STATE OF TEXAS ) INTERLOCAL AGREEMENT FOR 
COUNTY OF EL PASO ) CITY / DISTRICT PROJECT FOR 
) ENHANCED LAW ENFORCEMENT 
) COMMUNICATION INTERCONNECTIVITY 

This Agreement is entered into on the _____ day of ___________, 2013, by and between the City of El Paso, Texas a Texas Municipal Corporation, hereinafter called the “City” and the El Paso County Emergency Services District #1, hereinafter called the “District” by and through their duly authorized officials, pursuant to the Interlocal Cooperation Act.

WHEREAS, the District and the City are local governments as defined in Texas Government Code, Section 791.003(4), have the authority to enter into this agreement, and have each entered into this agreement by the action of its governing body in the appropriate manner prescribed by law; and

WHEREAS, the District and the City specify that each party paying for the performance of said functions of government shall make those payments from current revenues available to the paying party; and

WHEREAS, the federal government has been encouraging the development of an interoperable radio communications system for the entire country, and because of its location, El Paso County has been listed as a strategic site for homeland security because of its remote border location and large population base; and

WHEREAS, the federal government provided grant funds to assist the City to establish a master site for a community wide, public safety radio system based upon the P25 platform beginning in 2008, and millions of dollars in public money have been invested in a master radio and microwave equipment built on a P25 platform 800MHZ Digital System (“P25 System”); and

WHEREAS, In order to obtain the maximum radio interoperability and the reliability of the P25 System between the District, the City, the County and other law enforcement entities in the County, the District desires to connect to the P25 System; and

WHEREAS, the City’s Information Technology Department provides full maintenance support service for the P25 System and the City has the capacity to provide the full maintenance support service of the District’s hardware; and

WHEREAS, the City and the District believe that the cooperative agreement to share the law enforcement microwave resources located throughout the County will provide a mutual benefit to both entities, law enforcement, the public and the taxpayers and is adequate consideration to support this Interlocal Agreement; and
NOW THEREFORE, in consideration of the mutual contributions described herein and the mutual covenants and undertakings of the parties, the receipt and sufficiency is hereby acknowledged, the City and the District agree as follows:

I. OBLIGATIONS OF BOTH THE CITY AND THE DISTRICT

A. Shared P25 System. The City and District agree District will connect to the City’s P25 System to participate in the community wide, public safety radio system based upon the P25 System.

B. Maintenance and Replacement of Equipment and Software. The City and District shall be responsible for maintaining their respective equipment and software. As technology changes, the City and District will continue to confer regarding the optimum equipment and software purchases required in order to maintain the most effective public safety communication system. Any costs associated to update their respective software and equipment will be paid by each entity.

II. OBLIGATIONS OF THE DISTRICT

A. P25 System Usage Charges. The District shall be responsible for paying the City for the use of the P25 System based on the number of radios used by the District as set forth in Exhibit “A”. The District will pay the 800 MHZ Radio Cost annually.

III. OTHER COVENANTS AND AGREEMENTS

A. Transfer of Ownership Interest. This Interlocal Agreement represents an agreement for the District to connect to the City’s P25 System backbone. Neither party shall acquire an interest in the real or personal property of the other.

B. Retention of Ownership. Upon termination of this Agreement, in accordance with section V, each party will retain ownership of its respective properties, equipment and related supplies, whether or not the property was previously shared.

C. Responsibility for Third Party Contracts. If either party enters into a license, lease, lease/purchase agreement for services, equipment or software, the signing party shall remain responsible for all payments and interaction with the vendor.

D. Insurance. Each entity may insure its own property, and neither party shall be liable for loss or damage to the real or personal property of the other.

E. No Conveyance of Real or Personal Property Interests. Both parties agree this Interlocal Agreement is not intended to form an interest in real property and neither the City nor the
District will acquire rights of tenancy in the other’s facility for the initial term of this Agreement or during any renewal, extensions or modifications of the term of the Agreement. It shall not be necessary for either the City or the District to follow the law of landlord tenant, and the neither shall be required to resort to eminent domain proceedings to divest the other of any interest in real property. The only notice to which either entity is entitled to vacate the facility is the six month notice required in Section V.

IV. INITIAL TERM AND RENEWAL

A. This Agreement shall be in effect for ten years form the effective date and shall thereafter automatically renew for successive one (1) year periods, unless terminated by either party in accordance with the same provisions set in this Agreement.

V. TERMINATION

A. Notices. Either party may terminate this Agreement upon sixty (60) days written notice of its intention to terminate the sharing arrangement described herein to the other entity by certified mail, return receipt requested at the following addresses:

City of El Paso
Office of the City Manager
300 N. Campbell
El Paso, TX 79901

Emergency Services District #1
Attn:_____________________
14151 Nunda Dr.
Horizon City, TX 79928

Changes may be made to the above addresses and addressees through timely written notice provided to the other party.

VII. GOVERNMENTAL FUNCTION AND IMMUNITY

A. Governmental Function. The City and the District expressly agree that, in all things relating to this Interlocal Agreement, the parties enter into this Interlocal Agreement for the purpose of performing governmental functions and are performing governmental functions, as defined by the Texas Tort Claims Act. The parties further expressly agree that every act or omission of each party, which in any way pertains to or arises out of this Agreement, falls within the definition of governmental function.

B. Sovereign Immunity. The City and the District reserve, and do not waive, their respective rights of sovereign immunity and similar rights and do not waive their rights under the Texas Tort Claims Act. The parties expressly agree that neither party waives, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it against

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District #2/City Interlocal-SMC
claims arising in the exercise of its powers or functions or pursuant to the Texas Tort Claims Act or other applicable statutes, laws, rules, or regulations.

**VIII. RISK ALLOCATION – LIMITATION OF LIABILITY**

A. **Liability.** This Agreement is not intended to alter or reallocate any defense or immunity authorized or available to either party by law.

B. **Exclusion of Incidental and Consequential Damages.** Independent of, separable from, and to be enforced independently of any other enforceable or unenforceable provision of this Agreement, neither party shall be liable to the other party (nor to any person claiming rights derived from such party's rights) for incidental, consequential, special, punitive, or exemplary damages of any kind - including lost profits, loss of business, and further including, mental anguish, emotional distress and attorneys fees- as a result of breach of any term of this Agreement, regardless of whether the party was advised, had other reason to know, or in fact knew of the possibility thereof, except as expressly provided herein. Neither party hereto shall be liable to the other party or any third party by reason of any inaccuracy, incompleteness, or obsolescence of any information provided or maintained by the other party regardless of whether the party receiving said information from the other party was advised, had other reason to know, or in fact knew thereof.

C. **Intentional Risk Allocation.** The City and the District each acknowledge that the provisions of this Agreement were negotiated to reflect an informed, voluntary allocation between them of all risks (both known and unknown) associated with the transactions associated with this Agreement. The disclaimers and limitations in this Agreement are intended to limit the circumstances of liability. The remedy limitations, and the limitations of liability, are separately intended to limit the forms of relief available to the parties.

D. **No Indemnification.** The City and the District expressly agree that, except as provided herein, neither Party shall have the right to seek indemnification or contribution from the other Party for any losses, costs, expenses, or damages directly or indirectly arising, in whole or part, from this Agreement.

E. **Fines and Penalties.** Each party shall be solely responsible for fiscal penalties, fines or any other sanctions occasioned as a result of a finding that violations of any applicable local, state or federal regulations, codes or laws occurred as a result of that parties actions, except as may be specifically provided by law.

**IX. GENERAL PROVISIONS**

A. **Compliance with Laws.** In the performance of their obligations under this Agreement, the parties shall comply with all applicable federal, state or local laws, ordinances and regulations.
B. **Governing Law.** For purposes of determining the law governing the same, this Agreement is entered into in the City and County of El Paso, State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in El Paso County, Texas.

C. **Privileges and Immunities.** All privileges and immunities from liability, exemptions from laws, ordinances and rules, pension, relief, disability, worker's compensation, and other benefits which apply to the activities of officers, agents, or employees of the City and the District when performing a function shall apply to such officers, agents, or employees to the same extent while engaged in the performance of any of their functions and duties under the terms and provisions of this Agreement.

E. **No Waiver.** The failure of either party at any time to require performance by the other party of any provision of this agreement shall in no way affect the right of such party to require performance of that provision. Any waiver by either party of any breach of any provision of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver or the provision itself, or a waiver of any right under this Agreement.

F. **Amendment; Assignability.** This Agreement and the obligations hereunder shall not be amended, assigned, transferred or encumbered, in any manner without the written consent of the other party.

G. **Severability.** All agreements and covenants contained in this Agreement are severable. Should any term or provision of this Agreement be declared illegal, invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement will not be affected; and in lieu of each provision which to be illegal, invalid or unenforceable, there will be added as part of this Agreement, a provision which preserves the intention of the unenforceable provision, but which complies with the law.

H. **Section Headings.** The paragraph or section headings contained in this Agreement are for reference purposes only and shall not in any way control the meaning or interpretation of this Agreement.

I. This document shall be construed as equally binding on the parties and the fact that one party or the other drafted the document shall not be interpreted as requiring a strict construction of the provisions of the instrument against either party and will be interpreted in accordance with its terms without favor to any party.

J. **Complete Agreement.** This Agreement supersedes any and all other agreements, wither oral or in writing, between the parties hereto with respect to the subject matter hereof, and this Agreement constitutes the entire agreement between the parties relating to the terms and conditions of the Agreement. The parties expressly acknowledge and warrant that there exists no other written or oral understanding, agreements or assurances with respect to such matters except as are set forth herein.

IN WITNESS WHEREOF, this Agreement has been executed by the parties named
herein above as of the date, month and year first written above.

ATTEST:

______________________________
Richarda Duffy Momsen
City Clerk

______________________________
Hon. John F. Cook
Mayor

APPROVED AS TO FORM:        APPROVED AS TO CONTENT:

______________________________
Sol M. Cortez
Assistant City Attorney

______________________________
Enrique Martinez, Interim Director
Department of Information Technology Services

CITY OF EL PASO

EL PASO COUNTY
EMERGENCY SERVICES DISTRICT #1

ATTEST:

______________________________
Delia Briones
County Clerk

______________________________
Marvin McLellan
President

APPROVED AS TO FORM:        APPROVED AS TO CONTENT:

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