

**CONSOLIDATED PUBLIC SAFETY COMMUNICATIONS  
AND DISPATCH OPERATIONS AGREEMENT**

**AMONG**

**THE TOWN OF ADDISON, TEXAS,**

**THE CITY OF CARROLLTON, TEXAS,**

**THE CITY OF COPPELL, TEXAS,**

**THE CITY OF FARMERS BRANCH, TEXAS, AND**

**NORTH TEXAS EMERGENCY COMMUNICATIONS CENTER, INC.**

STATE OF TEXAS           §  
                                     §  
COUNTIES OF DALLAS   §  
AND DENTON               §

**CONSOLIDATED PUBLIC SAFETY COMMUNICATIONS  
AND DISPATCH OPERATIONS AGREEMENT**

**THIS CONSOLIDATED PUBLIC SAFETY COMMUNICATIONS AND DISPATCH OPERATIONS AGREEMENT** (this “Agreement” or “Operations Agreement”) is dated and entered into as of the Effective Date by and among the **TOWN OF ADDISON, TEXAS**, (“Addison”), the **CITY OF CARROLLTON, TEXAS** (“Carrollton”), the **CITY OF COPPELL, TEXAS** (“Coppell”), and the **CITY OF FARMERS BRANCH, TEXAS**, (“Farmers Branch”), all of whom are Texas home rule municipalities operating under the authority of their respective governing bodies (Addison, Carrollton, Coppell, and Farmers Branch, are hereinafter sometimes referred to collectively as “the Cities”), and the **NORTH TEXAS EMERGENCY COMMUNICATIONS CENTER, INC.** (“NTECC”), a Texas non-profit local government corporation created pursuant to Subchapter D of Chapter 431, Texas Transportation Code, as amended and Chapter 394, Texas Local Government, as amended. The Cities and NTECC are hereafter collectively referred to as the “Parties” or individually as a “Party”.

**RECITALS**

**WHEREAS**, the Cities are political subdivisions within the State of Texas engaged in the provision of governmental services for the benefit of their citizens; and

**WHEREAS**, the Cities jointly commissioned a study regarding the method of public safety dispatching and communications conducted by each of the Cities, and the options, advantages, and disadvantages to consolidating the public safety dispatch and communications operations of the Cities into a single consolidated public safety communications center (the “System Study”); and

**WHEREAS**, the findings of the System Study indicated that the operation by the Cities of a consolidated public safety communications center (“the Communications Center”) will result in significant efficiencies and savings in both human and financial resources and allow for a higher level of coordination of public safety services within the Cities that will enhance the safety of residents and other inhabitants of each of the Cities; and

**WHEREAS**, the System Study further recommended that the Communications Center should be managed and operated by a separate entity created by the Cities pursuant to applicable state law; and

**WHEREAS**, having received and considered the System Study and the recommendations of their respective city administrations, pursuant to the LGC Agreement (as defined in Section 1.01, below; other capitalized terms used in these Recitals may be defined in

Section 1.01), the Cities created NTECC for the purpose of assisting and acting on behalf of the Cities in the performance of their governmental functions and services, including, but not limited to, the construction, development, management, and operation of the Communications Center and other joint projects as authorized by the Cities from time to time subject to the NTECC Governing Documents, as may be amended from time to time; and

**WHEREAS**, the LGC Agreement further provides that the Cities will negotiate and sign one or more agreements with NTECC pursuant to which the Cities will approve specific projects or services to be operated and/or provided by NTECC, and pursuant to which each City will provide the necessary capital contribution and/or other financing for NTECC's operations; and

**WHEREAS**, the Cities entered into the Radio System Agreement effective June 26, 2013, setting forth the Cities' agreement regarding the purchase, installation, maintenance, operation, management, and use of the Radio System to be used jointly by the Cities for providing public safety dispatch and communications for the Cities' respective Fire/EMS and Police departments; and

**WHEREAS**, the Cities have determined that in addition to managing and operating the Communications Center, it would be in the best interest of the Cities for NTECC to assume ownership, maintenance, and operation of certain aspects of the Radio System; and

**WHEREAS**, in accordance with the LGC Agreement, the Parties desire to set forth the terms and conditions pursuant to which NTECC shall own, manage, operate, and maintain the Facilities for the benefit of the Cities, provide Public Safety Communications Services, and provide Radio System Services to the Cities, and the Cities' obligations to pay for same; and

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

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained, the sufficiency of which are hereby acknowledged, and upon and subject to the terms and conditions hereinafter set forth, the Parties agree as follows:

## **ARTICLE I DEFINITIONS**

**1.01. Definitions and Interpretations.** In addition to the definitions stated in the preamble and recitals hereof, the following words and phrases as used in this Agreement, unless the context clearly shows otherwise, shall have the following meanings:

"Additional Entity" or "Additional Entities" means any city or cities in addition to the Cities, or any county or other political subdivision with which NTECC may enter into a contract pursuant to this Agreement, following consent by the Cities to the addition of each such

Additional Entity, for the provision of Public Safety Communications Services through the Communications Center.

“Agreement” or “Operations Agreement” means this Agreement and any similar agreements executed between NTECC and the Cities with respect to the ownership, operation, management, and use of the Communication Center.

“Annual Expense Budget” means the total amount of money required during each Fiscal Year (or portion of a Fiscal Year as described in Section 4.02(a), below) for NTECC to pay (1) all Operation and Maintenance Expenses, (2) the principal of, redemption premium, if any, and interest on any debt issued by NTECC in accordance with Section 4.03 of the Bylaws, and (3) any amounts required to be deposited in any special or reserve funds, including any debt service reserve fund or repair and replacement fund.

“Board” means NTECC’s Board of Directors.

“Bond Resolution” means any resolution of the Board authorizing the issuance of Bonds and providing for their security and payment, as such resolution(s) may be (i) amended from time to time as therein permitted and (ii) the substance and form of which is approved by the Cities.

“Bylaws” means the Bylaws of NTECC and all amendments thereto as approved by the Parties.

“Center Lease” means that certain *Lease Agreement* between NTECC and CyrusOne, LLC, dated and effective May 2, 2014, for the lease by NTECC of the Leased Premises.

“Certificate” means the Certificate of Formation of NTECC on file with the Texas Secretary of State, and shall include all amendments thereto and restatements thereof.

“City’s Workflow” means the total of the Workflow Measures generated by utilization of NTECC’s services by a City’s employees or by a person located within the City’s incorporated limits or such other area where the City has primary responsibility for law enforcement, fire fighting, or emergency medical service, or other emergency or non-emergency response under an interlocal cooperation agreement with another governmental entity. For purpose of determining to which City a Workflow Measure shall be allocated in determining each City’s Workflow, in the event a City’s employees are dispatched on a mutual aid call:

(a) If employees of one or more of the Cities are dispatched to provide mutual aid assistance requested by one of the Cities, the call or incident shall be allocated to the City requesting the mutual aid assistance; and

(b) If employees of one or more of the Cities are dispatched to provide mutual aid assistance requested by an entity that is not a party to this Agreement, the call or incident shall be allocated to each of the Cities responding to the request for mutual aid

assistance, notwithstanding such allocation may result in a multiple counting of the incident.

“Communications Center” means that certain public safety communications and dispatch center operated by NTECC on behalf of the Cities which is initially located at the Leased Premises.

“Credit Agreement” means any credit agreement, as defined in Chapter 1371, Texas Government Code, which NTECC enters into relating to its obligations with respect to the Bonds, the substance and form of which is approved by the Cities; provided, however, for purposes of this Agreement, “Credit Agreement” shall not include Interest Rate Management Agreements as defined in Chapter 1371, Texas Government Code.

“Denco” means Denco Area 9-1-1 District, a political subdivision of the State of Texas created pursuant to Subchapter D of Chapter 772 of the Texas Health & Safety Code engaged in providing the enhanced 9-1-1 equipment network for emergency services for the benefit of the citizens of Denton County and all of the City of Carrollton, whether located within Dallas County or Denton County.

“Denco PSAP Agreement” means that certain *Interlocal Agreement to Serve as a Denco Area 9-1-1 District Public Safety Answering Point* by and between NTECC and Denco effective November 6, 2014, and all subsequently approved amendments.

“Effective Date” means the later of (i) the date signed by authorized representatives of the Parties and (ii) January 1, 2015.

“Facilities” means, collectively, the Communications Center, the Radio System, and all real and/or personal property, acquired or constructed, owned and/or leased by NTECC and used or operated by NTECC, or others acting on behalf of NTECC, in providing Public Safety Communications Services or Radio System Services to the Cities or other Persons.

“Fiscal Year” means the twelve (12) month period beginning each October 1 and ending the next subsequent September 30.

“Force Majeure” means acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, terrorist attacks, orders of any kind of the Government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, or any other causes not reasonably within the control of the party claiming such inability.

“Leased Premises” means approximately 11,800 gross square feet in the northeast corner of the building located at 1649 West Frankford Road, Carrollton, Denton County, Texas, owned by CyrusOne, LLC, and leased by NTECC as tenant pursuant to the Center Lease.

“LGC Agreement” means that certain *Interlocal Cooperation Agreement Regarding Establishment of the Metrocrest Quad Cities Local Government Corporation* entered by and among the Cities effective January 27, 2014, setting forth the agreement of the Cities to establish NTECC and to negotiate in good faith and seek to enter into an Operations Agreement among themselves and NTECC setting forth the agreement among the Cities and NTECC regarding the financing, development, operation, and management of the Facilities, including but not limited to, the amounts to be paid by the Cities to NTECC for operation and management of the Facilities and methodologies for determining the allocation of said costs.

“NTECC Governing Documents” means, collectively, the Certificate and the Bylaws.

“Operation and Maintenance Expense” means any cost of operation and maintenance of the Facilities including, but not limited to:

- (a) repairs and replacements to the extent funds are not held in a special fund;
- (b) the cost of utilities, supervision, engineering, accounting, auditing, regulatory costs, legal services, insurance premiums, and any other supplies, services, administrative costs, and equipment necessary for proper operation and maintenance of the Facilities; and
- (c) costs relating to NTECC employees including, but not limited to, wages, employer contribution to Social Security, group medical, dental, life, and/or disability insurance, workers compensation coverage, retirement benefits, and other costs related to employee pay and benefits paid by NTECC as an employer;
- (d) payments made for the use or operation of any property, payments of fines, and payments made by NTECC in satisfaction of judgments or other liabilities resulting from claims not covered by NTECC's insurance or not paid by one particular City arising in connection with the operation, maintenance, repair, and/or replacement of the Facilities; and
- (e) costs relating to the operation, repair, maintenance, and replacement of the Radio System to the extent such duties and obligations are assumed by NTECC pursuant to this Agreement or as may be subsequently agreed;
- (f) costs relating to performance of NTECC's obligations under the Center Lease including the payment of rent, utilities, tenant improvements, and other costs set forth in the Center Lease;
- (g) such other costs identified as an Operation and Maintenance Expense in the Annual Budget.

Depreciation shall not be considered an item of Operation and Maintenance Expense.

“Person” means an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership association, or any other legal entity that is not one of the Cities or NTECC, including, without limitation, any Additional Entity.

“Public Safety Communications Services” means communication and dispatching services between the public and the Cities’ police, fire, emergency medical services, and other departments as determined by the Parties in the furtherance of improved public safety and emergency response, including but not limited to, the following more specifically described services:

- (a) Receiving 9-1-1 Calls and routine calls for law enforcement, fire, emergency medical services, and other calls from the public relating to incidents in which employees of one or more of the Cities may be dispatched;
- (b) Directing a response to said calls by either dispatching the appropriate emergency or non-emergency response resources or forwarding the call to the appropriate agency for response;
- (c) Providing on-going communication support to personnel in the field;
- (d) Updating, maintaining and managing technology systems, support files and resource materials in NTECC’s control to accomplish the above; and
- (e) Establishing and updating from time to time standard protocols for communications to and from personnel in the field.

“Radio System” means a wide area, multi-site digital trunked radio system compliant with P-25 interoperability standards to be used jointly by the Cities and NTECC primarily for providing public safety dispatch and communications for the Cities’ respective Fire/EMS and Police departments and such other of the Cities’ departments as may be agreed from time to time by the Parties, purchased from and installed by Harris Corporation pursuant to the Radio System Purchase Agreement, and any other public safety communications system used by NTECC to conduct Public Safety Communications Services for the Cities.

“Radio System Agreement” means that certain *Metrocrest Quad Cities Public Safety Radio System Interlocal Agreement* effective June 26, 2013 for the purpose of establishing the Cities’ agreement regarding the purchase, installation, maintenance, operation, management, and use of the Radio System.

“Radio System Purchase Agreement” means that certain *System Purchase Agreement* between Farmers Branch and Harris Corporation RF Communications Division dated and effecting June 27, 2013, inclusive of all subsequent changes orders and amendments, relating to the purchase, installation and maintenance of the Radio System.

“Radio System Services” means the actions necessary and related to owning operating, maintaining, and repairing the Shared Components (as defined in the Radio System Agreement) of the Radio System.

“Workflow” means the total of all Workflow Measures for a stated period of time.

“Workflow Measure” means demonstrable and quantifiable activities or tasks (i) performed by NTECC employees and/or by the Cities’ fire, police, emergency medical services, or other employees or (ii) using NTECC’s equipment and systems, and which relate to the provision or receipt of Public Safety Communications Services, which activities or tasks shall include, but not necessarily be limited to:

- (a) The number of incoming 911 calls answered;
- (b) The number of incoming 10-digit calls answered;
- (c) The number of dispatched calls for service for Police, Fire, and Emergency Medical Service units;
- (d) The number of entered and/or processed Computer-Aided Dispatch (“CAD”) related to all field-initiated activities; and
- (e) Such other calls, tasks, or incidents as determined by the Board to be included as a Workflow Measure as set forth in NTECC’s standard operating procedures and policies.

The following shall not be counted in determining Workflow Measure:

- (1) Multiple incoming 911 calls and/or 10-digit calls relating to the same incident, it being the intent to count only one call in such instances;
- (2) Any incident that is cancelled by NTECC personnel due to an error or similar internal reason; provided, incidents that are cancelled when the requesting party calls back to cancel the response after the incident has been entered into CAD shall be included;
- (3) Data inquiries related to a routine traffic or field stop initiated by a City’s police officer using a mobile data device unless the circumstances of such stop change requiring NTECC dispatcher involvement (e.g., warrant arrest, report of criminal activity, initiation of pursuit, etc.) which would then be categorized as officer initiated police activity and counted as a full incident;
- (4) Any information broadcast over the Radio System such as an “Attempt to Locate (“ATL”)” or “Be on the Look Out” (“BOLO”) which does not generate an incident number or require dispatcher involvement;

(5) Any informational incident created solely for the purpose of assisting the NTECC dispatcher in tracking unit activity; and

(6) Such other calls, tasks, or incidents as determined by the Board should not be included as a Workflow Measure as set forth in NTECC's standard operating procedures and policies.

**1.02. Interpretation.** The caption headings of this Agreement are for reference purposes only and shall not affect its interpretation in any respect. Unless the context otherwise requires, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa. This Agreement and all the terms and provisions shall be liberally construed to effectuate the purpose set forth herein and to sustain the validity of this Agreement.

## **ARTICLE II TERM OF AGREEMENT**

**2.01 Initial Term.** This Agreement shall commence on the Effective Date and end on the last day of the twentieth (20<sup>th</sup>) complete Fiscal Year after NTECC commences providing Public Safety Communications Services to the Cities ("the Initial Term").

**2.02 Renewal Term.** After the end of the Initial Term, this Agreement shall be extended automatically through each subsequent Fiscal Year (each being a "Renewal Term") unless terminated as provided in this Agreement.

**2.03 Early Withdrawal During Initial Term.**

(a) Notwithstanding anything to the contrary herein, a City may terminate without cause its participation as a Party to this Agreement (said City called hereafter the "Withdrawing Party") prior to the end of the Initial Term subject to the following:

(1) The withdrawal date must fall on the last day of a Fiscal Year;

(2) The Withdrawing Party must deliver notice to the other Parties not later than two (2) years prior to the date of desired termination;

(3) The Withdrawing Party shall not be entitled to reimbursement from the other Parties for payments made pursuant to this Agreement prior to the date of termination; and

(4) On or before the Withdrawing Party's withdrawal date, the Withdrawing Party shall pay to NTECC all amounts due or owed by the Withdrawing Party pursuant to Article IV incurred or accrued prior to the date of the withdrawal.

(b) Except as set forth in this Section 2.03, the Withdrawing Party shall have no obligation to pay any amounts which come due after the effective date of the Withdrawing Party's withdrawal.

(c) The Withdrawing Party shall not be entitled to any distribution or payment from the other Cities or NTECC at the time of withdrawal from participation in this Agreement; provided, however, the Withdrawing Party shall continue to have the right to its share of the assets of NTECC upon termination and liquidation of NTECC pursuant to the NTECC Governing Documents and applicable state law. The other Cities shall have the right to offset the Withdrawing Party's liquidation share of NTECC based on any lawful Operation and Maintenance Expenses and additional capital expenditures in accordance with applicable state law, the NTECC Governing Documents, and generally acceptable accounting practices.

(d) The Withdrawing Party shall have no further right to the receipt of Public Safety Communications Services from NTECC except pursuant to a subsequent agreement with NTECC authorized by the Cities.

### **ARTICLE III NTECC SERVICES**

Pursuant to the provisions of this Agreement and subject to the NTECC Governing Documents, NTECC is hereby authorized to provide, and agrees to provide, Public Safety Communications Services and Radio System Services for and on behalf of the Cities and shall have the authority necessary to take such action as reasonable and necessary to provide Public Safety Communications Services and Radio System Services to the Cities.

### **ARTICLE IV PAYMENTS**

**4.01. Annual Expense Budget.** The Parties acknowledge and agree that payments to be made under this Agreement and similar agreements with Additional Entities, investment income, revenues received from other Persons' receipt of Public Safety Communications Services through use of the Facilities and the provision of Radio System Services to the Cities, and other revenues attributable to the use of the Facilities to provide Public Safety Communications Services, will be the only sources available to NTECC to provide the Annual Expense Budget; and that the Annual Expense Budget shall at all times be not less than an amount sufficient to pay or provide for the payment of:

(a) **Operation and Maintenance Component.** An "Operation and Maintenance Component" equal to the amount paid or payable for all Operation and Maintenance Expenses; and

(b) **Debt Service Component.** A "Debt Service Component" related to the cost of issuance and repaying the principal and interest on any debt issued by NTECC as authorized by the Cities pursuant to the NTECC Governing Documents.

**4.02 Cities' Share of Annual Expense Budget.** For providing Public Safety Communications Services to the Cities by NTECC under this Agreement, each City agrees to pay NTECC an amount equal to a portion of NTECC's Annual Expense Budget determined as follows:

(a) **Years 0 through 3:** For the period commencing on April 1, 2014 (notwithstanding that such date precedes the Effective Date of this Agreement), and ending on the last day of the third (3rd) complete Fiscal Year following the date NTECC commences providing Public Safety Communications Services to the Cities, the Cities' agree to pay NTECC an amount equal to the following percentages of NTECC's Annual Expense Budget (excluding the Radio System Service Charges and the Denco PSAP Charges):

- |     |                 |     |
|-----|-----------------|-----|
| (1) | Addison:        | 19% |
| (2) | Carrollton:     | 36% |
| (3) | Coppell:        | 21% |
| (4) | Farmers Branch: | 24% |

(b) **Years 4 and After:** Commencing with the fourth (4<sup>th</sup>) complete Fiscal Year following the date NTECC commences providing Public Safety Communications Services to the Cities and for each Fiscal Year thereafter, the Cities' share of the percentage of NTECC's Annual Expense Budget (excluding the Radio System Service Charges and the Denco PSAP Charges) shall be adjusted based on the percentage of each City's Workflow during the three (3) most recent calendar years in relation to the total Workflow for all of the Cities for the same three (3) calendar years. By way of example, for the Fiscal Year beginning October 1, 2018, the percentage share of the Annual Expense Budget for the City of "A" (excluding the Radio System Service Charges and the Denco PSAP Charges) will be City A's Workflow for calendar years 2015, 2016, and 2017 divided by the total Workflow for all of the Cities for calendar years 2015, 2016, and 2017.

**4.03 Division of Radio System Services Charges.** If the Parties agree the Radio System Purchase Agreement and any and all related agreements should be assigned to NTECC, and, in fact, such assignment occurs such that NTECC assumes all operational as well as financial responsibilities under such agreements, each City agrees to pay NTECC a percentage of the costs and expenses related to providing Radio System Services based on the City's percentage of each City's ownership of the Radio System's Shared Components as set forth in the Radio System Agreement, which share shall be reflected in the Annual Expense Budget. As of the Effective Date, the Cities understand, acknowledge, and agree that the allocation of costs for the Radio System's Shared Components as set forth in the Radio System Agreement is as follows:

(1)	Addison	1/6
(2)	Carrollton	1/2
(3)	Coppell	1/6
(4)	Farmers Branch	1/6

**4.04 Division of Denco PSAP Agreement Costs.** The Parties understand, acknowledge, and agree, that (i) NTECC has entered into the Denco PSAP Agreement setting forth the terms and conditions by which NTECC will serve as a 9-1-1 Public Safety Answering Point, (ii) telephone customers in Carrollton, but not the other Cities, currently pay a fee levied pursuant to state law (“Denco 911 Fee”) to provide funds to Denco to provide enhanced 9-1-1 call services within Denco’s jurisdictional boundaries, and (iii) it would be inequitable for Carrollton to be allocated a share of the Annual Expense Budget related to certain expenses due from NTECC under the Denco PSAP Agreement that are also being funded in part through payment of the Denco 911 Fee. In consideration of the understanding in the proceeding sentence, the Parties agree that:

(a) As long as the portion of the expenses related to Carrollton are being paid by Denco, the expenses to be paid by NTECC pursuant to Sections 7 and 8 of the Denco PSAP Agreement shall be proportionately allocated only to Addison, Coppell, and Farmers Branch based on each of said Cities’ respective populations as determined by the most recent decennial census divided by the total populations of Addison, Coppell, and Farmers Branch based on the most recent decennial census; and

(b) All other expenses incurred by NTECC pursuant to the Denco PSAP Agreement shall be allocated among all of the Cities in accordance with the percentage shares determined pursuant to Section 4.02, above.

**4.05 Quarterly Payments by Cities.** NTECC shall prepare and deliver an invoice to each City for the City’s share for Public Safety Communications Services, Radio System Services, and Denco PSAP Agreement Costs as determined by the Annual Expense Budget and Sections 4.02, 4.03, and 4.04, above. Such invoices shall be issued quarterly with the due dates to be the later of (i) October 1, January 1, April 1, and July 1 of each Fiscal Year and (ii) thirty (30) days after receipt of the invoice from NTECC. The initial invoice shall be delivered and payable on the first day of the Fiscal Year quarter after the approval of the first Annual Expense Budget for the portion of the Fiscal Year after the Effective Date of this Agreement.

**4.06 Delinquent Payments.** Payments not made by a City on or before the thirtieth (30th) day following receipt of the invoice for same shall be deemed delinquent. Interest shall accrue on delinquent payments at the rate authorized pursuant to Ch. 2251 of the Texas Government Code, as amended. NTECC is authorized to discontinue service under this Agreement to any City which fails to make any delinquent payment on or before the tenth (10th) day after NTECC provides written notice to such City in accordance with Tex. Govt. Code §2251.051. NTECC shall not be obligated to recommence provision of service to a City to whom services have been discontinued pursuant to this Section 4.06 until all past due amounts,

including any accrued interests and reasonable costs of collection authorized by law, have been paid to NTECC.

**4.07 NTECC Annual Expense Budget.** NTECC shall adopt and approve an Annual Expense Budget in accordance with applicable provisions of the NTECC Governing Documents. The Annual Expense Budget shall, as a minimum, reflect the Annual Expense Budget and all reasonable anticipated revenues for the Fiscal Year for which the Annual Expense Budget is to adopted.

**4.08 Annual Budgets of Cities; Appropriation.** Each City shall make provision in its annual budget and shall appropriate an amount sufficient, at a minimum, for the payment of all amounts required to be paid by the City during each Fiscal Year under this Agreement. Failure of a City to include in the City's annual budget funds to pay its share of NTECC's Annual Expense Budget for any Fiscal Year shall constitute a notice of withdrawal of that City's participation in this Agreement; in which case said City's right to use the Communications Center or receive Public Safety Communications Services or Radio System Services from NTECC shall be immediately suspended until said City appropriates funds to pay its share of the NTECC's Annual Expense Budget and, in fact, pays such funds as provided in Section 4.05, above. A City which fails for two consecutive Fiscal Years to include in its annual budget the funds necessary to pay its share of NTECC's Annual Expense Budget shall be deemed to be a Withdrawing Party pursuant to Article II of this Agreement.

**4.09 Interest Income.** All interest income earned by the investment of any funds created pursuant to any Bond Resolution shall be credited towards the payment of the Bond Service Component and taken into account in determining the Annual Expense Budget; except as to any fund or account created pursuant to the terms of a Bond Resolution or any financing document authorized by such Bond Resolution and funded from any Bond proceeds, together with all interest income earned by the investment thereof may, at the option of NTECC, be credited to such fund or account and used for the purposes for which the Bonds are issued, or be credited towards the payment of the Bond Service Component.

**4.10 Place of Payment.** Except to the extent otherwise provided by any Bond Resolution or as may otherwise be amended by written notice by NTECC to the Cities, all amounts due under this Agreement shall be paid and be due at the principal administrative offices of NTECC.

## **ARTICLE V MISCELLANEOUS OPERATIONAL MATTERS**

**5.01 NTECC Employees.** To the extent feasible, the Parties understand and agree that as soon as reasonably feasible, but in any case prior to the commencement of the provision of Public Safety Communications Services to the Cities, NTECC agrees to hire the Cities' employees who, prior to NTECC assuming the provision of Public Safety Communications Services, performed substantially similar duties for the Cities with whom they were employed subject to the following:

(a) The amount and/or rate of wages and type and amount of employee benefits to be paid and/or provided to people hired by NTECC shall be at the sole discretion of NTECC;

(b) The City's employee must be willing to accept a position with NTECC not later than five (5) business days after the date the position is offered to the City employee;

(c) NTECC, through the Executive Director, shall have sole authority in determining to what position the person should be hired; and

(d) The person shall be subject to promotion, demotion, reassignment, suspension, and termination pursuant to NTECC's policies and procedures and applicable law.

**5.02 Executive Director Not Subject To Section 5.01.** Notwithstanding Section 5.01, above, NTECC shall have the right to employ NTECC's Executive Director without the obligation to fill such position with an employee of any of the Cities.

**5.03 Issuance of Debt.** Notwithstanding other provisions of this Agreement that refer to the issuance of debt by NTECC, the Parties understand, acknowledge, and agree that NTECC is not authorized to issue bonds, certificates of obligation, or other debt instruments without the prior unanimous consent of the Cities granted pursuant to the NTECC Governing Documents.

**5.04 Establishment of Operational Policies and Procedures.** The Parties understand, acknowledge, and agree that, subject to the NTECC Governing Documents, NTECC shall be solely responsible for the adoption, implementation, and enforcement of policies and procedures necessary for the operation and management of NTECC and the Facilities.

## **ARTICLE VI ADDITIONAL CAPACITY AND FACILITIES**

As the responsible entity for the establishment, administration, management, operation, and maintenance of the Facilities, NTECC will, subject to the approval of the Cities as required by the NTECC Governing Documents, from time to time determine when and to what extent it is necessary to provide Additional Facilities to provide Public Safety Communications Services and/or Radio System Services to the Cities and, if necessary, to issue Bonds, subject to the provisions of this Agreement, to accomplish its purposes.

## **ARTICLE VII REMEDIES**

**7.01. Remedies.** Notwithstanding anything in this Agreement to the contrary, as governmental entities, the Parties have not waived immunity from suit and liability under Texas law, and the execution and delivery of this Agreement does not constitute such a waiver. The foregoing sentence notwithstanding and to the extent permitted by law, the obligations,

agreements, and covenants of NTECC and each City (including, without limitation, the obligation of each City to pay its share of the Annual Expense Budget, as provided herein) contained in this Agreement may be enforced by any Party and any holder of Bonds of NTECC by such suits, actions, or special proceedings in equity or at law, or by proceedings in the office of any board or officer having jurisdiction, either for mandamus or the specific performance of any covenant or agreement contained herein.

**7.02. Legal Authority.** In entering into this Agreement and performing all duties and obligations hereunder, the Cities and NTECC exercise their authority under and in accordance with the constitution and laws of the State including, but not limited to the Act, the Cities' Charters, and all other laws that may authorize this Agreement, all of which provisions and laws, cited or uncited herein, shall cumulatively provide the authority for this Agreement.

## **ARTICLE VIII MISCELLANEOUS**

**8.01 Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received when sent in the United States Mail, Postage Prepaid, Certified Mail, Return Receipt Requested, by hand-delivery or facsimile transmission and addressed to the respective Party at the following address:

If intended for Addison:

Town of Addison  
Attn: City Manager  
5300 Belt Line Road  
Dallas, Texas 75254

With copy(ies) to:

City Attorney  
Town of Addison  
5300 Belt Line Road  
Dallas, Texas 75254

If intended for Carrollton:

City of Carrollton  
Attn: City Manager  
1945 E. Jackson Road  
Carrollton, Texas 75006

With copy(ies) to:

City Attorney  
City of Carrollton  
1945 E. Jackson Road  
Carrollton, Texas 75006

If intended for Coppell:

City of Coppell  
Attn: City Manager  
255 E. Parkway Boulevard  
Coppell, Texas 75019

With copy(ies) to:

Robert E. Hager  
Nichols, Jackson, Dillard, Hager & Smith, LLP  
500 N. Akard, Suite 1800  
Dallas, Texas 75201

If intended for Farmers Branch:

City of Farmers Branch  
Attn: City Manager  
13000 William Dodson Parkway  
Farmers Branch, Texas 75234

With copy(ies) to:

Peter G. Smith  
Nichols, Jackson, Dillard, Hager & Smith, LLP  
500 N. Akard, Suite 1800  
Dallas, Texas 75201

If intended for NTECC

North Texas Emergency Communications  
Center, Inc.  
Attn: President  
13000 William Dodson Parkway  
Farmers Branch, Texas 75234

With copy to:

Kevin B. Laughlin  
Nichols, Jackson, Dillard, Hager & Smith, LLP  
500 N. Akard, Suite 1800  
Dallas, Texas 75201

**8.02 Governing Law.** The validity of this Agreement and any of its terms and provisions as well as the rights and duties of the Parties shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

**8.03 Party Responsibility.** To the extent allowed by law, and without waiving any governmental immunity available to the Parties under Texas law, or any other defenses the Parties are able to assert under Texas law, each Party agrees to be responsible for its own negligent or otherwise tortious acts or omissions in the course of performance of this Agreement.

**8.04 Immunity.** It is expressly understood and agreed that, in the performance of this Agreement, none of the Parties waive, nor shall be deemed hereby to have waived, any immunity or defense that would otherwise be available to them against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the Parties do not create any obligations, express or implied, other than those set forth herein, and this Agreement shall not create any rights in any persons or entities who are not parties to this Agreement.

**8.05 Entire Agreement.** This Agreement represents the entire agreement among the Parties with respect to the subject matter covered by this Agreement. There is no other collateral, oral or written agreement between the parties that in any manner relates to the subject matter of this Agreement.

**8.06 Exhibits.** All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

**8.07 Recitals.** The recitals to this Agreement are incorporated herein.

**8.08 Amendment.** This Agreement may only be amended by the mutual written agreement of all of the Parties.

**8.09 Place of Performance.** Performance and all matters related thereto shall be in Dallas County, Texas.

**8.10 Authority to Enter Agreement.** Each Party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to sign this Agreement. The persons signing this Agreement hereby represent that they have authorization to sign on behalf of their respective Party.

**8.11 Severability.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

**8.12 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

**8.13 Assignment.** No Party may assign, transfer, or otherwise convey this Agreement without the prior written consent of the other Parties.

**8.14 Consents.** Unless expressly stated otherwise, whenever the consent or the approval of a Party is required herein, such Party shall not unreasonably withhold, delay or deny such consent or approval.

**8.15 Good Faith Negotiation; Dispute Mediation.** Whenever a dispute or disagreement arises under the provisions of this Agreement, the Parties agree to enter into good faith negotiations to resolve such disputes. If the matter continues to remain unresolved, the Parties shall refer the matter to outside mediation, the costs of which shall be shared equally, prior to engaging in litigation (unless delaying the filing of a lawsuit might result in the lawsuit being barred, including but not limited to a bar by a statute of limitations). The provisions of this Section 8.15 shall survive termination.

**8.17 Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

**8.18 Source of Payment.** Each City paying for the performance of governmental functions or services pursuant to this Agreement must make those payments from current revenues available to the paying City or from funds otherwise lawfully available to the City for use in the payment of the City's obligations pursuant to this Agreement.

**8.19 Force Majeure.** No Party shall be liable to any or all of the other Parties for any failure, delay, or interruption in the performance of any of the terms, covenants, or conditions of this Agreement due to causes beyond the Party's respective control or because of applicable law,

including, but not limited to, war, nuclear disaster, strikes, boycotts, labor disputes, embargoes, acts of God, acts of the public enemy, acts of superior governmental authority, floods, riots, rebellion, sabotage, terrorism, any other reason of Force Majeure (as defined in Section 1.01, above), or any other circumstance for which a Party is not legally responsible or which is not reasonably within its power to control. The affected Party's obligation shall be suspended during the continuance of the inability then claimed, but for no longer period. To the extent possible, the Party shall endeavor to remove or overcome the inability claimed with all reasonable dispatch.

**(Signatures on following pages)**

***Town of Addison Signature Page***

SIGNED AND AGREED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

TOWN OF ADDISON

By: \_\_\_\_\_  
Lea Dunn, City Manager

ATTEST:

\_\_\_\_\_  
Matthew McCombs, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

*City of Carrollton Signature Page*

SIGNED AND AGREED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

CITY OF CARROLLTON

By: \_\_\_\_\_  
Leonard Martin, City Manager

ATTEST:

\_\_\_\_\_  
Krystle F. Nelinson, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Meredith A. Ladd, City Attorney

*City of Coppell Signature Page*

SIGNED AND AGREED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

CITY OF COPPELL

By: \_\_\_\_\_  
Clay Phillips, City Manager

ATTEST:

\_\_\_\_\_  
Christel Pettinos, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

*City of Farmers Branch Signature Page*

SIGNED AND AGREED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

CITY OF FARMERS BRANCH

By: \_\_\_\_\_  
Gary D. Greer, City Manager

ATTEST:

\_\_\_\_\_  
Angela Kelly, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Peter G. Smith, City Attorney

*NTECC Signature Page*

SIGNED AND AGREED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**NORTH TEXAS EMERGENCY  
COMMUNICATIONS CENTER, INC.**

By: \_\_\_\_\_  
Gary D. Greer President

APPROVED AS TO FORM:

\_\_\_\_\_  
Kevin B. Laughlin, General Counsel