shall provide the County Project Manager with a list and job function description of the City personnel providing Management Services. The number and types of employees provided for Management Services is described in **Exhibit A-City of Austin Personnel**, which is attached to this Agreement and incorporated herein. City personnel providing Management Services shall exclusively remain the employees of the City and subject to all of the employment rules and personnel policies of the City. The City Management Services Manager shall promptly notify the County Project Manager of any recommended changes in staff levels. Changes in City staff levels are subject to the written agreement of the parties.

Section 8. County Duties

8.1 The County agrees to permit City Management personnel access to the Project infrastructure during County business hours.

8.2 The County will provide the City with WCRCS documentation as required by the City to provide Management Services.

Section 9. Confidential Proprietary Information

All material submitted to the City becomes public property and is subject to the Texas Public Information Act upon receipt. If County does not desire proprietary information to be disclosed, each page must be identified and marked proprietary at time of submittal. The City will, to the extent allowed by law, endeavor to protect such information from disclosure. The final decision as to what information must be disclosed, however, lies with the Texas Attorney General. If the County fails to identify proprietary information, it agrees that by submission of the information that the material shall be deemed nonproprietary and available upon public request.

City will not disclose any material or information identified as County proprietary and confidential to third parties without County's prior written permission, unless City makes such material or information public or disclosure as required by law. If City is required by law to disclose such material or information, City will notify County prior to such disclosure. In order to provide the Management Services to the County, City may require access to certain items of County's and/or its licensors' confidential information (including inventions, employee

information, trade secrets, confidential know-how, confidential business information, and other information which Customer or its licensors consider confidential) (collectively, "Confidential Information"). The City may use the Confidential Information only in furtherance of the performance of this Agreement or any other agreement between the parties.

The City acknowledges and agrees that the Confidential Information is the valuable property of the other party and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information may injure the other party and/or its licensors. The City (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the other party 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 any court or other governmental authority with proper jurisdiction; provided the City promptly notifies the County before disclosing such information so as to permit the other party reasonable time to seek an appropriate protective order. The City agrees to use protective measures no less stringent than what the party uses within its own business to protect its own most valuable information to ensure the continued confidentiality of the Confidential Information.

Section 10. City Right to Audit

County agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine or reproduce, any and all documents of County related to City's performance under this Agreement.

County shall retain all such documents for a period of three (3) years after final payment on this Agreement or until all audit and litigation matters that City has brought to the attention of the County are resolved, whichever is longer.

Section 11. County Right to Audit

City agrees that the representatives of the office of the County Auditor or other authorized representatives of County shall have access to, and the right to audit, examine, or reproduce, any and all records of the City's performance under this Agreement, provided that the County's right to audit such books and records are limited to the verification of invoices for Management Services provided, upon advance notice and during normal business hours. In no event will County have right to inspect records or facilities of City or its subcontractors, if any, which are deemed confidential or proprietary. Audits shall be at the County's expense.

Section 12. Independent Contractor

This Agreement shall not be construed as creating an employer/employee relationship, a partnership, joint enterprise, or a joint venture between the parties. City and County are independent contractors. Both parties hereto agree and understand that this Agreement does not grant unto the other party any rights or privileges established for employees of either the City or the County.

Section 13. Default

A party to this Agreement shall be in default ("Event of Default") under this Agreement if the party (a) fails to fully, timely and faithfully perform any of its material obligations under this Agreement; or (b) fails to provide adequate assurance of performance under Section 14.

Section 14. Right to Assurance

Whenever one party to this Agreement in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within ten working days after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Agreement.

Section 15. Termination

15.1 If either party commits an Event of Default, the non-defaulting party shall deliver written notice of such Event of Default to the defaulting party. Such notice must specify the nature of the Event of Default and inform the defaulting party that unless the Event of Default is cured within sixty (60) days of receipt of the notice, additional steps may be taken to terminate this Agreement. If the defaulting party begins a good faith attempt to cure the Event of Default within sixty (60) days, then and in that instance, the sixty (60) day period may be extended by the non-defaulting party, so long as the defaulting party continues to prosecute a cure diligently to completion and continues to make a good faith attempt to cure the Event of Default. If, in the opinion of the non-defaulting party, the defaulting party does not cure the breach within sixty (60) days or otherwise fails to make any diligent attempt to correct the Event of Default, the defaulting party shall be deemed to be in default and the non-defaulting party may, in addition to seeking the remedies mentioned hereinafter, terminate this Agreement. In addition to any other remedy available under law or in equity, the non-defaulting party shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the non-defaulting party as a result of the defaulting party's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. The parties' rights and remedies under the Agreement are cumulative and are not exclusive of any other right or remedy provided by law.

15.2 In the event that either party should choose not to renew this Agreement for an additional term of 12-months, such party shall deliver written notice to the other party notifying the other party of its intent to not renew this Agreement for an addition term. The aforesaid notification must be delivered by the terminating party at least ninety (90) calendar days prior to the beginning of the next additional term.

Section 16. Dispute Resolution

16.1 If a dispute arises out of or relates to this Agreement, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within

fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute, and with the authority to agree to resolve it, subject as may be required by law and /or policy of that party to approval by the governing body(ies) of the parties, to attend any and each such meeting for negotiation of the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below.

16.2 Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the County agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the said agreement prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or an agreement interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the County will share the cost of mediation equally; and will bear their own costs of participation, such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation. Such mediation will be non-binding.

Section 17. Survival of Obligations

All provisions of this Agreement that impose continuing obligations on the parties, including but not limited to payment, agreement purpose, and confidentiality shall survive the expiration or termination of this Agreement.

Section 18. Texas Public Information Act

The Parties agree that this Agreement is subject to the Texas Public Information Act and the Act shall control to the extent of any conflict between the terms of this Agreement and the Act.

Section 19. Current Revenues

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

Section 20. Assignment

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

Section 21. 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 22. Performance

The obligations arising under this Agreement shall be performed in Williamson County and in Travis County, Texas.

Section 23. 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 24. Severability

If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Agreement will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligation of the parties shall be construed and enforced in accordance therewith. The parties acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is the desire and intention of each that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, give effect to the intent of this Agreement and be deemed to be validated and enforceable.

Section 25. Notices

Any notice, request, or other communication required or appropriate to be given under this Agreement shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U. S. Postal Service Certified or Registered Mail Return Receipt Requested. Notices delivered by any other means (fax, e-mail, courier) shall be deemed delivered upon receipt of a successful fax, e-mail, or courier confirmation report by the addressee. Routine communication may be made by first class mail, facsimile, or other commercially accepted means. Notices to the City and County shall be addressed as follows:

Williamson County

Honorable Dan A. Gattis (or successor)
Williamson County Judge
301 S.E. Inner Loop, Suite # 109
Georgetown, Texas 78626
Phone: (512) 943-1550
Facsimile: (512) 943-1662

City of Austin

Stephen Elkins (or successor)
Chief Information Officer
City of Austin,
Communications and Technology Management
625 E. 10th Street, Suite 900
Austin, Texas 78701
Phone: (512) 974-2344
Facsimile: (512) 974-2091

With copies to:

Catherine Roberts (or successor)
Wireless Communications Manager
Williamson County
508 Holly Street
Georgetown, TX 78626
Phone: (512) 943-3575
Facsimile: (512) 943-1366

With copies to:

Chuck Brotherton (or successor)
Wireless Communication Services Manager
City of Austin Wireless Communication
Services Division
1006 Smith Road, Austin, Texas 78721
Phone: (512) 927-3200
Facsimile: (512) 927-3222

Section 26. Governmental Immunity

Nothing in this Agreement shall be deemed to waive, modify, or amend any legal defense available at law or equity to either of the parties nor to create any legal rights or claims on behalf of any third party. Neither the City nor County waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas.

Section 27. Execution of this Agreement

Parties to this Agreement shall submit certified documentation of approval by the 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 28. 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.

CERTIFICATE

The undersigned officers of Williamson County, a political subdivision of the State of Texas, and the City of Austin, Texas, a Texas municipal corporation, hereby certify that The Honorable Dan A. Gattis is the Williamson County Judge and a duly chosen, qualified, and authorized representative of Williamson County and that City Manager Marc Ott's designee Stephen Elkins, Chief Information Officer, Communications and Technology Management, is a duly chosen, qualified, and authorized representative of the City of Austin, Texas.

And in such capacity have the authority to execute the Interlocal Cooperation Agreement between the City of Austin and Williamson County for Maintenance Services by virtue of official action of the Williamson County Commissioner's Court and the City Council of the City of Austin, Texas. This executed Agreement is duly adopted and recorded in the official minutes of the governing bodies of the Williamson County and the City of Austin, Texas, in conformity with the laws of the State of Texas.

The undersigned officers further certify that all acts, conditions, and things required to exist and to be done precedent to and to render this Interlocal Agreement 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 officers further certify 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 _____

WILLIAMSON COUNTY

By _____
Dan A. Gattis
County Judge

Date _____

Exhibit A: City of Austin Personnel

Exhibit A - City of Austin Personnel

The following titled job positions may contribute to “Management Services:”

- (1) Wireless Communication Services Manager (City Management Services Manager) – overall program management.
- (1) Wireless Communication Services Assistant Manager – overall program management.
- (1) Technical Services Manager/Shop Operations – technical management of in-shop operations.
- (1) Technical Services Manager/Field Operations – technical management of field operations.
- (1) Wireless Master Site Engineer – radio system master site management, system reports.
- (4) Radio Technician V – radio system technical services.
- (2) Stores Specialist Senior – customer service, inventory and asset tracking.
- (2) Service Writer – customer service, work order generation and tracking.
- (2) System Support Technician – customer service, system support services and alias database maintenance, system reports.
- (2) Business Systems Analyst - customer service, administrative and financial services support.
- (1) Electronics Technician III – master site support services, system voice recording maintenance.