

**FIRST RESTATEMENT OF THE INTERLOCAL AGREEMENT  
FOR THE CONSTRUCTION, ACQUISITION, IMPLEMENTATION, OPERATION AND  
MAINTENANCE OF  
THE BRAZOS VALLEY WIDE AREA COMMUNICATIONS SYSTEM (BVWACS)**

STATE OF TEXAS                   §  
COUNTIES OF BRAZOS AND WASHINGTON       §

This Agreement is by and among the City of Bryan, City of College Station, City of Brenham, Brazos County, Washington County, and Texas A & M University.

**RECITALS**

- A. The BVWACS Parties are combining their resources and desire to jointly operate and maintain the Brazos Valley Wide Area Communications System to improve the ability of public safety and public service radio communications internally and among themselves, and to allow direct access to, and exchange of data.
- B. The BVWACS Parties desire to continue to join their Wide Area Communications System with the regional communications system of Harris County, Texas, and to create a mechanism to effectively administrate this endeavor pursuant to a separate agreement with Harris County in a manner consistent with this Agreement.
- C. The BVWACS Parties desire to provide for the organizational structure and funding support for the construction, acquisition, implementation, operation and maintenance of the Wide Area Communications System.

## A G R E E M E N T

NOW, THEREFORE, in consideration of the mutual covenants herein, the BVWACS Parties agree as follows:

### 1. **Definitions.**

1.A. Annual Assessment means the proportionate share determined in accordance with that BVWACS Party's participation share as shown on Exhibit A of that Fiscal Year's Capital Costs and Operating Costs based on the approved Budget.

1.B. Brazos County means the corporate and political body of the state of Texas known as Brazos County.

1.C. Brenham means the City of Brenham.

1.D. Bryan means the City of Bryan.

1.E. BVWACS Associates means those entities that are sponsored by a BVWACS Party that are eligible to use the licensed frequencies under FCC rules and regulations, that are using the BVWACS and that are not BVWACS Parties pursuant to the terms of this Agreement.

1.F. BVWACS Managing Entity means the Brazos Valley Council of Governments contracted to supervise the performance of this Agreement or any other BVWACS Party or third party entity designated to perform this function pursuant to the terms of this Agreement and pursuant to Section 791.013 Texas Government Code.

1.G. BVWACS Parties means the state political subdivisions that have entered into this Agreement for the construction, acquisition, implementation, operation and maintenance of the BVWACS, including Bryan, College Station, Brenham, Brazos County, Washington County, and Texas A & M University. Additional parties may be added from time to time pursuant to the terms of this Agreement.

1.H. BVWACS Systems Manager means the Employee of the Managing Entity unless designated by the Governing Board otherwise tasked to perform services for BVWACS as set forth in this Agreement.

1.I. BVWACS Support Vendor means any of the one or more vendors selected to provide maintenance, repair, troubleshooting, and related services for the Brazos Valley Wide Area Communications System.

1.J. BVWACS Value means the undivided interest of a BVWACS Party in the BVWACS Infrastructure, Improvements and real property.

- 1.K. College Station means the City of College Station.
- 1.L. Commencement Date means the date on which this Agreement has been duly approved by all BVWACS parties.
- 1.M. Costs include Capital Costs and Operating Costs as defined below:
- 1.M.1. Capital Costs means all costs incurred for the construction, acquisition and implementation of the BVWACS in accordance with the terms of this Agreement. Capital Costs includes expenditures for the construction, acquisition and implementation of any and all Improvements, Infrastructure, additions, replacements, upgrades and enhancements to the BVWACS; land acquisition costs, including appraisals, legal fees, surveys, and other costs associated thereto; the procurement of any hardware or software relating to the construction and implementation of any and all Improvements, Infrastructure, additions, replacements, upgrades and enhancements to the BVWACS; engineering studies, consulting reports, analysis, design and planning; auditing and compliance with accounting principles and the fiscal and legal expenses relating thereto, and any and all other costs and expenses relating to the foregoing. The BVWACS will be implemented in phases. The Initial Phase is attached hereto and made a part hereof labeled Exhibit B. Notwithstanding any of the above, Capital Costs shall be processed in accordance with GASB 34 and GAAP Accounting Principles.
- 1.M.2. Operating Costs means all costs not specifically identified as Capital Costs and includes all fixed and variable costs and expenses incurred, directly or indirectly, in the operation and maintenance of the BVWACS consisting of, without limit, the direct purchase of goods and services, such as photographic supplies, developing and printing, educational materials, books, office supplies, postage, computer supplies, computer software, small tools and minor equipment, and minor computer hardware, office space or the value thereof; costs associated with contracts to supply goods and services, such as support contracts, rental of copy machines, vehicle maintenance and fuel costs, tower site and infrastructure insurance, building maintenance, computer hardware and software maintenance, printing and binding; personnel costs incurred by all entities for Employees approved in the Budget to support the BVWACS including, without limitation, wages, benefits, insurance, employment related taxes, employers' retirement contributions, phone allowances, pagers, education and seminar fees, travel for training, mileage reimbursement, and parking costs; and further including ongoing utility costs, security, and the normal, periodic maintenance, tuning, servicing, inspecting, parts replacement and repair and other similar activities that are intended to keep the BVWACS functioning

efficiently and to maintain the useful life of the assets and reduce the probability of failures. The term includes all other items or expenses of a like or different nature reasonably required or desirable for the efficient maintenance and operation of the BVWACS in full compliance with all current and future regulatory requirements and the performance of the provisions of this Agreement; the provision of liability and other insurance in amounts and types determined necessary for the proper operation of BVWACS; assumption of legal liability of the BVWACS Parties to pay money to satisfy an arbitration award, administrative decision, settlement agreement, or court decision creating a judgment against one or more of the BVWACS Parties as a result of a third party claim arising out of or incident to the terms of this Agreement, including reasonable attorneys' fees and costs incurred in defending against same; and costs incurred in enforcing or defending the provisions of this Agreement, including reasonable attorneys' fees. Notwithstanding any of the above, Operating Costs shall be processed in accordance with GASB 34 and GAAP Accounting Principles.

- 1.N. Day unless otherwise described, means calendar day.
- 1.O. Employees means the person(s) employed by one or more of the Parties or by the Managing Entity, devoted exclusively to the construction, acquisition, implementation, operation and maintenance of the BVWACS as set forth in this Agreement.
- 1.P. FCC means the Federal Communications Commission.
- 1.Q. Fiscal Year means the fiscal year agreed upon by the entities signing this Agreement. 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.R. Improvements means any structure, facility, addition, replacement, upgrades and enhancements to the BVWACS including, without limitation, hardware, software, equipment and real property acquired for increasing functionality, range or capacity of the Wide Area Communications System.
- 1.S. Infrastructure means collectively all Improvements, additions, replacements, upgrades and enhancements to real property or personality, real property acquisition, and all system hardware and software procurement necessary for the normal operation of the BVWACS and excluding Subscriber Equipment. The twenty-one radio consoles implemented in the system initial phase are included as system infrastructure.
- 1.T. Initial Phase means that first phase of Infrastructure and Improvements, including the Capital Costs relating thereto, for the Parties to utilize the BVWACS within the designated

portions of the Service Area all as shown on Exhibit C. As proposed herein, the Initial Phase shall include radio voice communications but not data transmission.

1.U. Quarterly Assessment means a BVWACS Party's proportionate share of the Capital Costs and Operating Costs that are projected to be incurred and the amount of money projected to be expended during the next fiscal quarter as presented in an itemized schedule prepared by the Managing Entity, with the proportionate share determined in accordance with the participation share of the BVWACS Party shown on Exhibit A.

1.V. Remaining Parties means those BVWACS Parties to this Agreement who remain committed to this Agreement if one or more BVWACS Parties withdraw from this Agreement or is terminated pursuant to the terms of this Agreement.

1.W. Service Area means that geographical area designed to serve the Parties for the BVWACS as same may, from time to time, be amended through approval by the Governing Board. A map of the initial Service Area is attached hereto as Exhibit C.

1.X. Standard Terms and Conditions means the terms and conditions listed in Exhibit D that must be included in all BVWACS Associate Interlocal Cooperation Agreements.

1.Y. Subscriber Equipment means the portable radios, mobile radios, control station radios, radio consoles, excluding the original 21 radio consoles installed or made operational as part of the Initial Phase, and other equipment operated by BVWACS Parties and BVWACS Associates accessing BVWACS.

1.Z. Terminated Party means a BVWACS Party who has received a notice of termination and whose participation in the BVWACS Agreement has been terminated for default, after it failed to cure the default in a timely manner.

1.AA. Termination Date means twelve (12) months from the date of the notice of withdrawal when a BVWACS Party gives notice of its intention to withdraw from this Agreement and terminate its participation in BVWACS.

1.BB. Washington County means the corporate and political body of the state of Texas known as Washington County.

1.CC. Wide Area Communications System or BVWACS means the Regional Voice and Data Radio System serving the Brazos County and Washington County, Texas areas as shown on a Service Area map attached as Exhibit C as same may from time to time be amended as provided in this Agreement, implemented by Parties for public safety and public service purposes in accordance with the terms herein and pursuant to applicable law for such type of public communications system.

1.DD. Withdrawing Party means a BVWACS Party who gives notice of its intention to withdraw from this Agreement and terminate its participation in BVWACS.

**2. Term of Agreement.**

The term of this Agreement shall be effective when this Agreement has been duly approved by all BVWACS Parties (termed the Effective Date), subject to the BVWACS Parties' rights of termination in this Agreement. The term of this Agreement is from the Effective Date to September 30, 2018. Nothing in this Agreement will prevent the BVWACS Parties from entering into a separate Agreement with another group or entity providing similar radio services provided such Party continues to adhere to the terms and conditions of this Agreement.

**3. Purpose.**

The purpose of this Agreement is to establish an organizational and management structure for the construction, acquisition, implementation, ongoing administration, operation, and maintenance of the BVWACS by the Parties, including establishing a budget proposal process, a funding process, and the allocation of Costs associated with the construction, acquisition, implementation, operation, maintenance, and improvements to the Wide Area Communications System.

The BVWACS Parties have developed initial objectives, attached as Exhibit E, and evaluation factors, attached as Exhibit F.

**4. Governing Board.**

4.A. Purpose. The Governing Board shall set policy for the BVWACS, direct and approve the operating policies and procedures of the Operating Board, adopt a draft budget annually, and carry out any and all other appropriate tasks necessary for the proper functioning of the BVWACS. The Governing Board may exercise such powers and duties as authorized under this Agreement.

4.B. Composition. The Governing Board shall consist of one member from each of the BVWACS Parties. Governing Board Members should be public officials or senior executive level employees of their respective BVWACS Party. Governing Board Members may designate in writing an individual within their entity to act in their place. The governing body of a BVWACS Party may designate in writing a change in that BVWACS Party's Governing Board Member.

4.C. Officers. The Governing Board shall elect a chair, vice-chair, and other officers annually. The BVWACS Managing Entity shall provide secretarial services and other administrative support services to the Governing Board.

4.D. Meeting Requirements. The Governing Board shall meet at least semi-annually, but special meetings may be called by the request of one (1) or more Governing Board Members.

These meetings shall be held in compliance with the Texas Open Meetings Act. These meetings shall be publicly posted 72 hours before the meeting by the Chair of the Governing Board. Meeting notices and meeting agenda shall be sent to members of the Governing Board at least 72 hours before the meeting.

4.E. BVWACS Improvements. The Governing Board may develop agreements defining the roles and responsibilities of the BVWACS Parties for BVWACS Improvements at the time the BVWACS Improvements are approved by the BVWACS Parties. The funding for these BVWACS Improvements shall be included in these agreements. Unless otherwise agreed by the BVWACS Parties in writing, funding for the cost of BVWACS Improvements that are constructed or acquired to benefit one (1) or more individual BVWACS Parties shall be paid only by the BVWACS Parties benefiting from such BVWACS Improvements.

4.F. Quorum and Voting. No action may be taken by the Governing Board unless a quorum is present. A quorum shall consist of a majority of members. Unless expressly stipulated otherwise in this Agreement or unless required differently pursuant to applicable law, the affirmative vote of a majority of members is required for the Governing Board to adopt any resolution or take any action. Each member of the Governing Board shall have one vote.

## **5. Operating Board.**

5.A. Purpose. The management and technical operation of the BVWACS is overseen by an Operating Board which ensures that the policies set by the BVWACS Governing Board are carried out and which provides overall BVWACS advice as to the construction, acquisition, implementation, operation and maintenance of the BVWACS and provides advice to the BVWACS Managing Entity.

5.B. Composition. The Operating Board consists of one member appointed by each of the BVWACS Parties. In addition, each BVWACS Party may designate in writing an alternate (“Alternate”) to act in place of its appointed Operating Board member. Notice of a change in designated Board Members or Alternate by a BVWACS Party may be made by sending written notice of the newly designated Board Member(s) or Alternate to the Chair of the Operating Board, with a copy to the BVWACS Managing Entity. The composition of the initial Operating Board is shown in Exhibit G.

5.C. Duties. The Operating Board shall meet at least quarterly. The Operating Board shall examine the apportionment of BVWACS Capital Costs and Operating Costs among the BVWACS Parties and recommend any adjustments needed to the Governing Board. The Operating Board shall annually submit a draft Operating and Capital Program budget for presentation to the Governing Board by March 1 of each year unless directed otherwise by the

Governing Board regarding funds needed to improve, operate, maintain, and use the BVWACS. The Operating Board shall review and recommend the operating policies and procedures for the BVWACS, including policies related but not limited to system security, fleetmap management, capacity management, and interoperability with other radio systems and equipment. The Operating Board shall regularly review the evaluation factors for the BVWACS as described in Exhibit F of this Agreement and take needed actions to ensure reliable BVWACS performance. The BVWACS Managing Entity, together with the Operating Board, shall develop and recommend to the Governing Board BVWACS Improvements as needed to ensure optimal BVWACS functionality and performance. The Operating Board shall consider the impact of proposed BVWACS Associates and proposed new Parties to this Agreement on the capacity of the BVWACS and recommend approval or denial of requests to sponsor an entity as an Associate or to add an additional party to this Agreement.

In addition, the Operating Board annually provides input to the Governing Board and to the BVWACS Managing Entity on the performance of the BVWACS Systems Manager.

5.D. Terms. The term of each Board Member shall be determined by the appointing BVWACS Party. All Board Members serve at the pleasure of their appointing BVWACS Party.

5.E. Attendance Requirements. Either a Board Member or Alternate shall attend all meetings. If a BVWACS Party has no representation at more than 25% of the meetings during any calendar year, the BVWACS Party shall appoint new Board Member(s) and new Alternate(s). Operating Board meetings are scheduled by the Operating Board Chair.

5.F. Chair, Vice-Chair, and Secretary. The Operating Board Members elect the Chair, Vice-Chair, and Secretary in the first month of each Fiscal Year. The Chair is responsible for scheduling meetings and providing Operating Board members with meeting notices. One of the duties of the Secretary shall be to record and track attendance of Board Members and Alternates. The BVWACS Managing Entity provides or arranges staff support to make written minutes of each Operating Board meeting and provides other needed logistical support for the Operating Board.

5.G. Procedures at Meeting. The Chair presides at the meetings and the Vice-Chair acts in the absence of the Chair. No action may be taken by the Operating Board unless a quorum of Board Members is present. A quorum shall consist of a majority of Board Members. The Chair shall provide the Board Members with at least 20 days notice of proposed dates for regular meetings. Any Board Member may place items on the Operating Board's meeting agenda by submitting the item to the Chair at least ten days before the next meeting. The Chair shall submit the agenda to the Board Members no later than seven days before the meeting. Each Board Member shall have

one vote. The affirmative vote of more than 50 percent of all the members of the Operating Board is required to adopt any resolution or take any action. Voting by proxy or delegate is permitted.

5.H. Actions of Operating Board. The Operating Board may not take any action that would violate any applicable statute, law, regulation, court order, ordinance, commissioners' court order, city charter provision, articles of incorporation or other governing document. If any such action is taken, it is null and void.

5.I. Special Meetings. The BVWACS Managing Entity may call meetings upon 72 hours written notice to the Board Members to conduct regular business matters or to address budget related items, which may require action by the Parties' governing bodies to increase or decrease currently budgeted expenditures. The Chair or a majority of the Board Members may also call special meetings of the Operating Board. In the event of an emergency, the notice provision herein shall be suspended.

## **6. Amendments to Agreement.**

Any BVWACS Party may propose an amendment to this Agreement to the Operating Board. The Operating Board considers the amendment and makes a recommendation to the Governing Board for consideration. The Governing Board shall review amendments to this Agreement and may recommend approval of the amendment to the governing bodies of the BVWACS Parties. An amendment to this Agreement shall be effective when approved by three fourths of the governing bodies of the BVWACS Parties. A BVWACS Party whose governing body does not approve an amendment to this Agreement adopted as provided above, may withdraw from participation in the BVWACS as described elsewhere in this Agreement.

## **7. Construction, Acquisition and Implementation of BVWACS.**

7.A. Initial Phase. The Initial Phase of the BVWACS shall be comprised of current Infrastructure and Improvements owned by one or more of the Parties hereto plus additional Infrastructure and Improvements to be constructed or acquired. Exhibit B sets out the Infrastructure, Improvements and real property currently owned by one or more of the Parties as well as the additional proposed BVWACS Infrastructure and BVWACS Improvements that will comprise the Initial Phase. The Parties agree that the Initial Phase of the BVWACS shall be as set forth in Exhibit B.

7.B. Ownership and Permission. Ownership of Infrastructure and Improvements currently owned by the Parties shall remain the property of such Party. Permission for all BVWACS Parties, BVWACS Associates, the BVWACS Managing Entity and its respective agents and representatives to access and use such Infrastructure and Improvements as part of the BVWACS

in accordance with this Agreement is herein granted. New BVWACS Improvements and BVWACS Infrastructure shall be owned as tenants in common among the Parties then in existence at the time funding was provided for such BVWACS Improvements or BVWACS Infrastructure.

## **8. Staffing and Operations.**

8.A. Designation of Managing Entity. The Governing Board shall designate one of the BVWACS Parties or a mutually agreed upon third party as the Managing Entity for the BVWACS.

8.B. BVWACS Systems Manager. The Managing Entity is responsible for providing the BVWACS Systems Manager. This may be a full time Employee or, with the approval of the Governing Board, contracted third party devoted to managing the construction, acquisition, implementation, operation and maintenance of the BVWACS under the direction of the Managing Entity. The Operating Board will serve in an advisory capacity to the BVWACS Systems Manager on behalf of the Governing Board. The BVWACS Systems Manager shall be an Employee of the Managing Entity unless the Governing Board designates otherwise. As its Employee, the Managing Entity shall be responsible for the hiring, firing, performance review, training and education, provision of health and retirement benefits and all other costs associated with this position as well as costs associated with being an Employee of the Managing Entity, subject to reimbursement by the Parties through adoption of the annual BVWACS Budget which shall include the costs of all Employees. The Managing Entity shall obtain input from the Governing Board before taking any formal action regarding performance, including annual reviews, with respect to such Employee.

8.C. Management Duties of the BVWACS Managing Entity. The BVWACS Managing Entity will manage the BVWACS on a day to day basis. Responsibilities include the following plus any other duties as determined by the Governing Board:

8.C.1. Management. Perform ongoing management of the construction, acquisition, implementation, operation and maintenance of the BVWACS;

8.C.2. Coordination with other radio systems. Serve as principal coordinator with other radio systems as determined by the Governing Board;

8.C.3. Minutes. Maintain minutes of the Governing Board and Operating Board meetings;

8.C.4. Recommendations. Make recommendations to the Operating Board regarding proper performance of the BVWACS under the terms of this Agreement;

8.C.5. Supervision. Supervise additional Employees as applicable;

8.C.6. Dispute Resolution. Assist in the administrative dispute process as set out elsewhere in this Agreement.

8.C.7. Agreement Copy. Maintain and make available at all reasonable times to the Operating Board and to the Governing Board a current copy of this Agreement, including any amendments and the most current version of all Exhibits together with copies of the most current versions of any subsequently developed operating procedures, policies or standards;

8.C.8. Financial Responsibilities. Reconcile the budget on a quarterly basis or as requested by the Governing Board. Prepare draft budget, coordinate purchasing, conduct inventories, assist with any audits and handle such other fiscal matters as may be directed by the Governing Board;

8.C.9. Reports. Provide such performance reports, projection reports and other reports regarding the technical, operational, fiscal and other aspects of the BVWACS as required by the Governing Board or Operating Board;

8.C.10. Record Keeping. Maintain and keep current all records, legal documents, contracts, manuals, warranties, etc. relating to the BVWACS and make same available for review by any of the Parties upon request;

8.C.11. Contract Administration. Administer all contracts for the construction, acquisition, implementation, operation and maintenance of the BVWACS;

8.C.12. Project Management. Oversee the management of all projects relating to the construction, acquisition and implementation of Infrastructure and Improvements to the BVWACS;

8.C.13. Standard Operating Procedures. Develop, distribute and keep current standard operating procedures for the BVWACS as directed by the Operating Board;

8.C.14. BVWACS Availability. Ensure operational and technical availability of the BVWACS features to the Parties and Associates in accordance with the goals and objectives set forth herein and that support interaction and communications with other public safety radio systems.

8.C.15. Grant Administration. Oversee the application, administration and financial management of grant funding programs available for the construction, acquisition, implementation, operation and maintenance of the BVWACS. This includes performing as a recipient or sub-recipient for the BVWACS Parties in relation to such grant programs.

8.D. Staffing. There may be such other Employees as may, from time to time, be budgeted and approved by the Governing Board. The BVWACS Parties through action of the Governing Board may elect to contract out some or all services relating to the construction, acquisition, implementation, operation and maintenance of the BVWACS. The initial number and types of Employees to be provided or funded by the BVWACS Parties are shown in Exhibit H. Notwithstanding anything herein to the contrary, personnel provided by one or more of the Parties to support the BVWACS are, and shall exclusively remain, employees of their respective entity, subject to all of the employment rules and personnel policies of that entity. The personnel costs necessary to support the BVWACS are included in each year's draft budget submitted to the Parties, subject to the provisions in Section 9. Budget, and Section 18. Effect of Breach and Default.

8.E. Operating Procedures. The BVWACS Managing Entity shall ensure that standard operating procedures are prepared to govern the day-to-day management and operation of the BVWACS and BVWACS staff ("Standard Operating Procedures") as may be directed by the Governing Board, and shall submit such Standard Operating Procedures to the Operating Board for review and approval. Standard Operating Procedures shall be annually reviewed by the Operating Board and updated as needed. The BVWACS Managing Entity also monitors the implementation of and compliance with the Standard Operating Procedures. If there is any conflict between the Standard Operating Procedures and the employment rules and personnel policies of the entities, then the employment rules and personnel policies of the entities control as they impact that entities' staff supporting the BVWACS. The Operating Board shall also oversee the development and implementation of corrective measures policies.

8.F. Roles and Responsibilities. The BVWACS Parties shall use the BVWACS in a manner consistent with the Standard Operating Procedures, directives of the Governing Board and in compliance with applicable FCC rules and regulations. The BVWACS Parties shall follow the established Standard Operating Procedures and Governing Board directives regarding the programming and addition of Subscriber Equipment to the BVWACS. The BVWACS Parties are encouraged to utilize and improve the interoperation capabilities of the BVWACS. BVWACS Parties shall utilize the BVWACS Managing Entity as their primary point of contact for requests for BVWACS Improvements when dealing with problems, or to answer questions. BVWACS Parties shall work in good faith with the BVWACS Managing Entity to help resolve problems. Using Standard Operating Procedures or other directives from the Governing Board, BVWACS Parties shall have access to system reports including, but not limited to, system usage, utilization and performance. A BVWACS Party is financially responsible for any FCC penalties, fines or

other financial encumbrance caused by the actions of that BVWACS Party and any BVWACS Associate sponsored by it.

8.G. Capacity Management. The BVWACS Managing Entity may develop a policy for capacity management and submit the policy to the Operating Board for review and approval. This policy shall be reviewed annually by the Operating Board, and updated as needed to ensure appropriateness and applicability with current BVWACS needs and industry standards and practices.

8.H. Withdrawal of Managing Entity. In the event the current entity ceases to be the BVWACS Managing Entity and the BVWACS Managing Entity is not a BVWACS Party subject to the provisions of Section 17.B herein, the Governing Board Members representing three-fourths of the BVWACS Parties shall appoint a replacement BVWACS Managing Entity. Within ten (10) days after receipt of notice of the identity of the replacement BVWACS Managing Entity, the current BVWACS Managing Entity shall:

8.H.1. Possession. Transfer control and possession of all BVWACS Infrastructure, BVWACS Improvements including BVWACS real property owned as tenants in common pursuant to this Agreement to the replacement BVWACS Managing Entity.

8.H.2. Conveyance of Real Property. Transfer any and all ownership rights it may have to real property acquired pursuant to the terms of this Agreement to the BVWACS Parties.

8.H.3. Evidence of Ownership. Provide evidence and documentation adequate to prove ownership of the BVWACS Infrastructure, BVWACS Improvements or real property, including, wherever applicable, transferring all rights, title and interests, including proprietary and intellectual property rights, to enable the replacement BVWACS Managing Entity to manage, upgrade, update, maintain, and operate or to sell, convey or otherwise dispose of the BVWACS Infrastructure, BVWACS Improvements or real property if or when the BVWACS Parties determine that this is appropriate, and

8.H.4. Operations and Legal Documents. Transfer the originals of all deeds, operations manuals, warranties, bills of sale, licenses, leases, titles and other legal documents related to BVWACS Infrastructure, BVWACS Improvements or BVWACS real property to the replacement BVWACS Managing Entity.

## **9. Budget.**

9.A. Budget Adoption. The Governing Board shall annually approve a draft BVWACS Budget upon the approval of three-fourths of its members in accordance with the timeframes set forth herein and recommend approval of the Budget to the governing bodies of the BVWACS

Parties, including approval to appropriate their proportionate share of the BVWACS Budget. All Operating Costs must be included in each annual BVWACS Budget as well as any Capital Costs. The Budget shall include any and all costs relating to employees in implementing and maintaining the BVWACS. If any BVWACS Party does not agree with the draft BVWACS Budget as presented, it must provide the Governing Board with a detailed explanation of its issues with the draft Budget within 30 days after receipt of it. Each member of the Governing Board shall consult with its governing body or appropriate budget review personnel before voting to approve any Budget.

9.B. Annual Operating Costs Budget. The annual Operating Costs shall be shared according to the participation levels shown in Exhibit A, or as may be amended from time to time by the Governing Board based on an annual true-up of the ratio of actual accounts for each party to total accounts. An annual true-up shall take place by January 31 of each year. Each year the BVWACS Managing Entity, following and abiding by its budgeting and accounting practices, shall prepare an annual Operating Costs budget (“Operating Budget”) on a fiscal year basis and submit this budget to the Operating Board. The Operating Budget must provide for all Operating Costs. The Operating Board shall review and adjust, as needed, the Operating Budget and then submit its recommendation to the Governing Board. The Governing Board shall, no later than April 1st of each year, approve a draft budget and recommend approval of the Operating Budget by each BVWACS Party and appropriation of their proportionate share of the Operating Budget in their next Fiscal Year’s budget. If budgeted amounts exceed actual expenditures, the Governing Board by majority vote may move the unexpended balances into the BVWACS Capital Fund, or credit the unexpended balances against the budgeted expenditure amounts in the Operating Budget for the next Fiscal Year at each Parties then-current participation level, unless refunded to the Party at such Party’s request. From time to time, participation levels shall be re-evaluated upon request of a Party using the same procedure set forth herein of recommendation by the Operating Board and determination by the Governing Board as Infrastructure or Improvements are made to BVWACS, as use of the BVWACS changes, or when new information affecting BVWACS becomes available. A BVWACS Party may use its share of BVWACS capacity for its own purposes or may allocate a portion of that share through a BVWACS Associate Interlocal Cooperation Agreement.

9.C. Annual Capital Costs Budget. A Capital Costs budget shall be prepared annually using the same process for adoption as the Annual Operating Costs Budget except that while the Capital Costs budget is prepared annually, the planning period for Capital Costs is five (5) years. Unless otherwise agreed by the BVWACS Parties, Capital Costs shall be shared according to the

participation levels shown in Exhibit A, if and as amended, as described in Section 9.B.; provided, however, that the Capital Costs that are incurred to benefit only one or more individual BVWACS Parties shall be paid by the BVWACS Parties benefiting from such BVWACS Improvements and Infrastructure.

9.D. Budgeted Expenditures. After the Budget has been approved and funded by the BVWACS Parties, the BVWACS Managing Entity is authorized to incur costs in accordance with the Budget. Any costs to be incurred in excess of the approved and funded Operating Costs or Capital Costs Budget amounts require additional budget approval and funding, or re-allocation of existing funds, by the BVWACS Governing Board. The BVWACS Governing Board may approve transfer of funds from the BVWACS Capital Fund to the Capital Budget to meet an urgent need that was not addressed during the Budget process. Such approval requires the vote of three-fourths of the members of the Governing Board.

9.E. Other BVWACS Fees. Fees payable by BVWACS Associates are determined by the terms of their BVWACS Associate Interlocal Cooperation Agreement. Funds received by new Parties are determined in accordance with this Agreement.

9.F. Funding Transfers to the Managing Entity. Once each BVWACS Party appropriates its portion of the BVWACS Budget in its annual budgetary process, the Managing Entity shall provide timely and accurate invoices to facilitate the transfer of funds by each BVWACS Party to the Managing Entity, and the Parties shall each comply with the following procedures to facilitate payment by the Managing Entity to the BVWACS vendors and contractors:

9.F.1. Quarterly Assessment. At least 60 days prior to the beginning of each Quarter of the Fiscal Year, the BVWACS Managing Entity shall give the Operating Board, for its review, an itemized schedule of the Capital Costs and Operating Costs that are projected to be incurred, and the amount of money projected to be expended, during the next quarter. At least 30 days prior to the beginning of each Quarter, the Managing Entity shall send each BVWACS Party an invoice for its Quarterly Assessment.

9.F.2. Approval. Each BVWACS Party must approve or dispute its Quarterly Assessment and provide written notice of any dispute to the BVWACS Managing Entity within 15 business days after receipt of the invoice for the Quarterly Assessment. If a dispute concerning the Quarterly Assessment is not resolved by the time the BVWACS Party is required to remit payment, the matter shall be resolved in accordance with the procedures set forth in Section 21, Dispute Resolution.

9.F.3. Payment Instructions. The Managing Entity must provide payment instructions to each BVWACS Party for the transfer of BVWACS Party funds to the Managing Entity.

9.F.4. BVWACS Party Funds. Each BVWACS Party must pay its Quarterly Assessment to the Managing Entity no later than 60 calendar days after receipt of an invoice in accordance with the resolution of any dispute about the Quarterly Assessment.

9.F.5. BVWACS Fund. The Managing Entity shall establish a separate fund for BVWACS in its accounting records (“BVWACS Fund”) that is dedicated to the administration of the BVWACS. All funds received from BVWACS Parties and other BVWACS revenues, including the capital fund and any interest earned, shall be credited to the BVWACS Fund. All BVWACS obligations shall be debited from the BVWACS Fund. The records for the BVWACS Fund shall be maintained in compliance with generally accepted accounting principles.

9.F.6. Accounting. The BVWACS Fund is managed by the Managing Entity in the same manner as the Managing Entity manages funds held in its depository accounts. Funds associated with the BVWACS, including accrued interest, shall be accounted for separately by the Managing Entity for the benefit of the BVWACS Parties, unless otherwise required by law or this Agreement.

9.F.7. Statements. The BVWACS Managing Entity is responsible for providing quarterly statements showing the credits to and debits from the BVWACS Fund, including any income earned, to each Party on or before the 20th day of the first month following the end of such quarter.

9.F.8. Payments. Subject to the availability of sufficient funds in the BVWACS Fund, the Managing Entity shall pay BVWACS contractors and vendors in compliance with the Texas Prompt Payment Act.

9.F.9. Reports. The BVWACS Managing Entity is responsible for providing each BVWACS Party with a quarterly written financial report on the Budget, including current BVWACS Cost projections for the succeeding quarter.

9.G. Funding. The BVWACS Parties specifically acknowledge that funding for each BVWACS Party’s share of the BVWACS Operating Budget and Capital Costs Budget goes through that BVWACS Party’s normal budgeting process; and upon approval by its governing body, is payable from current revenue available to each funding BVWACS Party. Purchase, operation and maintenance costs of Subscriber Equipment are the responsibility of each BVWACS Party.

9.H. Failure to Appropriate. The failure of a BVWACS Party to appropriate its proportionate share of the BVWACS Budget by the first day of the Fiscal Year for which the Operating Budget and Capital Costs Budget is applicable shall be a material default of such BVWACS Party under this Agreement, and the BVWACS Parties shall follow the procedures for termination of a BVWACS Party set out in this Agreement addressing the effect of breach and default.

9.I. Partial Funding. If any BVWACS Party appropriates less than its proportionate share of Operating Budget and Capital Costs budget for any year, or if any BVWACS Party fails to pay its Quarterly Assessment, (herein called the “Underfunding Party”) the other BVWACS Parties, acting through the Governing Board may take one or more of the following actions:

9.I.1. Suspension of Representation. Remove the Governing Board representation and voting rights for the Underfunding Party.

9.I.2. Service Reduction. Reduce the BVWACS services being provided to the Underfunding Party.

9.I.3. Notice of Underfunding. Send the Underfunding Party a notice stating the amount of underpayment, which is the difference in the Underfunding Party’s Quarterly Assessment and the amount of funding provided by the Underfunding Party (“Deficiency”). Said Deficiency is an obligation of such Underfunding Party subject to the Prompt Payment Act. Each Underfunding Party agrees that its future right to participate in the BVWACS is dependent upon fully paying its Quarterly Assessments. The Underfunding Party must appropriate and pay the Deficiency, and its entire Quarterly Assessment for the remainder of that Fiscal Year.

9.I.4. Budget Revision. Amend the BVWACS Operating Budget and Capital Costs budget by reducing costs and/or increasing the amounts paid by the other BVWACS Parties.

9.I.5. Termination of Participation. Terminate the Underfunding Party’s participation in this Agreement by following the procedure for termination of a BVWACS Party, if the level of funding is deemed by the other BVWACS Parties to be substantially a failure to fund.

9.J. Asset Management. BVWACS Infrastructure shall be tracked in accordance with standard operating procedures approved by the Operating Board. These procedures must be consistent with generally accepted accounting principles for property held as tenants in common for one or more of the BVWACS Parties. If any BVWACS Infrastructure needs to be retired, the BVWACS Managing Entity will provide this information to the Operating Board for approval prior to removal. At a minimum, the BVWACS Managing Entity shall provide the asset serial

number, asset ID tag (if any), location from which it is to be removed and description of the asset. The asset to be retired shall be disposed as directed by the Governing Board upon receiving the recommendation of the Operating Board. Any funds received from the disposal of the asset shall be credited as revenue in the BVWACS Fund and shown in the next BVWACS Capital budget. These funds are managed in accordance with the provisions of this Agreement.

With respect to Infrastructure, Improvements and real property owned by only one or some of the Parties and that is not listed as BVWACS Infrastructure, BVWACS Improvements, or BVWACS real property, right of access, license and use is herein granted by such Parties to all Parties and to the BVWACS Managing Entity as necessary for BVWACS purposes as determined by the Governing Board. With respect to future Infrastructure, Improvements and real property owned by only one or some of the Parties, such Parties agree that all rights of access, use or licenses required to make same a part of the BVWACS shall be granted. No Infrastructure, Improvement or real property owned by only one or some of the Parties may be conveyed to a third party, destroyed or otherwise removed from the BVWACS without giving at least 12 months advance notice. Failure to do so shall be considered a failure to perform substantially such Party's or Parties' material obligations under this Agreement, and the provisions of Section 18. (Effect of Breach and Default) shall apply. The Governing Board may determine to file Certificates of Memorandums in the deed records of the county where an asset owned by one or more Parties is located notifying the public regarding BVWACS rights associated with such asset.

**10. BVWACS Associates.**

10.A. Procedure for Becoming BVWACS Associate. To use the BVWACS, an entity must be either a BVWACS Party or BVWACS Associate unless special access is granted by three-fourths vote of the members of the Governing Board. Additionally, the Texas Department of Public Safety is hereby granted special access. To become a BVWACS Associate, a BVWACS Party must sponsor the entity. A BVWACS Party may only sponsor BVWACS Associates to the extent that it has a portion of its share of BVWACS capacity that is unused and therefore available to assign. A BVWACS Party may not sponsor any entity unless the entity is eligible to use the BVWACS licensed radio frequencies under FCC rules, regulations and practices. A BVWACS Party may sponsor one or more entities as BVWACS Associates. BVWACS Parties shall use the following procedure for sponsoring an entity:

10.A.1. Share of Capacity. Determine the extent of the BVWACS Party's share of the BVWACS capacity that is available for assignment to the entity based upon most recent participation level determined using the true-up provisions set forth in Section 9.B.

10.A.2. Anticipated Usage. Determine the anticipated usage of the entity to be sponsored based on talk time if available, the number of radios used by the entity and other relevant information as determined by the Governing Board.

10.A.3. Compatibility. Determine the compatibility of the Subscriber Equipment used by the entity with the system and the impact of their inclusion in the system based on voice traffic, talk-group needs, and functionality.

10.A.4. Associate Agreement. Negotiate a BVWACS Associate Interlocal Cooperation Agreement with the prospective BVWACS Associate that includes the Standard Terms and Conditions as well as any other terms and conditions related to payment, term of agreement, nature of the services to be provided, curtailment of services or termination of the authority to continue use of the BVWACS for breach, withdrawal by the entity, and other matters that they desire as long as they are not contrary to or more expansive than the Standard Terms and Conditions or the terms and conditions of this Agreement.

10.A.5. Report to Board. Present a report to the Operating Board that includes the anticipated usage of the entity, the number of radios or equipment used by the entity, the compatibility of the radios or equipment used by the entity with the system, the number of talkgroups needed and any other information relevant to whether the addition of the entity is likely to cause the BVWACS Party to exceed its share of the BVWACS capacity.

10.A.6. Board Approval of Draft Agreement. Present a draft copy of the proposed BVWACS Associate Interlocal Cooperation Agreement to the Operating Board so that it can verify that the agreement contains the Standard Terms and Conditions and is consistent with the terms and conditions of this Agreement.

10.A.7. Parties Approval of Associate Agreement. Obtain approval of the BVWACS Associate Interlocal Cooperation Agreement by the governing bodies of the sponsoring Party and the prospective BVWACS Associate to the agreement.

10.B. Operating Board Duties. The Operating Board shall review the report of the BVWACS Party asking to sponsor an entity as a BVWACS Associate and evaluate the following:

10.B.1. Impact on current and future BVWACS voice traffic capacity.

10.B.2. Impact on current and future BVWACS talkgroup capacity.

10.B.3. Impact on overall current and future BVWACS functionality.

The Operating Board shall review the proposed BVWACS Associate Interlocal Cooperation Agreement to be entered into by the BVWACS Party asking to sponsor an entity as a BVWACS Associate and determine whether it includes the Standard Terms and Conditions.

If the impact on these three aspects of the BVWACS capacity is not likely to result in that BVWACS Party's exceeding its share of the BVWACS capacity or to detrimentally affect the overall current and future functionality of the BVWACS, and the proposed BVWACS Associate Interlocal Cooperation Agreement includes the Standard Terms and Conditions, the Operating Board may recommend approval of the request to sponsor the entity to the Governing Board.

10.C. Association Interlocal Cooperation Agreements Approval. The Governing Board must approve all BVWACS Association Interlocal Cooperation Agreements before such prospective BVWACS Associate may access or use the BVWACS.

10.D. Capacity for Sponsoring BVWACS Associates. Initially, a BVWACS Party's share of the capacity of the BVWACS is based on the participation levels stated in Exhibit A. Two years after system acceptance of the BVWACS or when adequate information is available, whichever occurs first, BVWACS capacity is based on the capacity management process recommended by the Operating Board and approved by the Governing Board. The share of capacity used may be adjusted as Infrastructure or Improvements are made to BVWACS. A BVWACS Party may use its share of BVWACS capacity for its own purposes or may allocate a portion of that share through a BVWACS Associate Interlocal Cooperation Agreement. In no event shall sponsoring a BVWACS Associate cause alteration to the Participation Table set forth in Exhibit A, if and as amended as described in Section 9.B.

10.E. Financial Effect of Sponsoring BVWACS Associate. When a BVWACS Party authorizes another entity to use a portion of its share of BVWACS capacity, that BVWACS Party remains responsible for full payment of its entire cost share of the BVWACS.

10.F. Sponsor's Control of BVWACS Associate's Access to BVWACS. If a BVWACS Party requests that the BVWACS System Manager disable all or part of the services available to a BVWACS Associate sponsored by that BVWACS Party, the BVWACS System Manager shall comply with these requests and disable the portion of the services available to a BVWACS Associate requested by the BVWACS Party as soon as practicable.

10.G. Responsibility for Subscriber Equipment. BVWACS Associates are responsible for purchasing and providing their own Subscriber Equipment to be used on the BVWACS. The purchase of Subscriber Equipment shall be coordinated with the BVWACS Managing Entity.

10.H. Additional Units. BVWACS Associates are not allowed to add units to the BVWACS without approval from their sponsoring BVWACS Party.

10.I. Changes to Operations. Each BVWACS Party that has sponsored BVWACS Associates is responsible for informing the BVWACS Associates of changes in BVWACS Standard Operating Procedures.

**11. New BVWACS Parties.**

11.A. New Parties to BVWACS. From time to time, entities may join the BVWACS as full Parties. Entities desiring to join the BVWACS as full Parties shall petition the current Parties for membership in accordance with the terms herein.

11.B. Contents of Petition. An entity desiring to join BVWACS shall submit a petition. At a minimum, a petition to join BVWACS as a Party shall include the following:

11.B.1. Area to be Served. A description of the area to be covered and a description of how the Service Area will be affected;

11.B.2. Proposed Subscriber Equipment. The type of Subscriber Equipment proposed to use the BVWACS, including the approximate number of units to be added, talk groups and talk time;

11.B.3. Infrastructure, Improvements, Funds and Real Property. A description of any Infrastructure, Improvements, funds or real property that will be made available to the BVWACS to offset costs associated with system expansion, and a description of how this will affect the BVWACS and the current Service Area; and

11.B.4. Share of Capacity. Provide an estimate of the requested capacity desired, including the anticipated type and amount of usage based on talk time, talk group needs and other relevant factors as determined by the Governing Board.

11.C. Procedure. The following procedure shall be followed when petitioning to become a Party.

11.C.1. Submit Petition. An entity desiring to become a Party to the BVWACS shall petition the Governing Board through the BVWACS Managing Entity who will then review such petition for completeness as well as content. The BVWACS Managing Entity shall forward the petition to the Operating Board for recommendation by the Operating Board within 30 days from submission of such petition.

11.C.2. Operating Board. The Operating Board shall review the petition of the submitting entity and make its recommendation to the Governing Board within 60 days from the date of submission of such petition. The Operating Board shall evaluate the petition based upon the following:

11.C.2.1. Whether the addition of petitioner as a Party will have an adverse impact on the current and future needs of the existing Parties, on the Service Area and on BVWACS as a whole; and

11.C.2.2. Whether the addition of petitioner as a Party is consistent with the goals and objectives of BVWACS as set forth in this Agreement.

11.C.3. Governing Board. The petitioner may negotiate an amendment to this Agreement relating to its inclusion as a Party. The Governing Board will consider the request and the recommendation of the Operating Board within ninety (90) days from the date of submission of the petition and approve, deny or request additional information needed to consider the request. Adding a new Party to this Agreement shall be considered an amendment subject to the terms and conditions for approval of amendments set forth in Section 6 above. The Governing Board will also determine if the petitioner will be required to make a capital contribution towards construction or improvement to the system. Such contribution may be in the form of a reimbursement for prospective construction or improvements to the system.

11.D. Participation Level. A BVWACS Party's share of the capacity of the BVWACS is based on the participation levels stated in Exhibit A, as may be amended, and as described in Section 9.B. Addition of new Parties will require reevaluation and possible alteration of the participation levels. The Operating Board will provide preliminary recommended participation levels based on the new Party joining BVWACS at the time it reviews the petition. The Governing Board shall then review such recommendation and determine whether such participation levels should be modified. Such determination must be approved by three-fourth of the members of the Governing Board.

11.E. Obligations of New BVWACS Parties. When a new BVWACS Party is authorized by the Governing Board, the participation levels determined above will establish the Annual Assessment for the new Party. Once the new Party is approved for membership, that Party assumes responsibility for its Annual Assessment and all other obligations as a Party to this Agreement. New BVWACS Parties are responsible for purchasing and providing their own Subscriber Equipment to be used on the BVWACS. The purchase of Subscriber Equipment shall be coordinated with the BVWACS Managing Entity.

## **12. Accounting Records.**

The BVWACS Managing Entity maintains accounting records in accordance with generally accepted accounting standards applicable to governmental entities, including compliance with federal guidelines for spending federal funds or bond proceeds.

The BVWACS Managing Entity shall ensure that records pertaining to the BVWACS shall be kept in accordance with the records retention policy of the Managing Entity and in accordance with the Open Records Act. At any reasonable time, upon three (3) business days prior written notice, any BVWACS Party may inspect, copy, examine, and/or audit the BVWACS records, at that BVWACS

Party's expense, at the office of the BVWACS Managing Entity, or any other mutually acceptable location.

**13. Contracting Authority.**

Except for real estate transactions, the BVWACS Parties hereby grant such BVWACS Managing Entity the authority to contract on behalf of the BVWACS Parties for acquisitions and services that have been approved in the annual BVWACS Budget or as otherwise approved by the Governing Board, so long as the contracted amount is within the budgeted amount and the payments are made from available funds, using the BVWACS Managing Entity's standard purchasing processes, unless expenditure of federal funds or bond proceeds requires use of additional procedures or guidelines. Procurements shall be made in accordance with the laws applicable to such entity. These contracts shall be administered by the BVWACS Managing Entity.

**14. Federal Funds and Bond Funds.**

If a BVWACS Party utilizes federal funds, grant funds, or bond funds to meet a portion of their financial commitment under this Agreement, the BVWACS Parties agree to conduct all procurements, maintain all records and otherwise conduct their activities in furtherance of this Agreement so as to comply with all applicable statutes, regulations, policies and grant contract provisions necessary to qualify the BVWACS expenditures contemplated for federal or grant program reimbursement and to avoid arbitrage penalties. Further, the BVWACS Parties agree to cooperate with each other in the application for and administration of federal funds, grant funds, or bond funds to maximize funding participation in the operation and maintenance of the BVWACS. By October 1 of each year each BVWACS Party using federal funds, grant funds, or bond funds to meet a portion of its annual financial commitment shall notify the BVWACS Managing Entity.

**15. BVWACS Performance.**

The Operating Board shall take such action as may be necessary for assuring that Subscriber Equipment configuration changes or additions do not adversely affect the performance of the BVWACS. The Operating Board may utilize the system assessment services of the BVWACS Support Vendor or other qualified contractor to determine the impact of adding Subscriber Equipment to the BVWACS. The Operating Board may develop policies involving the BVWACS Support Vendor that provide a review process prior to implementing any Subscriber Equipment system configuration changes requested or made by BVWACS Parties. BVWACS Parties shall not take any action that is known or ought to be known to affect the operation of the BVWACS adversely and shall reverse any action taken that affects the operation of the BVWACS adversely. BVWACS Parties shall not change the configuration of their

program or template in a way that is known or ought to be known to affect the operation of the BVWACS adversely and shall reverse any change in the configuration of their program or template that affects the operation of the BVWACS adversely.

**16. Dissolution of BVWACS.**

16.A. Dissolution of BVWACS. This Agreement may be voluntarily dissolved before the end of the final term if three-fourths of the governing bodies of the BVWACS Parties agree in writing to provide for a dissolution date. The dissolution date shall not be less than twelve (12) months after these BVWACS Parties have executed the agreement to dissolve the BVWACS unless all BVWACS Parties agree to an earlier dissolution date.

16.B. Distribution of Assets. If the BVWACS is dissolved either by agreement or at the end of the final term, the assets of the BVWACS shall be equitably distributed among the BVWACS Parties. The BVWACS Parties shall agree on which BVWACS Party receives which assets in the distribution. An agreement for distribution of assets of the BVWACS shall be effective after approval by three-fourths of the governing bodies of the BVWACS Parties. The manner of distribution shall consider and be consistent with the following factors:

16.B.1. Participation Level. The BVWACS Party's share of the Capital Costs for Infrastructure and Improvements to the BVWACS and the BVWACS Party's participation level as stated in Exhibit A, if and as amended as described in Section 9.B.;

16.B.2. Asset Value. The value of the assets on the dissolution date;

16.B.3. Manner of Acquisition. The basis on which the asset was acquired, whether the asset

16.B.3.1. Was already owned by a Party;

16.B.3.2. Was acquired jointly by all BVWACS Parties or

16.B.3.3. Was acquired by only one or some of the BVWACS Parties;

16.B.4. Early Termination. Whether and, if so, when the BVWACS Party terminated its participation in BVWACS before the dissolution of the BVWACS; and

16.B.5. Utility of Asset. The usefulness of the asset to the BVWACS Party receiving it.

16.C. The BVWACS Party to which an asset is distributed shall also be provided evidence and documentation adequate to prove ownership of that asset, including, wherever applicable, transfer of all rights, title and interests, including proprietary and intellectual property rights, to enable that BVWACS Party to upgrade, update, operate, and maintain it or to sell, convey or otherwise dispose of it and the originals of all operations manuals, warranties, bills of sale, licenses, leases, titles and other legal documents related to that asset.

**17. Withdrawal of a BVWACS Party.**

17.A. Notice of Withdrawal. A BVWACS Party may withdraw from this Agreement and terminate its participation in BVWACS at any time by giving at least twelve (12) months prior written notice to the Remaining Parties. The Termination Date shall not be earlier than twelve months after notice is given unless three-fourths of the members of the Remaining Parties agree otherwise. The Withdrawing Party must continue to fund its Annual Assessment through the Termination Date, and if it does so, the Withdrawing Party may continue to participate in the BVWACS until its Termination Date. The portion of the Budget allocated to a Withdrawing Party after receipt of the notice of withdrawal may be reduced by the agreement of three-fourths of the members of the Remaining Parties.

17.B. Withdrawal of Managing Entity. In the event the BVWACS Managing Entity is a party to this Agreement and such Party withdraws from the BVWACS, the Governing Board Members representing three-fourths of the members of the Remaining Parties shall appoint a replacement BVWACS Managing Entity. Within ten (10) days after receipt of notice of the identity of the replacement BVWACS Managing Entity, the Withdrawing BVWACS Party that is the BVWACS Managing Entity shall:

17.B.1. Possession. Transfer control and possession of all BVWACS Infrastructure, BVWACS Improvements including BVWACS real property owned as tenants in common pursuant to this Agreement to the replacement BVWACS Managing Entity.

17.B.2. Conveyance of Real Property. Transfer any and all ownership rights it may have to real property acquired pursuant to the terms of this Agreement to the Remaining Parties.

17.B.3. Evidence of Ownership. Provide evidence and documentation adequate to prove ownership of the BVWACS Infrastructure, BVWACS Improvements or real property, including, wherever applicable, transferring all rights, title and interests, including proprietary and intellectual property rights, to enable the replacement BVWACS Managing Entity to manage, upgrade, update, maintain, and operate or to sell, convey or otherwise dispose of the BVWACS Infrastructure, BVWACS Improvements or real property if or when the Remaining Parties determine that this is appropriate, and

17.B.4. Operations and Legal Documents. Transfer the originals of all deeds, operations manuals, warranties, bills of sale, licenses, leases, titles and other legal documents related to BVWACS Infrastructure, BVWACS Improvements or BVWACS real property to the replacement BVWACS Managing Entity.

17.C. Disposition of BVWACS Value of Withdrawing Party. All right, title, and interest in and to the Withdrawing Party's BVWACS Value may be dealt with in one of two ways: 1) sale and assignment by Withdrawing Party; or 2) determination of valuation and disposition of Withdrawing Party's BVWACS Value by Remaining Parties. In either event, all rights of access, licenses and use to such Withdrawing Party's assets comprising a part of the BVWACS remain in place during the withdrawal process.

17.C.1. Sale and Assignment by Withdrawing Party. The Withdrawing Party shall offer its BVWACS Value to the Remaining Parties. If none of the Remaining Parties accept the offer within sixty (60) days after receipt of the offer, the Withdrawing Party may sell its BVWACS Value to one or more entities approved by all of the Remaining Parties if the entity or entities enter into an assignment of this Agreement from the Withdrawing Party and accept the duties and obligations of the Withdrawing Party under this Agreement as its or their own duties and obligations. The assignee, if other than a Remaining Party, shall also obtain the rights of the Withdrawing Party under the BVWACS Agreement, including one representative on the Governing Board and one representative on the Operating Board. After the assignment, the BVWACS Agreement shall be construed as if the assignee were listed in the definition of BVWACS Parties. If the Withdrawing Party has an offer to purchase its BVWACS Value from an entity but all of the Remaining Parties do not approve that entity as a reasonable replacement for the Withdrawing Party, the Remaining Parties shall compensate the Withdrawing Party for its BVWACS Value in proportion to their Annual Assessment of BVWACS and obtain a proportionate share of the Withdrawing Party's BVWACS Value.

17.C.2. Determination of Value by Remaining Parties. If the Withdrawing Party does not give the Remaining Parties notice that it is exercising its rights under 17.C.1. at least six (6) months before the Termination Date, no later than the Termination Date the Remaining Parties must fairly determine what the Withdrawing Party's BVWACS Value is at the Termination Date. If the Withdrawing Party and the Remaining Parties are unable to agree on the BVWACS Value, an accounting shall be performed by a panel of three persons. The Remaining Parties shall select one person to represent them on the panel. The Withdrawing Party shall select another person to represent it on the panel. The two persons selected shall select a third person to complete the panel and the accounting. If an accounting is performed, it shall be the basis for determining BVWACS Value for the Withdrawing Party. One half of the cost of this panel shall be

borne by the Withdrawing Party and one half of the cost of this panel shall be borne by the Remaining Parties.

17.C.3. Disposition by Remaining Parties. When the BVWACS Value is determined, the Remaining Parties shall determine how to disburse the ownership of the BVWACS Value of the Withdrawing Party. The Remaining Parties shall consider at least the following options:

17.C.3.1. New Party. Find another entity to compensate the Withdrawing Party for its BVWACS Value, assume ownership of the Withdrawing Party's BVWACS Value and assume its obligations and rights under the BVWACS Agreement;

17.C.3.2. Share Value. Divide the Withdrawing Party's BVWACS Value proportionally among the Remaining Parties, compensate the Withdrawing Party for its BVWACS Value, and provide for a proportional increase in Annual Assessment;

17.C.3.3. Single or some of BVWACS Parties. Allow one or only some of the Remaining Parties to compensate the Withdrawing Party for its BVWACS Value, assume ownership of the Withdrawing Party's BVWACS Value with a corresponding increase in Annual Assessment; or

17.C.3.4. Ownership without Use. Require the Withdrawing Party to retain ownership of its BVWACS Value but forfeit its use of the BVWACS and representation on the Governing Board and Operating Board unless and until the Withdrawing Party pays what its accrued share of the systems operations costs from the Termination Date to the end of the then current Budget Year would have been if it had not withdrawn.

17.D. Exclusion of Withdrawing Party's Votes. The Withdrawing Party and its vote on the Governing Board shall be excluded in determining the votes needed for the Remaining Parties to make a decision about the disposition of the Withdrawing Party's BVWACS Value after the Termination Date.

17.E. Disposition of BVWACS Value by Remaining Parties. If the Remaining Parties select the ownership alternative in 17.C.3.2., or 17.C.3.3. the Remaining Parties shall provide for payment of the Withdrawing Party's BVWACS Value in the fiscal year following the fiscal year of the Termination Date.

17.F. Effect of Disposition on Membership in Governing Board. If the Remaining Parties select the option in 17.C.2. or 17.C.3.3. and Withdrawing Party's BVWACS Value is divided

among the Remaining Parties or assumed by one or only some of the Remaining Parties, the representation of these BVWACS Parties on the Governing Board shall not be increased.

17.G. Depreciation of BVWACS Value. If the Withdrawing Party retains its BVWACS Value, the portion of the value that relates to depreciable assets shall be reduced annually on a declining balance method over the useable life of the asset as long as the depreciable assets that form part of the BVWACS Value are owned by one or more of the Remaining Parties. The portion of the BVWACS Value that relates to non-depreciable assets shall remain unchanged.

**18. Effect of Breach and Default.**

18.A. Events of Breach. Breach results from any of the following:

18.A.1. Payment. A BVWACS Party's failure to appropriate or pay its Annual Assessment timely;

18.A.2. FCC Rules. Violation of FCC rules and regulations by a BVWACS Party or any BVWACS Associate with which it has entered into a BVWACS Associate Interlocal Cooperation Agreement;

18.A.3. Policies and Procedures. Individual or repeated violations of approved written policies and procedures by a BVWACS Party or any BVWACS Associate with which it has entered into a BVWACS Associate Interlocal Cooperation Agreement;

18.A.4. Inappropriate Use. Inappropriate use of the BVWACS by a BVWACS Party or any BVWACS Associate with which it has entered into a BVWACS Associate Interlocal Cooperation Agreement;

18.A.5. Penalty Payment. Failure to pay FCC penalties or fines resulting from the actions of a BVWACS Party or any BVWACS Associate with which it has entered into a BVWACS Associate Interlocal Cooperation Agreement;

18.A.6. Improper Disposition of Assets or Interest. Disposing of assets owned by only one or some of the Parties in contravention of the provisions of this Agreement, or failure to follow the required process set forth in this Agreement of divesting a Party's interest in a BVWACS Improvement, BVWACS Infrastructure or BVWACS real property.

18.A.7. Adverse Impact. Any other action or omission that has a material adverse impact on the operation and maintenance of BVWACS; or

18.A.8. Substantial Performance. Failure to perform substantially its material obligations other than failure to appropriate or timely pay its Annual Assessment.

18.B. Breach for Non-Payment. The decision to exercise rights granted by this subsection shall be made by the Governing Board. If any BVWACS Party commits the breach described in 18.A.1., the Governing Board may determine to deliver a written notice of breach to

the BVWACS Party that specifies the nature of the breach and indicates that unless the breach is cured within thirty (30) days, additional steps shall be taken. A breach described in 18.A.1. can only be cured by paying that Annual Assessment. If the breaching BVWACS Party does not cure that breach within thirty (30) days of receiving the written notice of breach, the breaching BVWACS Party is in default and the Governing Board shall deliver a written notice of default to the BVWACS Party that specifies the following:

18.B.1. The nature of the default;

18.B.2. The date of the notice of breach;

18.B.3. The failure of the breaching BVWACS Party to cure timely; and

18.B.4. The BVWACS Party's interest in the BVWACS is terminated no later than 60 days from the date of the written notice of breach if the termination is approved by all of the BVWACS Remaining Parties unless the default is cured by the defaulting BVWACS Party paying that Annual Assessment within an additional thirty (30) days from the date of default as referenced in 18.A.1. above for a total of sixty (60) days from the date of default unless the Governing Board approves a longer timeframe.

18.C. Suspension for Other Breaches. If any BVWACS Party commits a breach described in 18.A.2. through 18.A.8. or a breach described in 18.A.2. through 18.A.8. involving use of any radio or other equipment accessing the BVWACS under the authority of a BVWACS Party, the Governing Board may suspend the right of that BVWACS Party to use the BVWACS for that radio or equipment or for any other radio or equipment for a period of time adequate to cure the breach and determine whether additional remedies are needed.

18.D. Notice of Breach, Default, and Termination For Other Breaches. The decision to exercise rights granted by this subsection 18.D. shall be made by the Governing Board. If any BVWACS Party commits a breach described in 18.A.2. through 18.A.8., the Governing Board may deliver a written notice of breach to the BVWACS Party that specifies the nature of the breach and indicates that unless the breach is cured within thirty (30) days, additional steps shall be taken. If the breaching BVWACS Party begins to cure the breach within the thirty (30) day period, the thirty (30) day cure period is extended as long as the breaching BVWACS Party continues to prosecute a cure diligently to completion and is making a good faith effort to cure the breach. If the breaching BVWACS Party does not cure the breach within thirty (30) days of receiving the written notice of breach or additional period as extended by diligent prosecution of a good faith effort to cure the breach, the breaching BVWACS Party is in default and the Governing Board shall deliver a written notice of default to the BVWACS Party which specifies the following:

18.D.1. The nature of the default;

18.D.2. The date of the notice of breach;

18.D.3. The failure of the breaching BVWACS Party to cure timely; and

18.D.4. The BVWACS Party's interest in the BVWACS is terminated on the effective date stated in the notice if the termination is approved by all of the BVWACS Remaining Parties unless the default is cured within thirty (30) days of the notice of default.

18.E. Disposition of BVWACS Value. The Remaining Parties shall determine as to how the Terminated Party's BVWACS Value shall be disposed. The Remaining Parties have ninety (90) days after the date that termination is effective to determine the value and disposition of the Terminated Party's BVWACS Value. The Remaining Parties may seek an agreement with the Terminated Party about its BVWACS Value. If the Terminated Party and the Remaining Parties are unable to agree on the Terminated Party's BVWACS Value, they shall use the method for determination of value in section 17.C. as if the Terminated Party were a Withdrawing Party. When the BVWACS Value is determined, the Remaining Parties shall determine how the ownership of the BVWACS Values is to be disposed. The Remaining Parties shall consider at least the following ownership alternatives for the BVWACS Value of the Terminated Party:

18.E.1. New Party. Find another entity to compensate the Terminated Party for its BVWACS Value, assume the ownership of the Terminated Party's BVWACS Value, and assume its obligations and rights under the BVWACS Agreement;

18.E.2. Share Value. Divide the Terminated Party's BVWACS Value proportionally among the Remaining Parties so that the Remaining Parties can each compensate the Terminated Party for their share of the BVWACS Value and pay a proportional increase in Annual Assessment in the fiscal year following the fiscal year in which the default last occurred;

18.E.3. One or More BVWACS Parties. Allow one or more Remaining Parties to compensate the Terminated Party for its BVWACS Value and assume ownership of the Terminated Party's BVWACS Value with a corresponding increase in Annual Assessment; or

18.E.4. Ownership without Use. Require the Terminated Party to retain the ownership of its BVWACS Value but forfeit its use of the BVWACS and representation on the Governing Board and Operating Board and annually reduce its BVWACS Value by twenty per cent (20%) of the original BVWACS Value so that the Terminated Party has no BVWACS Value remaining after five (5) years. The Terminated Party would transfer the reduction in value among the Remaining Parties each of such five (5) years

proportionally based on the Remaining Parties' respective participation level during the year such distribution is made.

18.F. Exclusion of Terminated Party's Votes. The Terminated Party and its vote on the Governing Board shall be excluded in determining the votes needed for the BVWACS Remaining Parties to make a decision about the disposition of the Terminated Party's BVWACS Value after the date that termination is effective.

18.G. Effect of Termination on Representation on Governing Board. If the Terminated Party's BVWACS Value is divided among the Remaining Parties or assumed by only one or some of the Remaining Parties, the representation of these BVWACS Parties on the Governing Board shall not be increased.

**19. Effect of Withdrawal or Termination on Remaining Parties.**

Termination or withdrawal of a BVWACS Party has no effect on a Remaining Party's rights to participate in the BVWACS other than the specific rights and duties set out in this Agreement, and the continuing duty of all Remaining Parties to pay their Annual Assessment.

**20. FCC Licenses.**

Termination or withdrawal of any Party from the BVWACS shall include the surrender to the Remaining Parties any and all of that BVWACS Party's radio frequency licenses that were licensed for the purpose of implementing the BVWACS. The Remaining Parties shall determine whether to request reassignment of the license to another BVWACS Party or surrender these licenses to the Federal Communications Commission (FCC). The Remaining Parties are responsible for complying with all rules and regulations of the FCC related to reassignment and surrender of these licenses. Notwithstanding the above, licenses held, managed and owned by only one or some of the Parties as the exclusive license of such Party or Parties at the time of termination or withdrawal are not subject to the provisions of this section.

**21. Dispute Resolution Process.**

21.A. Cooperation. All BVWACS Parties are encouraged to work together to resolve all disputes prior to invoking the dispute resolution process set forth herein.

21.B. Hearing by Operating Board. Any BVWACS Party that has an issue or dispute relating to the BVWACS may request a hearing before the Operating Board. The Operating Board shall hear such matter after requesting information regarding such dispute or issue from such BVWACS Party and from the BVWACS Managing Entity. The Operating Board shall then hold a hearing and render its decision in writing.

21.C. Appeal to Governing Board. A BVWACS Party that is adversely affected by the Operating Board's decision may appeal such decision to the Governing Board, which may elect to hear the appeal or refer the matter to mediation.

21.D. Withdrawal of Dispute. A dispute may be withdrawn at any time during the Dispute Resolution process.

21.E. Timeframes:

21.E.1. Initial Dispute Hearing. Any BVWACS Party may bring an issue or dispute to the Chair of the Operating Board. The Chair must schedule a meeting of the Operating Board within (15) fifteen business days of receipt of the notice and provide a written determination to the appropriate BVWACS Parties and to the BVWACS Managing Entity within (5) five business days after the hearing. Any appeal of the decision or recommendation of the Operating Board is to the Governing Board.

21.E.2. Appeal to Governing Board. Any appeal from the decision of the Operating Board must be made by delivery of written notice of appeal to the BVWACS Managing Entity and Governing Board within (15) fifteen business days after receipt of the Operating Board's decision or recommendation. The Governing Board may meet to hear the appeal or may elect to send the appeal to mediation. The Governing Board, assisted by the BVWACS Managing Entity, either schedules a hearing or sends the appeal to mediation within (25) twenty-five business days of receipt of the notice of the appeal. Any appeal from the Governing Board's recommendation is to a mediator as described below.

21.E.3. Mediation. If the Governing Board refers a dispute to mediation, the parties to the dispute shall select, within thirty (30) days, a mediator trained in mediation skills to assist with resolution of the dispute. The parties to the dispute 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 Agreement prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) days after the Governing Board refers the dispute to mediation, the mediator shall be selected by mutual agreement. If that is not possible, by the Dispute Resolution Center of the Brazos Valley or a mutually agreeable mediation center. The parties agree to participate in mediation sessions in good faith for a period of up to thirty (30) days from the date of the first mediation session. Notice of the date, time, and location of the mediation shall be given to the BVWACS Managing Entity, which may attend. The

parties to the dispute shall share the costs of mediation equally. If efforts to mediate the dispute are unsuccessful, the parties to the dispute shall then be free to exercise all available rights and remedies under this Agreement, or at law or in equity.

21.E.4. Application of Government Code, chapter 2260. To the extent that Chapter 2260, Texas Government Code, is applicable to this Agreement, is not inconsistent with the process set forth above, and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used in disputes involving Texas A & M University that cannot be resolved in the ordinary course of business. The designated officers of Texas A & M University, as applicable, shall examine the claim and any counterclaim and negotiate with the claimant in an effort to resolve such claims. The BVWACS Parties specifically agree that

21.E.4.1. Neither the execution of this Agreement by Texas A & M University nor any other conduct, action or inaction of any representative of Texas A & M University relating to this Agreement constitutes or is intended to constitute a waiver of Texas A & M University's or the state's sovereign immunity to suit; and

21.E.4.2. Texas A & M University has not waived its right to seek redress in the courts.

## **22. Miscellaneous.**

22.A. Interlocal Agreement. This Agreement is an Interlocal Agreement authorized and governed by the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. Each BVWACS Party agrees that in the performance of its respective obligations as set forth in this Agreement, it is carrying out a duly authorized governmental function, which it is authorized to perform individually under the applicable statutes of the State of Texas and/or its charter. Each BVWACS Party agrees that the compensation to be made to the other BVWACS Parties as set forth in this Agreement is in an amount intended to fairly compensate each performing BVWACS Party for the services or functions it provides hereunder, and is made from current revenues available to the paying BVWACS Party. Where applicable, this Interlocal Agreement shall be administered in accordance with the laws applicable to a home-rule municipality.

22.B. Immunity as a Defense. No BVWACS Party has agreed to waive any defense, right, immunity, or other protection under law including any statutory provision, by entering into this Agreement or otherwise participating in the BVWACS.

22.C. Retention of Defenses. The Parties agree that neither this Agreement nor the operation or use of the BVWACS by the BVWACS Parties affect, impair, or limit their respective immunities and limitations of liability to the claims of third parties, including claims predicated on premises defects.

22.D. Notices. Notices required under this Agreement must be in writing and delivered personally or sent by certified US Mail, postage prepaid, addressed to such BVWACS Party at the following respective addresses:

**City:**

City of Bryan  
Attention: City Manager, with a copy to the City Attorney  
P. O. Box 1000  
Bryan, TX 77805

**City:**

City of College Station  
Attention: City Manager, with a copy to the City Attorney  
PO Box 9960  
College Station, TX 77842

**City:**

City of Brenham  
Attention: City Manager, with a copy to the City Attorney  
200 West Vulcan Street  
PO Box 1059  
Brenham, TX 77834

**County:**

Brazos County  
Attention: County Judge, with a copy to County Attorney  
200 S. Texas Avenue  
Suite 332  
Bryan, TX 77803

**County:**

Washington County  
Attention: County Judge, with a copy to County Attorney  
100 East Main Street  
Suite 104  
Brenham, TX 77833

**Texas A & M University:**

Texas A & M University  
Attention: Vice President and Associate Provost  
For Information Technology and Chief Information Officer  
1365 TAMU  
College Station, TX 77843-1365

All notices so given, are deemed given on the date so delivered or so deposited in the US Mail. All BVWACS Parties may change their address by sending written notice of such change to the other Parties in the manner provided for above.

22.E. Assignment. This Agreement being based upon the special qualifications of each BVWACS Party, any assignment or other transfer of this Agreement or any part hereof without the express consent in writing of the other Parties is void and has no effect, which consent shall not be unreasonably withheld.

22.F. Entire Agreement. The entire agreement among the BVWACS Parties is contained herein and no change in or modification, termination, or discharge of this Agreement in any form whatsoever is valid or enforceable unless it is in writing and signed by duly authorized representatives of all Parties.

22.G. Prior Agreements. This Agreement supersedes any and all prior agreements regarding this subject that may have previously been made. The subject of this Agreement is the construction, acquisition, implementation, operation and maintenance of the BVWACS.

22.H. Severability. If any term or provision of this Agreement is, to any extent, rendered invalid or unenforceable, the remainder of this Agreement is not affected, and each other term and provision of this Agreement remains valid and enforceable to the fullest extent permitted by law.

22.I. Non-waiver. Failure of a BVWACS Party to exercise any right or remedy for a breach or default of any other BVWACS Party does not waive such right or remedy for that breach or default or in the event of a subsequent breach or default.

22.J. Authority of Signatories. Each BVWACS Party represents to all the other BVWACS Parties that the representative signing this Agreement on any BVWACS Party's behalf has been duly authorized by the governing body of that BVWACS Party in compliance with Texas law.

22.K. Further Assurances. Each BVWACS Party agrees to perform all other acts and execute and deliver all other documents as may be necessary or appropriate to carry out the intent and purposes of this Agreement.

22.L. Exhibits. The Exhibits, which are attached hereto and described below, are incorporated herein and made a part hereof for all purposes.

22.M. Counterparts and Multiple Originals. This Agreement is effective as of the Effective Date set forth in this Agreement. This Agreement may be executed simultaneously in one or several counterparts, each of which is deemed to be an original and all of which together

constitute one and the same instrument. The terms of this Agreement become binding upon each BVWACS Party from and after the time that it is executed by all BVWACS Parties. The counterparts may be signed in multiple originals to allow each BVWACS Party to have an originally signed counterpart for each BVWACS Party. The Agreement has been executed in multiple originals, each having equal force and effect, on behalf of the Parties.

Exhibit List:

Exhibit A – Participation Table

Exhibit B – Initial Phase of the BVWACS

Exhibit C – Service Area map for Initial Phase

Exhibit D – BVWACS Associate Standard Terms and Conditions

Exhibit E – Goals and Objectives

Exhibit F – Monthly, Quarterly, and Annual Evaluation Factors

Exhibit G – Governance, Operation, and Maintenance Flow Chart and Distribution of Board Membership

Exhibit H – Initial staffing for BVWACS Program

**CITY OF BRYAN**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Jason Bienski, Mayor

**ATTEST:**

\_\_\_\_\_  
Mary Lynne Stratta, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Janis Hampton, City Attorney



CITY OF COLLEGE STATION

By: \_\_\_\_\_

Date: \_\_\_\_\_

CITY OF BRENHAM

By: \_\_\_\_\_

Date: \_\_\_\_\_

BRAZOS COUNTY

By: \_\_\_\_\_

Date: \_\_\_\_\_

WASHINGTON COUNTY

By: \_\_\_\_\_

Date: \_\_\_\_\_

TEXAS A & M UNIVERSITY

By: \_\_\_\_\_

Date: \_\_\_\_\_

**FIRST RESTATEMENT OF THE INTERLOCAL AGREEMENT  
FOR THE CONSTRUCTION, ACQUISITION, IMPLEMENTATION, OPERATION AND  
MAINTENANCE OF  
THE WIDE AREA COMMUNICATIONS SYSTEM**

**Exhibit A – Participation Table**

<b><u>BVWACS Party</u></b>	<b><u>Participation Level</u></b>
City of Bryan	20.35%
City of College Station	31.29%
City of Brenham	9.69%
Brazos County	13.38%
Washington County	15.57%
Texas A & M University	9.72%

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**Exhibit B - Initial Phase**

Each of the BVWACS parties will contribute existing infrastructure, and real property currently owned or leased by the parties for the purpose set forth in the Agreement. The existing infrastructure and real property contributed by each of the parties at the execution of the Agreement is as follows:

**College Station**

Access to 325' radio tower, equipment shelter, land (tower & shelter located), existing equipment and furnishings that will serve the BVWACS system.

**Bryan**

Access to secure third floor equipment space, including 48 VDC battery plant, generator use, and tower use rights on a 133 foot communications tower atop the 4 story building located at 101 Regent Street, Bryan, Texas.

Access to a climate-controlled, fenced, equipment shelter, including UPS system and generator, and use of two conventional 800 MHz repeaters, including their antenna system, at the City of Bryan water tower located on Luza Street, between 26<sup>th</sup> Street and 28<sup>th</sup> Street, Bryan, Texas.

**Brenham**

Communications existing furnishings (console desks).

**Washington County**

Access to three rental towers with shelters.

## **Brazos County**

Access to a climate-controlled, fenced, equipment shelter on real property located at 21550 Kathy Fleming Road, Millican, Texas, in south Brazos County.

## **Texas A&M University**

Access to a 320 foot tower located at Hensel Park for installation of the radio antennas and cable.

Space in the TAMU radio transmission facility for up to six 19” floor mount racks.

Air conditioning and AC power (supported both by UPS and generator) for RF transmission systems.

24x7 access to the radio facility via University issued keyless entry access cards for approved personnel.

Environmental monitoring of facility by TAMU Network Operations Center on a 24x7 basis. The monitoring will include security cameras, temperature and humidity alarms, power interruption alarms and high water alarms.

## Phase I - Public Safety Interoperability Communications (PSIC) grant

Phase I provided the necessary equipment and racks (consisting of base radios, site controller and radio frequency distribution system), antennas and associated wiring located at each of seven sites. Phase I also provided operator consoles replacement/upgrade for the parties

**Table 1: Phase I**

<b>Item/Site</b>	<b>Description</b>
Network Connectivity	Leased connectivity to connect all the sites together
Bryan /Brazos County Site	Includes 700/800 MHz Multicast Base equipment with racks (6 chls) , Xmit & Rcv antennnas and coax
College Station Site	Includes 700/800 MHz Multicast Base equipment with racks (12 chls), Xmit & Rcv antennnas and coax
College Station Console Sys	As shown in Table 2 below. - 6 operator positions
Bryan/Brazos county Console Sys	Convert existing system to P25
Millican	Includes 700/800 MHz Multicast Base equipment with racks (6 chls) , Xmit & Rcv antennnas and coax
Hensel Park Site	Includes 700/800 MHz Multicast Base equipment with racks (6 chls) , Xmit & Rcv antennnas and coax
TAMU Console Equip	Convert existing system to P25
LCRA - Site	Includes 700/800 MHz Multicast Base equipment

	with racks (6 chls) , Xmit & Rcv antennnas and coax
Brenham Site	Includes 700/800 MHz Multicast Base equipment with racks (6 chls) , Xmit & Rcv antennnas and coax
Burton Site	Includes 700/800 MHz Multicast Base equipment with racks (6 chls) , Xmit & Rcv antennnas and coax
Brenham Emerg Comms Console Sys	As shown in Table 2 below. - 4 operator positions
Management Reserve	Includes structural analysis of all towers and project reserves.

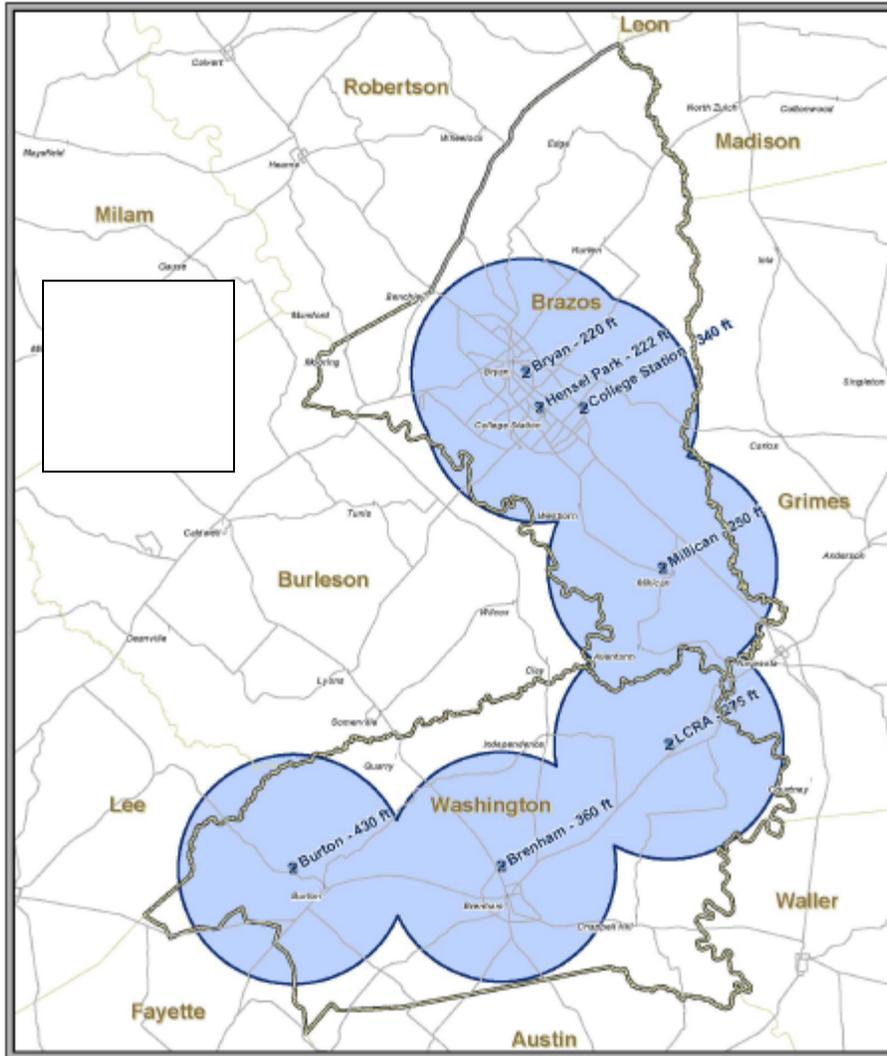
Console equipment installed at College Station and the City of Brenham is shown in Table 2.

**Table 2: Console Equipment**  
**Console Sys Equipment**

IP Based console sys  
Console site router  
Auxiliary I/O Server  
Site Controller  
Conventional Channel Gateway  
LAN Switch  
Operator Position Equip: PC, Mouse, Speakers, Mic, Keyboard  
IP Based Logging Sys: Archiving Interface Server, Digital Logging Server, Digital Logging Recorder, Logging Playback Station  
700/800 MHz P25 Trunked B/U Stations  
Remote Control - Multimode  
Antenna System  
Lightening Protection  
UPS

**FIRST RESTATEMENT OF THE INTERLOCAL AGREEMENT  
FOR THE CONSTRUCTION, IMPLEMENTATION, OPERATION AND MAINTENANCE OF  
THE WIDE AREA COMMUNICATIONS SYSTEM**

**Exhibit C - Service Area**



**C**

**FIRST RESTATEMENT OF THE INTERLOCAL AGREEMENT  
FOR THE CONSTRUCTION, ACQUISITION, IMPLEMENTATION, OPERATION AND  
MAINTENANCE OF  
THE WIDE AREA COMMUNICATIONS SYSTEM**

**Exhibit D - BVWACS Associate Standard Terms and Conditions**

When using the Brazos Valley Wide Area Communications System (“BVWACS”), BVWACS Associate shall abide by all policies, procedures and guidelines established by the BVWACS Operating Board, the BVWACS Governing Board, and the terms and conditions of this BVWACS Associate Interlocal Cooperation Agreement

BVWACS Associate shall use the BVWACS in a manner consistent with the Standard Operating Procedures established by the BVWACS Operating Board and in compliance with applicable Federal Communications Commission (“FCC”) regulations and rules.

BVWACS Associate is encouraged to use and improve the interoperation capabilities of the BVWACS and to provide input to the BVWACS Managing Entity on the day-to-day operations of the BVWACS and development of BVWACS standard operating policies and procedures.

BVWACS Associate shall utilize its sponsoring BVWACS Party as its primary point of contact for requests for BVWACS Improvements.

BVWACS Associate shall utilize the BVWACS Managing Entity as its primary point of contact when dealing with problems, or to answer questions. BVWACS Associate shall work in good faith with the BVWACS Managing Entity to help resolve problems.

BVWACS Associate shall purchase and provide its own subscriber radios and equipment to be used on the BVWACS. The selection and specifications for these radios and equipment must be coordinated with the BVWACS Managing Entity so that all radios and equipment purchased are compatible with the BVWACS.

BVWACS Associate shall ensure that programming for its subscriber equipment that uses the BVWACS is consistent with the Standard Operating Procedures established by the BVWACS Operating Board.

BVWACS Associate has no right to use the BVWACS if the BVWACS Party entering into this BVWACS Associate Interlocal Cooperation Agreement with it is no longer eligible to use the BVWACS.

BVWACS Associate is subject to any limitations or restraints on its usage of BVWACS that apply to the BVWACS Party entering into this BVWACS Associate Interlocal Cooperation Agreement.

The current term of this BVWACS Associate Interlocal Cooperation Agreement shall not exceed the current term of the Interlocal Agreement for Construction, Acquisition, Implementation, Operations and Maintenance of a Wide Area Communications System.

BVWACS Associate may be subject to immediate suspension of this BVWACS Associate Interlocal Agreement for violation of FCC rules and regulations, individual or repeated violations of the BVWACS Standard Operating Procedures, or use of the BVWACS that is determined to be inappropriate by the Governing Board.

Upon thirty (30) days written notice that specifies the existence and nature of the default, the BVWACS Party sponsoring the BVWACS Associate may automatically terminate the participation of BVWACS Associate. Default results from failure to comply with the BVWACS Associate Interlocal Cooperation Agreement, including:

1. Violation of FCC rules and regulations;
2. Individual or repeated violations of the BVWACS Standard Operating Procedures; or
3. Use of the BVWACS that is determined to be inappropriate by the Governing Board.

BVWACS Associate may avoid termination if the default is cured within thirty (30) days. If the BVWACS Associate begins to cure the default within the thirty (30) day period, the time to cure may be extended, at the sole discretion of the sponsoring BVWACS Party, for as long as the BVWACS Associate diligently continues to work toward completion of the cure.

BVWACS Associate shall ensure that the persons it authorizes to use its radios and equipment are trained in the proper use and etiquette for two-way radio communication.

BVWACS Associate shall reimburse the BVWACS Party that is the holder of an FCC license if there is any actual or alleged violation of any FCC rule or regulation as a result of any radios or equipment that is owned by BVWACS Associate or used by any person associated with BVWACS Associate for all costs

arising from the actual or alleged violation, including costs and attorneys fees for defense against the allegation as well as fines and penalties incurred.

**FIRST RESTATEMENT OF THE INTERLOCAL AGREEMENT  
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MAINTENANCE OF  
THE WIDE AREA COMMUNICATIONS SYSTEM**

**Exhibit E – Goals and Objectives**

**GOALS**

The goal of the Brazos Valley Wide Area Communications System is to provide voice radio and ultimately data transmission coverage and radio communication interoperability throughout the Service Area utilizing Infrastructure and Improvements currently provided by the Parties as well as new Infrastructure and Improvements in accordance with this Agreement.

**OBJECTIVES**

1. The Brazos Valley Wide Area Communications System shall maintain an appropriate reserve capacity based on the determination of the Governing Board.
2. The Brazos Valley Wide Area Communications System shall strive to maintain coverage at or above 95% reliability for a portable radio worn on the hip with a speaker collar microphone inside a – 10db loss building within the Service Area.
3. To the extent practicable, the Brazos Valley Wide Area Communications System shall maintain interoperability with other public safety and governmental radio systems within the Service Area, the Brazos Valley Council of Governments area, regionally, statewide, and nationally.
4. The Brazos Valley Wide Area Communications System shall maintain the performance and equipment of the BVWACS at a standard consistent with the developments in technology and the needs of the BVWACS Parties.
5. The Brazos Valley Wide Area Communications System shall research and pursue opportunities for assistance for funding the BVWACS through grants and other means.

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**Exhibit F – Monthly, Quarterly and Annual Evaluation Factors**

Maintain system reserve capacity at or above the level approved by the Governing Board.

Maintain coverage at RFP's coverage specifications.

Report number of minutes of BVWACS non-normal operation.

Report number of system busies.

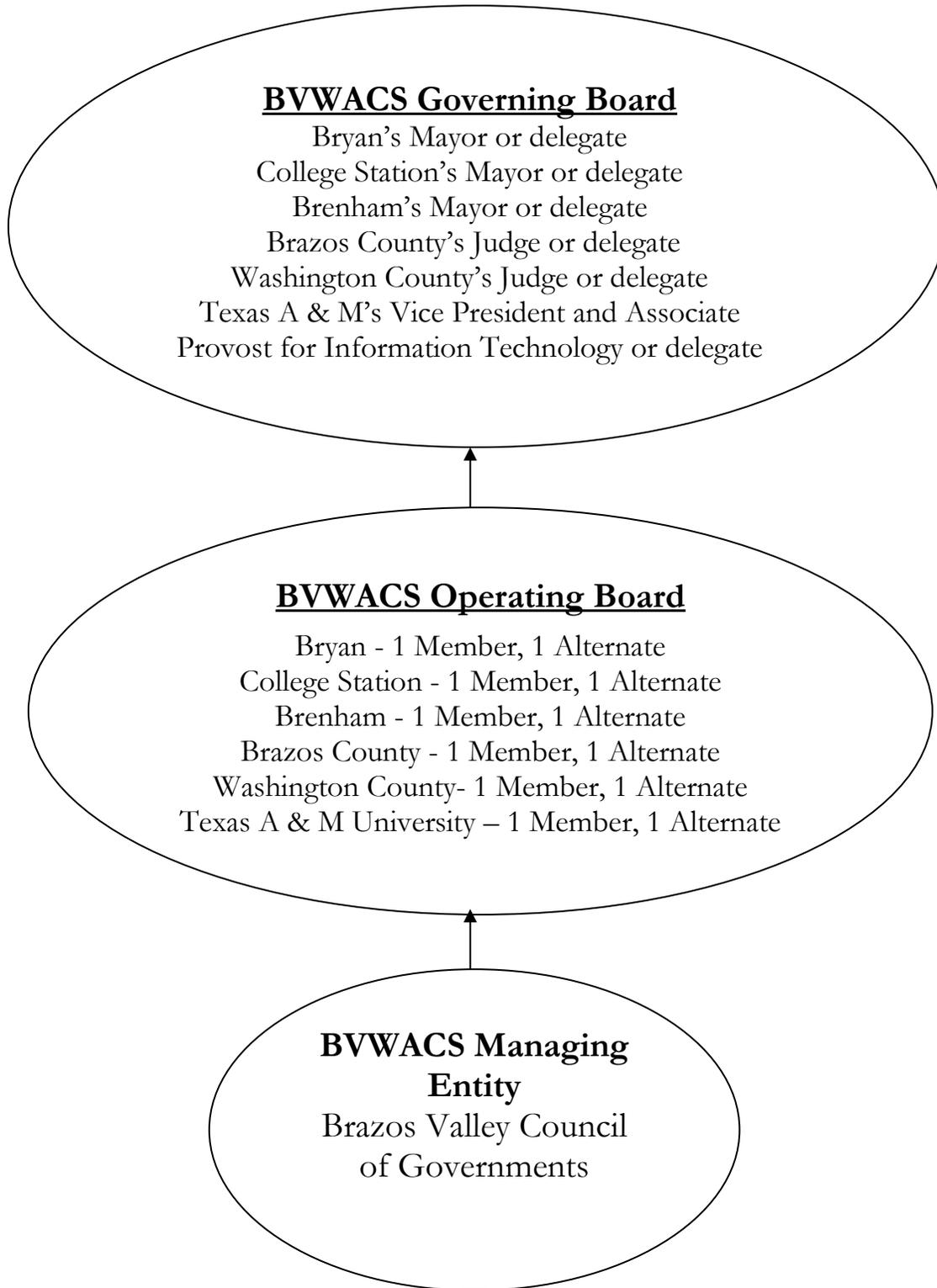
Report BVWACS Support Vendor response time to system problems.

Develop shared staff performance measures.

Report peak Busy Hour for each month.

**FIRST RESTATEMENT OF THE INTERLOCAL AGREEMENT  
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**Exhibit G- Governance, Operation, and Maintenance Flow Chart  
and Distribution of Board Membership**



**FIRST RESTATEMENT OF THE INTERLOCAL AGREEMENT  
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**Exhibit H – Staffing for BVWACS Program for FY 2014**

Radio System Manager (100 %)