



**Interlocal Agreement
For Managing Entity by the BVCOG
for the Brazos Valley Wide Area Communications System**

THIS INTERLOCAL AGREEMENT (“ILA”), made and entered into pursuant to the Texas Interlocal Cooperation Act, Chapter 791, Texas Government Code (the “Act”), by and among the Brazos Valley Council of Governments, hereinafter referred to as “BVCOG,” and the City of Bryan, City of College Station, City of Brenham, Brazos County, Washington County, and Texas A & M University, all political subdivisions or agencies of the state of Texas.

WHEREAS, the Brazos Valley Council of Governments (the “BVCOG”) is a regional planning commission and political subdivision of the State of Texas operating under Chapter 391, Texas Local Government Code; and

WHEREAS, pursuant to the Interlocal Cooperation Act codified in Chapter 791 Texas Government Code, the BVCOG is authorized to contract with eligible entities to perform governmental functions and services; and

WHEREAS, the City of Bryan, City of College Station, City of Brenham, Brazos County, Washington County, and Texas A & M University, collectively hereinafter sometimes referred to as the “BVWACS Parties” have entered into the First Restatement of the Interlocal Agreement for the Construction, Acquisition, Implementation, Operation and Maintenance of the Brazos Valley Wide Area Communications System to create and maintain an interoperable radio and data communications system (the “BVWACS Agreement”); and

WHEREAS, the BVWACS Parties desire the BVCOG to supervise the performance of the BVWACS Agreement; and

WHEREAS, the BVCOG desires to undertake the supervision of the performance of the BVWACS Agreement as set forth in this Agreement;

NOW, THEREFORE, BVCOG and the BVWACS Parties do hereby agree as follows:

ARTICLE 1: LEGAL AUTHORITY

The BVCOG represents that it is eligible to contract with the BVWACS Parties under the Interlocal Cooperation Act for the purposes recited herein because it is a local government and it possesses adequate legal authority to enter into this Agreement. Likewise, the BVWACS Parties represent that they, too, are each local governments or political subdivisions eligible to enter into this Agreement for the purposes recited herein.

ARTICLE 2: APPLICABLE LAWS

The BVCOG and the BVWACS Parties agree to conduct all activities under this Agreement in accordance with all applicable rules, regulations, and ordinances and laws in effect or promulgated during the term of this Agreement. This includes applicable laws relating to purchasing and bidding of products and services, maintenance of open records and use of the Brazos Valley Wide Area Communications System in accordance with Federal Communications Commission rules. A party to this Agreement is financially responsible for any FCC penalties, fines or other financial encumbrances or penalties caused by the actions of its agents, employees or representatives.

ARTICLE 3: WHOLE AGREEMENT

This Agreement and any attachments, as provided herein, constitute the complete agreement among the parties hereto, and supersede any and all oral and written agreements among the parties relating to matters herein.

ARTICLE 4: PERFORMANCE PERIOD

This Agreement shall be effective when approved by the governing body of the last party which approval makes the Agreement go into effect or October 1, 2013, whichever occurs latest. It shall remain effective until September 30, 2018, subject to the rights of termination set forth herein. The conditions set forth below shall apply unless modified or terminated in accordance with the provisions hereof.

ARTICLE 5: SCOPE OF SERVICES

The BVCOG agrees to perform certain services for the BVWACS Parties at specified rates and costs as set forth in Exhibit "A-2" Scope of Services attached hereto. Additionally, the BVCOG agrees to perform as the BVWACS Managing Entity as set forth in the BVWACS Agreement which is attached hereto as Exhibit "A-1."

The BVCOG will assist the BVWACS Parties in managing grant funds as set forth in Exhibit "A". Nothing herein shall make the BVCOG responsible for providing funding for various projects associated with such grant or programs in the event of a shortfall.

ARTICLE 6: PAYMENTS

Pursuant to the BVWACS Agreement, upon delivery of goods or services provided and upon presentation of properly documented statements on a quarterly basis to each of the BVWACS Parties for their proportionate share of same, each BVWACS Party shall promptly in accordance with the BVWACS Agreement pay the BVCOG the full amount of its respective share. All payments for goods or services will be made from current revenues available to the BVWACS Parties.

ARTICLE 7: CHANGES AND AMENDMENTS

This Agreement may be amended only by a written amendment executed by all the parties, except that any alternations, additions, or deletions to the terms of this Agreement which are required by changes in Federal and State law or regulations are automatically incorporated into

this Agreement without written amendment hereto and shall become effective on the date designated by such law or regulation.

ARTICLE 8: TERMINATION PROCEDURES

The BVCOG or the BVWACS Parties may cancel this Agreement at any time upon ninety (90) days written notice by certified mail to the other parties to this Agreement. The obligations of the BVWACS Parties and of the BVCOG, including obligations to pay any invoices outstanding for goods and/or services purchased under this Agreement, shall survive such cancellation, as well as any other obligation incurred under this Agreement, until performed or discharged by the responsible party.

ARTICLE 9: SEVERABILITY

All parties agree that should any provision of this Agreement be determined to be invalid or unenforceable, such determination shall not affect any other term of this Agreement, which shall continue in full force and effect.

ARTICLE 10: FORCE MAJEURE

To the extent that any party to this Agreement shall be wholly or partially prevented from the performance within the term specified of any obligation or duty placed on such party by reason of or through strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, accident, order of any court, act of God, or specific cause reasonably beyond the party's control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty shall be suspended until such disability to perform is removed; provided, however, force majeure shall not excuse an obligation solely to pay funds.

ARTICLE 11: CONSENT TO SUIT

Nothing in this Agreement will be construed as a waiver or relinquishment by any party of its right to claim such exemptions, privileges and immunities as may be provided by law.

ARTICLE 12: NOTICES

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

Brazos Valley Council of Governments:

Attention: Executive Director
P.O. Box 4128
Offices: 3991 East 29th St.
Bryan, Texas 77805-4128

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
P. O. 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

ARTICLE 13: MISCELLANEOUS

a. This Agreement has been made under and shall be governed by the laws of the State of Texas. Venue and jurisdiction of any suit or cause of action arising under, or in connection with, this Agreement shall lie exclusively in Brazos County, Texas.

b. It is understood that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter.

c. No Amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of all the parties.

d. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective entities.

e. Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of either party thereafter to enforce each and every provision hereof.

f. This Agreement and the rights and obligations contained herein may not be assigned by any party without the prior written approval of all the other parties to this Agreement.

g. This Agreement is effective as of the effective date set forth above. 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 counterparts may be signed in multiple originals to allow each party to have an originally signed counterpart for each party. The Agreement has been executed in multiple originals, each having equal force and effect, on behalf of the parties.

THIS INSTRUMENT HAS BEEN EXECUTED IN MULTIPLE ORIGINALS BY THE PARTIES HERETO AS FOLLOWS:

BRAZOS VALLEY COUNCIL OF
GOVERNMENTS

By: _____

Date: _____

CITY OF BRYAN

By: _____

Date: _____

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: _____

EXHIBIT “A-1”

SCOPE OF SERVICES

The BVCOG shall perform the following services at the following rates for the BVWACS Parties as the Managing Entity pursuant to the BVWACS Agreement:

1. Perform as Managing Entity as set forth in the BVWACS Agreement. This includes the following:
 - a. Overall management. To manage the BVWACS on a day to day basis. Responsibilities include specific duties outlined in the BVWACS Agreement plus any other duties as determined by the Governing Board created under such Agreement.
 - b. Management. Perform ongoing management of the construction, acquisition, implementation, operation and maintenance of the BVWACS;
 - c. Coordination with other radio systems. Serve as principle coordinator with other radio systems as determined by the Governing Board;
 - d. Minutes. Maintain minutes of the Governing Board and Operating Board meetings;
 - e. Recommendations. Make recommendations to the Operating Board regarding proper performance of the BVWACS under the terms of this Agreement;
 - f. Supervision. Supervise additional Employees as applicable;
 - g. Dispute Resolution. Assist in the administrative dispute process as set out elsewhere in this Agreement.
 - h. 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 or standards;
 - i. 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;
 - j. 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;
 - k. 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;
 - l. Contract Administration. Administer all contracts for the construction, acquisition, implementation, operation and maintenance of the BVWACS;
 - m. Project Management. Oversee the management of all projects relating to the construction, acquisition and implementation of Infrastructure and Improvements to the BVWACS;
 - n. Standard Operating Procedures. Develop, distribute and keep current standard operating procedures for the BVWACS as directed by the Operating Board;
 - o. 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;

p. 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, and such other duties as set out below.

2. Perform Grant Administration, including the following:

- a. Procurement and evaluation responses resulting in specific recommendations to the BVWACS Governing Board for the execution of grants and contracts, including receipt of funds;
- b. Recommendation to the BVWACS Governing Board for the award of subcontracts for the provision of the services set forth for covered programs that have been approved in accordance with the BVWACS Agreement;
- c. Management, administration, and oversight of subcontracts and subcontractors' performance, including for contracts for planning, evaluation, and monitoring;
- d. Payment of all authorized grant program expenses, whether for staff or administrative services, participant support costs, authorized subcontracted services, participant wages or stipends, or other costs incurred in the implementation of programs;
- e. Reimbursement of any questioned or disallowed costs will first be demanded from the subcontractor where the costs occurred, and making recommendations regarding possible solutions;
- f. Maintenance of financial and grant participant information records;
- g. Preparation and delivery of such reports and invoices for funds as are required by the state and federal rules, regulations, and administrative policies applicable to the program covered under the statutes;
- h. Preparation of a budget for Grant Recipient/Fiscal Agent;
- i. Authority to procure service providers for services authorized in the adopted and approved annual plans for the covered grant programs;; and
- j. Provision of other duties that may be required by changes in state and/or federal rules, regulations, and/or policies that are applicable to the covered grant program.

3. Exclusion from scope of services:

a. Conveyance of interests in real property. This does not prohibit the provision of services relating to property acquisition, such as oversight of surveys, title work, appraisals, etc.

EXHIBIT "A-2"

	<u>APPROVED</u> <u>FY2013 BUDGET</u>
EXPENSES	
Personnel	
System Manager	91,052
BVCOG Staff	19,351
Benefits	33,941
Total Personnel	<u>144,344</u>
Direct Expenses	
Travel	8,000
T-1 lines	109,164
Maintenance (Motorola)	258,445
Maintenance (HCRRS)	77,765
Supplies	
Telephone Expense	1,400
Equipment	
Contingency	
Consultants	
Postage, Printing, Training	
Other Direct	15,000
Total Direct Expenses	<u>469,774</u>
Other Direct Expenses	
Copier Expense	160
Postage Expense	192
Insurance	6,000
Training and Meeting Expense	2,500
Total Other Direct Expenses	<u>8,852</u>
Internal Service Funds	
Accounting Svc ISF	4,608
System Adm ISF	10,149
Copy Fax Service ISF	513
Human Resource Management	
ISF	8,535
Office Space ISF	6,552
Receipt Internet Loc Ph ISF	2,307
Core Supplies ISF	1,731
Supply Procurement ISF	807
Audit Expense	1,250
Total Internal Service Funds	<u>36,452</u>
Total Expenses before Indirect	<u>659,422</u>
Indirect Expenses	
Indirect Cost Expense	17,804
Total Indirect Expenses	<u>17,804</u>
Total EXPENSES	<u>677,226</u>

FY2013 APPROVED CAPITAL BUDGET

Revenue

Beginning Balance	\$	131,853
Partners' Contributions	\$	<u>293,000</u> ¹
TOTAL REVENUE	\$	<u>424,853</u>

Expenses

Console replacement project	\$	458,553
Less: Motorola discount	\$	<u>(35,000)</u>
TOTAL EXPENSES	\$	<u>423,553</u>

Carry forward to FY2014 \$ 1,300

¹ This amount will be reduced by \$ 61,523.71 if BVCOG's requested FY2012 Homeland Security Grant for this project is received.