

**Interlocal Agreement between the  
City of San Antonio, CPS Energy, and Bexar County  
for Ownership and Management of a Public Safety Radio System**

This Interlocal Agreement (the “Agreement”) is entered into pursuant to Chapter 791 of the Texas Government Code by and between the City of San Antonio, Texas (CITY), Bexar County, Texas (COUNTY), and CPS Energy (CPS), referred to individually herein as “Owner” or “Party” and collectively referred to herein as “Owners” or “Parties”.

**Background**

- A. On or about January 7, 2016, CITY issued a Request for Proposals for the System Construction, System Delivery, and System Operation of a new P25 compliant public safety radio system that meets the technical requirements of the Parties. The radio system, referred to as the Alamo Area Regional Radio System (“AARRS”), will replace the current EDACS public safety radio system; and
- B. CITY and COUNTY each have an ownership interest in the current EDACS public safety radio system, and the Parties wish to share in the cost of the new AARRS.
- C. The AARRS is intended to meet the radio communications needs of CITY’s, COUNTY’s and CPS’ operational personnel. Consequently, COUNTY and CPS agree to make financial contributions to obtain minority ownership interests in the AARRS and CITY agrees to make financial contributions to obtain a majority ownership interest in the AARRS.
- D. The Owners will jointly evaluate the vendor proposals and CITY will award the AARRS Contract. The Owners intend for the AARRS Enterprise to provide System Oversight pursuant to the terms of this Agreement.
- E. The Parties want to document the terms for shared ownership of the new AARRS, including, but not limited to, financial contributions, fiscal controls, governance, management, vendor oversight, construction, testing, delivery, operation, maintenance, technology upgrades and enhancements, selection of equipment, and the admission of radio subscribers.

**NOW THEREFORE**, the Owners severally and collectively agree, and by the execution of this Agreement, are bound to the mutual obligations and to the performance and accomplishment of the tasks described in the Agreement.

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## ARTICLE I - PURPOSE

- 1.01 The purpose of this Agreement is to establish the ownership of the AARRS and the terms and conditions for the governance, deployment, and management of the AARRS by CITY, COUNTY, and CPS, and the respective rights, duties, and obligations of the Owners.

## ARTICLE II - DEFINITIONS

- 2.01 Definitions. For the purpose of this Agreement, the following are the definitions of capitalized terms. Defined terms appearing in the Agreement in singular form will include the plural and vice-versa. Any defined terms that appear to conflict with other defined terms will be interpreted to eliminate or reduce conflicting meanings. Any undefined terms shall have the meaning applicable to those terms as found in the technical communications industry or as found in common usage.
- 2.01.01 AARRS Contract means the contract to be awarded and executed by the City with the System Vendor for System Construction, System Delivery, and System Maintenance, to which CPS and COUNTY are intended third-party beneficiaries.
- 2.01.02 AARRS Mission Plan means the technology implementation and strategic plan to guide the Executive Committee and JOC throughout the lifecycle of the System. The plan shall be divided into three parts. Part one will provide a transition plan from the current EDACS radio system to the AARRS System, as well a short-term assessment of System operations and functionality over the first five years of the System, including projected costs, network evolution, technological innovations, and any projected System Upgrades or System Enhancements. Part two of the plan will provide a medium-term assessment of the System focusing on the next five years of operations and addressing the same issues as the short-term assessment, but from the perspective of meeting the evolving needs of the community, System Owners, System growth, and any financial concerns or other matters that may require technological or operational adjustments. Part three of the plan will provide an end-of-life assessment of the System with a replacement strategy. The AARRS Mission Plan shall be refreshed as appropriate, but at a minimum every five years.
- 2.01.03 AARRS Operational Manual means the regulations and procedures for directing the deployment and management of System Construction, System Delivery, and System Maintenance, as well as the System transition to operations. The AARRS Operational Manual shall include the technical standards for subscriber access, System capacity, and integration of Subscriber Equipment. The Network Manager shall adhere to the provisions

of the AARRS Operational Manual and ensure that System subscribers comply with the requirements of the manual.

- 2.01.04 AARRS RFP means the request for proposal issued by CITY on or about January 7, 2016 for the purchase of the System including System Network Backbone Infrastructure, System Subscriber Equipment, System Design, System Construction, System Delivery, and System Maintenance.
- 2.01.05 Advisory Committee means any ad hoc committee of the AARRS Enterprise created by the Executive Committee for the purpose of addressing a special project.
- 2.01.06 Annual Operation Costs means the following annual costs necessary to provide System functionality to all Owners and Tenant Subscribers, as may be amended from time to time by adoption of the Annual Budget:
- (1) Funding for the service agreement with the System Vendor for System Maintenance;
  - (2) Funding for the following dedicated AARRS Enterprise positions, including, but not limited to, salaries, benefits, and all costs and resources required to perform duties: (i) Network Manager (percentage of time to be determined in budget process); (ii) Telecommunications Engineer (full-time); (iii) Network Administrator (full-time); (iv) two Telecommunications Analysts (full-time); (v) Fiscal Administrator (part-time); (vi) Budget Analyst (part-time), and (vii) Radio Services Manager (percentage of time to be determined in budget process) or as modified by the Annual Operation Budget;
  - (3) Funding to cover the annual expenses for System Tower Sites, including, but not limited to, real estate rent, tower leasing fees, broadband backhaul connectivity service, utility service fees, and related expenses;
  - (4) Funding for repairs to System Tower Site equipment, including, but not limited to, (i) tower climbs; (ii) tower lighting; (iii) air conditioning maintenance and replacement; and (iv) replacement of tower equipment not covered under the System Vendor maintenance service contract, including, but not limited to (a) antennas, (b) transmission lines, (c) connectors, (d) amplifiers and combiners, (e) microwave components, (f) cabinets, and (g) related communications equipment, if, and to the extent, not covered by the AARRS Contract;
  - (5) Funding to repair damage to tower facilities that is not covered by insurance or maintenance service agreements;

- (6) Funding for routine and periodic upgrades to jointly-owned Network Backbone Infrastructure equipment, software enhancements or patches, and security protections to ensure System operational security and functionality;
  - (7) Funding for insurance coverage for jointly-owned Network Backbone Infrastructure;
  - (8) Funding for backhaul services provided by CPS;
  - (9) Funding for other reasonable costs related to operation and administration of the AARRS approved by the EC for the benefit of all Owners and Tenant Subscribers.
- 2.01.07 Annual Subscriber Fee means the annual assessment on every Tenant Subscriber including 1) the fee charged per Subscriber, and 2) the fee charged per talk group, each intended to be allocated towards the Annual System Costs for the specific assessment year.
- 2.01.08 Annual System Budget means the annual budget approved by the EC for each fiscal year of the AARRS that is established based upon the Annual System Costs and annual allocation of Technology Enhancement Costs to be expensed during the specific fiscal year.
- 2.01.09 Annual System Costs means the specific Annual Operation Costs and Technical Enhancement Costs approved by the EC for each Annual System Budget of the AARRS during the term of the Agreement.
- 2.01.10 Annual Technology Assessment means the annual financial contribution allocated to the Owners related to planned System Upgrades and System Enhancements approved as part of the corresponding Annual System Budget.
- 2.01.11 EC means the Executive Committee that exercises the executive functions for the AARRS Enterprise, as defined in Article IV.
- 2.01.12 EC Members means the members appointed to the Executive Committee under Section 4.03.01 of this Agreement.
- 2.01.13 EDACS means Enhanced Digital Access Communications System, a trunked radio system originally manufactured by Ericsson Corporation, and which is the basis for network architecture for the current public safety radio system that will be replaced by the AARRS.
- 2.01.14 FCC means the Federal Communications Commission.
- 2.01.15 Fiscal Agent means the CITY acting in a fiduciary capacity for the AARRS Enterprise and responsible for establishing financial accounts, managing

funds, providing accounting functions, and sending invoices on behalf of the AARRS Enterprise in accordance with the terms of this Agreement.

- 2.01.16 Fiscal Year means the period beginning October 1 and ending September 30 of the following calendar year.
- 2.01.17 JECP means the Joint Emergency Communications Plan as described in Section 4.13.08 of this Agreement.
- 2.01.18 JOC means the Joint Operations Committee tasked with exercising the operational and administrative functions for the AARRS Enterprise.
- 2.01.19 JOC Representatives means the representatives appointed to the Joint Operations Committee under Section 4.09 of this Agreement.
- 2.01.20 Network Backbone Infrastructure means the wireless network infrastructure components of the System that consist of communications towers, repeaters, radio electronics, transmission lines, antennas, system controllers, microwave equipment, equipment shelters, bidirectional amplifiers (BDA) and related equipment and facilities, and corresponding software and firmware.
- 2.01.21 Network Manager means a CITY employee appointed by the EC Chairperson to perform the day-to-day functions of managing the proper operation of the System.
- 2.01.22 P25 means Project 25 which signifies a suite of standards for digital radio communications developed by the Association of Public Safety Communications Officials in collaboration with representatives from industry and standards bodies for use by federal, state, and local public safety organizations in North America for the purpose of enabling interoperable voice and data communications among multi-jurisdictional agencies and mutual aid response teams.
- 2.01.23 Subscriber Equipment means end-user radio equipment manufactured or provided by the System Vendor, or another vendor, to access the System for radio communications and consisting of desktop base stations, dispatch consoles/consolettes and related hardware electronics, software functionality, as well as mobile vehicle radios and handheld portable radios and related accessories.
- 2.01.24 System means the interconnected infrastructure components of the AARRS consisting of a wireless network made up of interconnected System Tower Sites and related communications facilities that provides wireless connectivity to users on specific System Frequencies and channels, and the mobile switching office made up of electronics and software connected to the wireless network that provides managed access to the wireless network based on authorized functionality and features.

- 2.01.25 System Construction means the deployment of the wireless network, including the installation, modification and/or construction of all System Tower Sites and the mobile switching office, and the deployment of radios by the System Vendor necessary to deliver System capacity and functionality.
- 2.01.26 System Construction Plan means the implementation plan and schedule for System Construction outlining the duties and obligations of the Owners and System Vendor consistent with the requirements of the AARRS Contract. The Network Manager shall work in close coordination with project managers assigned by the Owners to timely execute the System Construction Plan.
- 2.01.27 System Delivery means System acceptance by the Owners following System Construction, the installation of mobile vehicle radios, testing of System Equipment, and verification of System capacity, coverage and functionality, and completion of the burn-in period.
- 2.01.28 System Enhancement means an addition or modification to System infrastructure, architecture, or software that improves operational functionality, adds System capacity and/or coverage, or increases features not originally part of the AARRS Contract.
- 2.01.29 System Frequencies means licensed radio frequencies granted by the FCC which are integrated into the System.
- 2.01.30 System Maintenance means the day-to-day maintenance of the System which consists of network monitoring, network trouble shooting, network maintenance, network provisioning, network management, the implementation of routine network upgrades, and the deployment of major System Upgrades and System Enhancements.
- 2.01.31 System Oversight means the administrative functions provided by the AARRS Enterprise to the Owners through the EC and JOC to ensure timely System Construction, System Delivery, efficient System Maintenance, and the proper allocation and recovery of Annual System Costs and Annual Technology Assessment contributions.
- 2.01.32 System Tower Sites means the tower locations where communications facilities and equipment have been installed as part of the wireless network that makes up the System.
- 2.01.33 System Upgrade means a change or modification to System infrastructure to ensure compliance with applicable engineering, legal, or regulatory requirements, or to improve existing features or operational functionality consistent with the Owners' requirements in the AARRS Contract.
- 2.01.34 System Vendor means the respondent selected pursuant to the RFP and awarded the AARRS Contract, or any successor thereto.

2.01.35 Technology Enhancement Costs means the expense associated with both System Upgrades and System Enhancements.

2.01.36 Tenant Subscriber means an entity who has entered into a subscriber agreement in accordance with this Agreement for access to the System, whether for the use of one or more of an Owner's talkgroups, or for use of its own talkgroups, or sponsored by one of the Owners and approved by this Agreement or the JOC to use System capacity.

### ARTICLE III - TERM

3.01 The term of this Agreement begins on \_\_\_\_\_, 2018 and shall continue for a period of the lesser of the actual life of the System or 20 years, unless the Agreement is extended or terminated as provided by its terms.

### ARTICLE IV - GOVERNANCE

4.01 Establishment of AARRS Enterprise. The Owners establish the Alamo Area Regional Radio System (AARRS) Enterprise to provide System Oversight and administration of the AARRS for the overall benefit of the Owners and other entities that may be authorized by the Owners to subscribe to the AARRS. The AARRS Enterprise is not a separate legal entity. The term AARRS Enterprise is used for convenience of reference only, referring to the Owners, acting in their respective capacities under this Agreement. In accordance with Texas Government Code Section 791.013, the Owners designate CITY to supervise the performance of this Agreement.

4.02 Governance Structure. The following permanent and special committees are established for the AARRS Enterprise:

- (1) Executive Committee (the "EC")
- (2) Joint Operations Committee (the "JOC")
- (3) Advisory Committees for special projects established as needed by the EC

4.03 Composition of Executive Committee.

4.03.01 The Executive Committee shall be composed of the following EC Members from each AARRS Owner.

- (1) City of San Antonio
  - (i) City Manager (the "EC Chair") or designee
  - (ii) Chief Financial Officer
  - (iii) Chief Information Officer (the "CIO")
  - (iv) San Antonio Police Chief
  - (v) San Antonio Fire Chief
  - (vi) Aviation Director
  - (vii) TCI Director

(2) Bexar County

- (i) Bexar County Sheriff
- (ii) Bexar County Chief Information & Technology Officer (the “CITO”)
- (iii) Bexar County Manager
- (iv) Bexar County Emergency Management Coordinator

(3) CPS

- (i) Chief Information Officer
- (ii) Sr. Director of Infrastructure and Operations

4.04 Alternates. Each EC Member shall designate to the Network Manager in writing one or more alternates with authority to act on the EC Member’s behalf, including without limitation, the exercising of voting rights, if the EC Member is unavailable. The alternate must be an individual with authority to bind the AARRS Enterprise to operational changes or budget adjustments and to any commitments voted on and approved by the EC as it relates to the System. All references to an EC Member shall be deemed to include that EC Member’s designee.

4.05 Voting Rights for Executive Committee.

4.05.01 Owner voting shall be proportional to the Owner’s level of ownership in the AARRS, as described in Section 5.01. Each Owner shall cast one vote, representing a simple majority of the votes of that Owner’s EC Members. The weight of that one vote shall correspond with the percentage of ownership of the represented Owner in the AARRS Network Backbone Infrastructure. Should ownership in the AARRS change, voting rights shall be modified to reflect the new level of ownership, per agreement of the Owners. At the time of execution of this Agreement, the weight corresponding with each Owner’s vote is: CITY = 56%, COUNTY = 22%, and CPS = 22%.

4.05.02 No vote of the EC may be taken without a quorum present. A simple majority of all EC Members constitutes a quorum.

4.05.03 Voting on Routine Matters. A simple majority of votes, taken in accordance with section 4.05.01, of those present is required to take any action, except as noted below.

4.05.04. Unanimous Votes Required. A unanimous vote of the EC Members present at a meeting, taken in accordance with section 4.05.01, is required for the following matters:

- (1) Establishing an annual shared System work plan after System Delivery;
- (2) Establishing an Annual System Budget after System Delivery;
- (3) Termination of System Vendor;
- (4) Initiating litigation against the System Vendor for breach of the AARRS Contract, except as provided in Sections 12.04 and 12.05;
- (5) Termination of a Tenant Subscriber;

- (6) Setting Tenant Subscriber fees;
- (7) Change orders to the AARRS Contract exceeding \$500,000;
- (8) Acceptance of partial performance of any element of the AARRS Contract, including System Vendor deliverables;
- (9) Entering into a Vendor maintenance agreement after the warranty period under the AARRS Contract expires;
- (10) The addition of a new Owner to the AARRS System; and
- (11) Amendments to the AARRS Contract that would alter system specifications.

4.05.05 Dispute Resolution Process. If unanimous agreement cannot be reached for those items for which it is required, then the Owners agree to follow the dispute resolution process described in Article XVIII, beginning with section 18.04.

#### 4.06 Responsibilities of Executive Committee.

- 4.06.01 The EC shall guide the deployment and support the operations of the AARRS. A key objective of the EC is to reach consensus among the Owners over the deployment and operation of a public safety radio system that benefits all Owners and serves to provide security for the community. The EC shall not take any action that will unreasonably negatively impact the System or an Owner and shall take all actions necessary to ensure beneficial use for all Owners.
- 4.06.02 The EC shall provide executive leadership and direction for the AARRS with a focus on maintaining and advancing network capabilities and performance while enhancing inter-governmental relationships.
- 4.06.03 The EC shall provide oversight of all capital and operational expenditure investments in the AARRS, subject to authorizations of necessary funds by the governing bodies of the Owners.
- 4.06.04 The EC will, through the respective Owner, make recommendations to the Owners' governing bodies on matters requiring the governing bodies' approval and will approve matters that the Executive Committee is authorized to approve under this Agreement.
- 4.06.05 The EC is responsible for determining equitable solutions when considering an AARRS investment that may benefit one Owner at the expense of the other Owners. If an AARRS investment does not enhance the System in general and results in no, or negligible, benefit to an Owner, then that Owner may choose to not participate in the investment. Conversely, when an investment only benefits one Owner and the other Owners receive no, or negligible, benefit, the other Owners may choose not to participate in such investment.
- 4.06.06 The EC shall determine Annual Tenant Subscriber fees to be assessed on Tenant Subscribers. All fees are subject to approval of the San Antonio City

Council. The EC may consider Annual System Costs for the assessment year, the affordability of the Tenant Subscriber fees assessed, and the benefits of interoperability among all users.

- 4.06.07 The EC shall review and approve all proposed System Upgrades and System Enhancements.
- 4.06.08 The EC shall maintain transparency of information among Owners with regard to all AARRS financial matters performed by CITY as Fiscal Agent and the resource allocation for contributing Owners as agents for the AARRS Enterprise.
- 4.06.09 The EC shall ensure the System Vendor provides reliable System services and is responsive to inquiries and concerns of all AARRS users via communications through the Network Manager.
- 4.06.10 The EC shall approve or deny any new governmental entity seeking to become an Owner in the AARRS.
- 4.06.11 The EC shall set System capacity thresholds to be used when considering the addition of new Owners and Tenant Subscribers to ensure sufficient System capacity for peak use of existing Owners and Tenant Subscribers and proposed new Owners and Tenant Subscribers. New Tenant Subscribers may be approved by the JOC up to the prevailing System capacity threshold, provided excess capacity allocated to new Tenant Subscribers will not negatively impact capacity use for existing Owners and Tenant Subscribers. The JOC can make recommendations to the EC based on System performance and capacity for future network capacity thresholds.
- 4.06.12 The EC shall establish and appoint members to ad hoc Advisory Committees to support special projects, as needed.
- 4.06.13 The EC shall review JOC recommendations for adoption of the Annual System Budget to ensure the Annual System Costs for the following fiscal year are covered, vote to approve the Annual System Budget, and forward its recommendations to the governing bodies of each Owner for consideration and appropriation of necessary funds by June 1<sup>st</sup> of each year.
- 4.06.14 The EC shall adopt key performance indicators recommended by the JOC to monitor (1) overall System performance; (2) quality of System service delivery; and (3) System Vendor (i) compliance with contractual requirements, (ii) responsiveness to Owner requests for service, (iii) responsiveness in addressing network troubleshooting events, and (iv) response to inquiries regarding Subscriber Equipment.
- 4.06.15 At the first scheduled meeting of the EC, the EC shall direct the JOC to develop the AARRS Mission Plan, for adoption by the EC, to provide a short-term, middle term, and end-of-life System implementation and transition plan

for the AARRS. The AARRS Mission Plan shall guide the work of the EC, JOC, and Network Manager, and shall be updated at least every five years.

4.06.16 At the first scheduled meeting of the EC, the EC shall direct the JOC to develop the AARRS Operational Manual for adoption by the EC as the formal written regulations and procedures for deployment and management of the System.

4.06.17 At the first scheduled meeting of the EC, the EC shall direct the JOC to develop the System Construction Plan, for adoption by the EC, to establish the project management time-line for System Construction.

#### 4.07 Executive Committee Meeting Process.

4.07.01 Executive Committee Chair. The City Manager, or designee, shall chair the EC.

4.07.02 Executive Committee Meetings. The EC will meet quarterly, or by special request of the City Manager, or designee, or Network Manager. The EC may vote to meet more or less frequently. The Network Manager will establish the meeting agenda and provide 72 hours' notice of the meeting date, time, location and agenda to each EC Member. The Network Manager will place on the agenda items within the jurisdiction of the EC, requested by any Owner, as practical based on the number of items scheduled for the meeting. The EC shall select one of its members to act as secretary and be responsible for ensuring minutes of the meetings are kept. EC Members shall make a good faith effort to attend all meetings.

#### 4.08 Network Manager.

4.08.01 The EC Chairperson shall appoint a City employee as Network Manager to perform the day-to-day functions of managing the proper delivery of radio communications services by the AARRS. In performing these functions, the Network Manager shall coordinate with the System Vendor, as appropriate. The Network Manager shall be responsible for ensuring contract compliance by the System Vendor for the Owners. The Network Manager shall not take any action that will unreasonably negatively impact the System or an Owner and shall take all actions necessary to ensure beneficial use for all Owners.

4.08.02 The Network Manager shall be an employee of CITY and paid directly by CITY. However, the costs for the Network Manager shall be recoverable through the AARRS as an Annual System Cost as allocated by the EC.

4.08.03 Following adoption of the AARRS Operational Manual and AARRS System Construction Plan by the EC, the Network Manager shall work closely with internal personnel and external contractors of the Owners to ensure compliance with these guiding documents.

- 4.08.04 All Owner and Tenant Subscriber communications with the System Vendor for the purposes of resolution of System issues, or planned modifications, shall occur through the Network Manager, or the Network Manager's designee, including Subscriber Equipment issues that would result in any changes to System operations. Notwithstanding the foregoing, Owners may communicate directly with the System Vendor with regard to Subscriber Equipment issues, with notice to the Network Manager, having no impact on System operations. Owners and Tenant Subscribers may communicate directly with the System Vendor to make inquiries for educational purposes. The AARRS Contract shall require the System Vendor to maintain a 24x7 staffed customer service function that will be available for these purposes. Owners may contact the System Vendor directly for the purchase and maintenance of Subscriber Equipment, or select an alternative vendor with compatible Subscriber Equipment.
- 4.08.05 The Network Manager shall prepare the Annual System Budget for EC review and approval, including Annual System Costs and assessment of Annual Subscriber Fees in compliance with this Agreement. The Network Manager shall have the authority to enter into Tenant Subscriber agreements pursuant to Chapter 791 of the Texas Government Code that have been approved by the EC in the form attached as Exhibit 3.
- 4.08.06 The Network Manager shall exercise oversight of System Construction, including acceptance of deliverables in accordance with the AARRS Contract and System Construction Plan, and control change management, with authority to execute change orders, subject to availability of funds. EC approval is required for change orders exceeding \$500,000 in cost. Each Owner may establish its own contingency fund as may be needed to meet its obligations during System Construction and thereafter. The project managers designated by the Owners under section 8.13 shall work with the Network Manager and external contractors throughout System Construction. The Network Manager is vested with authority to implement the System Construction Plan and resolve all issues regarding System Construction and System Delivery within the scope of the System Construction Plan approved by the EC. Resolutions of issues outside of, and changes to the System Construction Plan, shall be approved by the EC. The Network Manager may not waive enforcement of any System requirements without the recommendation of the JOC and approval of the EC.
- 4.08.07 The Network Manager shall recommend qualified external contractors who are necessary to assist with System Construction to the EC for approval.
- 4.08.08 The Network Manager shall provide regular briefings to the JOC and EC during System Construction, and may call meetings of both committees as needed to resolve implementation questions and issues.
- 4.08.09 The Network Manager shall, with the assistance of the System Vendor, maintain an inventory of assets comprising the Network Backbone Infrastructure.

4.09 Composition of Joint Operations Committee. The JOC shall be composed of the following JOC Representatives:

- (1) The AARRS Network Manager (Chair)
- (2) SAPD Representative
- (3) SAFD Representative
- (4) City Radio Services Technical Representative
- (5) Bexar County Sheriff's Representative
- (6) Bexar County Fire Marshal's Representative
- (7) Bexar County Radio Services Technical Representative
- (8) CPS Energy Delivery Services Representative
- (9) CPS Power Generation Representative
- (10) CPS Radio Services Technical Representative
- (11) At Large Representative Chosen from Tenant Subscribers, selected by vote of JOC (non-voting position)

4.10 Alternates. Each Joint Operations Committee Representative shall designate to the Network Manager in writing one or more alternates in writing with the authority to act on the Joint Operations Committee Representative's behalf, including without limitation, the exercising of voting rights if the Joint Operations Committee Representative is unavailable. All references to a JOC Representative shall be deemed to include that Representative's designee.

4.11 Joint Operations Committee Meeting Process. The JOC will meet monthly, or by special request of the Network Manager who will establish the meeting agenda, and provide 72 hours' notice of the meeting date, time, location and agenda to each JOC Representative. The JOC may decide to meet more or less frequently. Any JOC Representative or Tenant Subscriber may add items within the jurisdiction of the JOC to the agenda for discussion, and such items will be placed on the agenda as soon as practical, based on the number of items scheduled for the meeting. JOC Representatives shall make a good faith effort to attend all meetings. The Network Manager is responsible for ensuring meeting minutes are kept.

4.12 Voting Rights of JOC.

Each JOC Representative is entitled to one vote. A simple majority of the votes of those present and constituting a quorum is required to take any action.

4.13 Responsibilities of the Joint Operations Committee.

4.13.01 The JOC shall recommend to the EC key performance indicators to monitor (1) overall System performance; (2) quality of System service delivery; and (3) System Vendor (i) compliance with contractual requirements, (ii) responsiveness to Radio Subscriber requests for service, (iii) delay in addressing network troubleshooting events, and (iv) response to inquiries regarding Subscriber Equipment.

- 4.13.02 The JOC, with assistance from the System Vendor, shall track and report System network performance and problems, which may include, but are not limited to:
- (1) System failures
  - (2) System repairs pending and System repairs completed
  - (3) preventive maintenance performed
  - (4) System traffic reports
    - (i) identification of peak busy hour
    - (ii) percentage of capacity used during peak busy hour
    - (iii) number of “System busies” logged (or number of calls queued) during the preceding quarter
  - (5) alarm histories: major alarms on a quarterly basis (System functional alarms that may cause an outage).
- 4.13.03 The JOC shall assess System performance received by all Owners and Tenant Subscribers.
- 4.13.04 The JOC shall interface with the System Vendor during JOC meetings, as needed, to review performance issues related to Subscriber Equipment and System functionality, and to assess proposed System modifications and the addition of Subscriber Equipment features. The System Vendor shall attend JOC meetings as necessary to meet this objective, and as consistent with the terms of the AARRS Contract.
- 4.13.05 The JOC shall investigate and assess proposed System Upgrades and System Enhancements and make recommendations to the EC regarding their adoption.
- 4.13.06 The JOC shall develop training materials and exercises, and determine tactical operational requirements to advance Owner and Tenant Subscriber knowledge and capabilities. The JOC shall plan and host annual training sessions if the JOC deems them necessary. Any costs associated herewith shall be paid for out of the Annual System Budget.
- 4.13.07 The JOC shall work towards advancing inter-agency and inter-jurisdictional interoperable communications among the governmental entities that use the AARRS.
- 4.13.08 The JOC shall develop a Joint Emergency Communications Plan (“JECP”) for approval by the EC, and the Owners’ respective governing bodies, if required. The JECP will provide written procedures to be followed by each governmental entity in the event of an emergency or disaster. The JECP will be supported by the creation of a certain number of talk groups to be determined by the JOC. The JECP will provide for the “activation” of JECP talk group(s), which shall provide for dispatchers or command post personnel to monitor and manage communications for such talk group(s). All Owners shall have equivalent System access capabilities during an emergency event.

- 4.14 Escalation Process. Owners shall address complaints or concerns regarding the System Vendor directly with the Network Manager. If the complaint or concern is not addressed at the Network Manager level within a reasonable period, the Owner may escalate the System Vendor issue using the dispute resolution process set forth in Article XVIII.

## **ARTICLE V - OWNERSHIP OF SYSTEM**

- 5.01 CITY, COUNTY and CPS have the following undivided ownership interests in the AARRS System:

CITY:	56%
COUNTY:	22%
CPS:	22%

- 5.02 Each Owner shall have an undivided ownership interests in the Network Backbone Infrastructure components that make up the System described in the Network Backbone Infrastructure, attached as Exhibit 2, as may be amended from time to time, based on the Owner's level of ownership established in accordance with the preceding section, excluding 1) BDAs and 2) any assets purchased exclusively by one Owner for that Owner's sole benefit, as further shown on said Exhibit 2.
- 5.03 Each Owner shall separately own 1) BDAs, 2) any assets purchased exclusively by an Owner for the Owner's sole benefit, and 3) Subscriber Equipment.
- 5.04 Each Owner retains ownership of any equipment which it brings into the AARRS at the start of this Agreement. Notwithstanding the foregoing, these assets shall not impact the ownership percentages set forth in Section 5.01.
- 5.05 Each Owner shall have the right to inspect System components that are under the control of another Owner upon reasonable notice and coordination with the Network Manager.
- 5.06 Each Owner shall have reasonable access, upon reasonable notice, to the books, data, logs, and records of another Owner concerning the installation, operation and maintenance of System infrastructure components.
- 5.07 System Frequencies.
- 5.07.01 Each Owner shall contribute a quantity of System Frequencies approximately proportional to their System usage.
- 5.07.02 There shall be no undue burden on System design solely based on an Owner's desire to retain a frequency. Technical efficiency shall be prioritized over each Owner's desire to retain a specific frequency.
- 5.07.03 All System Frequencies contributed by an Owner shall be allocated to the AARRS Enterprise for the duration of this Agreement.

- 5.07.04 All Owners may contribute frequencies in the VHF band up to the Owner's percentage of ownership interest. An Owner contributing frequencies in the VHF band shall retain all rights to the contributed VHF frequencies.

## ARTICLE VI - COST SHARING

### 6.01 Capital Investment.

- 6.01.01 Each Owner shall provide the initial capital investment and implementation costs set forth in Exhibit 1 (Capital Investment Costs).
- 6.01.02 Owners shall share in the cost of FCC frequency license coordination in the same ratio as their ownership interests.
- 6.01.03 Each Owner shall pay for its own BDAs, including purchase, installation, maintenance and repairs. If BDAs are required for regional hospitals, the AARRS shall engage Southwest Texas Regional Advisory Council (a.k.a. STRAC) and facility owners for contributions. If the AARRS decides to fund these BDAs, the EC shall determine a method of funding, which will be by the CITY and COUNTY only, and the costs will be apportioned based on either population or transports.

### 6.02 Investment in Subscriber Equipment. Each Owner shall be responsible for its investment in Subscriber Equipment necessary to meet its requirements, and for payment of all costs associated with future acquisitions of Subscriber Equipment by that Owner during the term of the Agreement, including maintenance and repair costs.

### 6.03 Entity Specific System Assets. Costs for entity-specific assets shall be paid solely by the Owner benefitting from or owning that asset. Such entity-specific costs include, but are not limited to, capital investment, all goods and associated services, project management, testing, implementation, maintenance and repairs, and Annual System Costs associated therewith or that may be apportioned thereto.

### 6.04 Annual System Costs – Method of Allocation. Unless expressly stated otherwise in this Agreement, Annual System Costs shall be allocated as follows:

#### 6.04.01 Cost Period 1 - During System Construction and for the first two calendar years following System Delivery:

Annual System Costs shall be allocated to the Owners in proportion to the number of radios each Owner has programmed to access the System.

#### 6.04.02 Cost Period 2 - The three (3) year period following Cost Period 1:

Annual System Costs shall be allocated to the Owners in proportion to each Owner's average airtime usage for the first two (2) year period following System Delivery. Usage during System Construction will not be considered.

6.04.03 Cost Period 3 - The three (3) year period following Cost Period 2:

Annual System Costs shall be allocated to the Owners in proportion to each Owner's average airtime usage during Cost Period 2.

6.04.04 Additional Cost Periods - Annual System Cost allocations shall be set for three (3) year periods:

Annual System Costs shall be allocated to the Owners in proportion to each Owner's average airtime usage during the preceding three (3) year cost period.

6.05 All unit identifiers associated with an Owner, whether used by the Owner directly, or furnished to a third party, shall be included with that Owner's radio count and air time usage for purposes of allocating Annual System Costs.

6.06 Colocation.

6.06.01 CPS Existing Towers. CPS shall retain ownership of any towers currently existing on CPS property that the AARRS agrees to use for the System. CPS shall negotiate lease rent for the AARRS for use of existing tower sites, if desired by the AARRS.

6.06.02 Future CPS Towers. Any new towers built on CPS property that may be utilized by the AARRS shall be owned by CPS, and CPS shall bear the cost of construction. CPS shall lease back such System tower sites to the AARRS at a negotiated rate . CPS shall pay its percentage of Annual System Costs associated with any towers located on its property that become System tower sites. Revenue generated from colocation on such new tower sites shall belong to CPS.

6.06.03 Future Jointly Owned Towers. If a tower at a System tower site subject to colocation is a new site funded by the AARRS and owned by the AARRS, then the rent collected by the AARRS pursuant to any new colocation agreements will accrue to the AARRS, and be used to offset Annual System Costs.

6.06.04 Pre-existing Towers. Rents from any pre-existing co-location leases as of the date of this Agreement will accrue to the benefit of the Owner(s) who is a party to the lease.

6.06.05 Crown-Castle Tower Sites. CPS has pre-negotiated priority use of several towers with Crown-Castle at designated heights, and agrees to make these tower sites available to the AARRS. If the AARRS uses any of the tower sites, CPS shall charge the AARRS the pre-negotiated lease rate, which shall be included in Annual System Costs. If the AARRS uses a different height location on any of the tower sites than previously negotiated by CPS, the lessor will be Crown Castle and the lease rate will be subject to negotiation with the lessor.

- 6.07 Tenant Subscriber Fees. Tenant Subscriber Fees shall be used to offset the Annual System Costs of the Owners. Owners shall be responsible for covering the balance of Annual System Costs as provided in this Agreement. Tenant Subscriber Fees shall be considered fair compensation to the AARRS Enterprise under Section 791.011 of the Texas Government Code for System administration and access to System capacity.
- 6.08 System Construction Period
- 6.08.01 The JOC shall develop the System Construction Plan, consistent with the AARRS Contract, to guide the Owners and System Vendor throughout the System Construction phase. Each Owner may contribute personnel to assist during System Construction. Other than the individuals identified under the definition of Annual Operational Costs, costs associated with personnel contributed by Owners during this period, including project managers, are not recoverable by the AARRS and may not be allocated by the AARRS to Owners. Each Owner shall absorb the cost associated with using its employees through final acceptance of the System.
- 6.08.02 Costs of external contractors approved by the EC and used by the AARRS during System Construction shall be shared by the Owners in proportion to their ownership in the AARRS.
- 6.08.03 Operating costs of the common project office used during System Construction shall be shared by the Owners in proportion to their ownership in the AARRS. CITY is not required to furnish space for the common project office. If an entity furnishes space for this office, it will do so free of charge to the AARRS, unless otherwise agreed by the Owners. If space is leased from a third party for a common project office, then the Owners shall share in the lease costs in proportion to their ownership interest in the AARRS.
- 6.09 Owner Payments. Each Owner agrees to pay its share of the Capital Investment and Annual System Costs, and for any Subscriber Equipment, and maintenance and repairs thereof, ordered by City for Owner through the AARRS Contract, and shall do so within 30 days of receipt of an invoice from the Network Manager.
- 6.10 Fiscal Agent. The CITY shall act as Fiscal Agent for the AARRS Enterprise using services from its Finance Department.
- 6.10.01 Duties of Fiscal Agent. The CITY, as Fiscal Agent, shall act on behalf of the AARRS Enterprise. As Fiscal Agent, the CITY shall establish fund(s) to hold financial contributions made by each Owner, subscriber fees paid by Tenant Subscribers, and any grants or other funds related to the AARRS. The Network Manager shall use the funds to pay for System capital expenditures, and Annual System Costs in accordance with contractual commitments and this Agreement.
- 6.10.02 Issuance of Invoices. Unless otherwise approved by the EC, the Fiscal Agent shall issue invoices as follows:

(1) The Fiscal Agent shall invoice Owners their respective share of the Capital Investment costs as required by the AARRS Contract to meet payments to the System Vendor.

(2) The Fiscal Agent shall invoice Owners for their respective share of the Annual System Costs on a monthly basis.

(3) The Fiscal Agent shall invoice Tenant Subscribers on a monthly basis, unless otherwise provided in the Subscriber agreement form approved by the EC.

- 6.10.03 Financial Reports. The Fiscal Agent shall provide standard financial reports to the EC concerning the financial position of the AARRS Enterprise for every quarterly meeting and as requested by the Network Manager for JOC meetings.
- 6.11 Recovery of System Upgrades and System Enhancement Costs. If the JOC makes a recommendation to the EC regarding the implementation of System Upgrades and System Enhancements, the EC shall determine whether such System Upgrades and System Enhancements benefit all Owners, in which case the expense will be recovered in proportion to each Owner's ownership interest in the AARRS. If the EC determines, however, that any System Upgrade or System Enhancement does not benefit all Owners, the cost for such System Upgrade or System Enhancement shall be allocated only among those Owner(s) receiving the benefit.
- 6.12 Unforeseen Technology Upgrades. If the EC receives a recommendation from the JOC to make an unforeseen but necessary technology upgrade to the System that is not covered by the Annual System Costs, then the EC will create an Advisory Committee to determine, document, and report (i) the reasons leading to the unforeseen technology upgrade requirement, (ii) recommendations to mitigate the cost of implementing the proposed technological upgrade, and (iii) whether all Owners will benefit from implementation of the proposed technological update. After receiving the Advisory Committee report the EC shall determine the appropriate recovery of the expenses associated with the proposed technological upgrade from the Owners that benefit from the technology upgrade in a manner consistent with recovery process outlined in Section 6.11. By unanimous vote of the Owners, the EC may elect not to convene an Advisory Committee to review a proposed technology update.
- 6.13 Management of Grants. The Owners may individually and collaboratively seek grants to enhance the AARRS. The acceptance of any grant must be approved by the EC. Should the acceptance of a grant require matching contributions, the EC shall receive written confirmation of any Owner that will benefit from the grant of its commitment to make the matching contribution. If all Owners would benefit from the grant, the Owners shall make matching contributions based on their percentage of ownership in the AARRS. Any Owner that does not directly benefit from a grant will not be required to make a matching contribution. CPS shall not be required to contribute matching funds for public safety grants that benefit the System, if CPS is not an intended grant participant/qualifying entity under the grant, the parties hereto recognizing that CPS may

have no need for the incidental benefit conferred by the grant. The AARRS Enterprise and the Owner seeking the grant must ensure all grant operational and reporting requirements are met.

- 6.14 Insurance Requirement. Each Owner will be responsible, at its own cost, for maintaining adequate insurance coverage, or setting self-insurance reserves, to protect against loss or damage on equipment and infrastructure owned by the Owner that is part of the System or connected to the System. Jointly-owned infrastructure and equipment that is part of the System shall be insured by the AARRS Enterprise as approved by the EC.
- 6.15 Financial Records. City shall properly, accurately and completely maintain all documents, papers, records, and other supporting evidence pertaining to the annual operational costs and other transactions relating to this Agreement. Upon reasonable notice and City shall make such materials reasonably available to the other Owners' Auditors, or any duly authorized representative during the term of the Agreement for purposes of auditing, inspecting, examining, and making excerpts or copies of same by such Owners. Annual Operational Costs assessed and Monthly Invoices shall be accompanied by sufficient supporting evidence and detail so as to allow audit by the other Owner entities.

#### **ARTICLE VII - SUBSCRIBING AGENCIES**

- 7.01 Approval of Additional Tenant Subscribers. As System capacity permits, and in accordance with section 4.06.11, the JOC may approve other agencies to be Tenant Subscribers in the AARRS subject to a subscriber agreement containing such terms as the EC may approve. The Network Manager shall have authority to execute Agreements, without additional approval of the San Antonio City Council, subject to the City Council's approval of all fees charged under the Interlocal Agreement.
- 7.02 Tenant Subscriber Access to System. Subject to JOC authorization and the execution of a subscriber agreement, Tenant Subscribers may access the System, including designated talk-group/channel quantities within operational parameters. System access to Tenant Subscribers shall be contingent on payment of Subscriber fees set forth in the applicable subscriber agreement. Further, System access may also be predicated on and/or subject to System capacity and capabilities. The Network Manager may approve access prior to the approval of the JOC in times of operational need or other circumstances, such as risk of loss of grant funding by the Tenant Subscriber, as long the item is submitted for ratification at a subsequent JOC meeting.
- 7.03 Tenant Subscribers shall establish their own contracts for procuring and maintaining Subscriber Equipment independently of the AARRS Contract. Tenant subscribers may use the AARRS Contract pricing, if cooperative purchasing language is contained therein.
- 7.04 Interoperable / Mutual Aid Communications. Governmental agencies and other emergency responders who are not Owners or Tenant Subscribers may be allowed access to interoperable / mutual aid communications in accordance with the AARRS Operational Manual adopted by the EC.

## ARTICLE VIII - GENERAL PROVISIONS

- 8.01 System Compliance with Applicable Law. The Owners shall use the System in accordance with FCC regulations and all other applicable federal, state, and local laws, and procedural requirements established by the EC. The Network Manager shall ensure that the System operates in a professional manner, only for official business purposes, and in a manner that enhances the System's performance in light of the operational requirements and priorities of the respective Owners.
- 8.02 Joint Operation of System Infrastructure. The Owners agree to share System Frequencies to jointly maintain and operate the Network Backbone Infrastructure for their mutual benefit as part of the AARRS Enterprise and to ensure efficient and seamless System operations.
- 8.03 To ensure system integrity, all Owners shall use the AARRS Contract as the authorized service provider to the System. All sites and towers that comprise the communication system shall be maintained jointly by the Owners through the Network Manager, including without limitation generators and fuel, grounds maintenance, ground system maintenance, tower lights, amplifiers, antennas, transmission lines, receivers, multi-couplers, microwave components, and transmitter combiners.
- 8.04 System Maintenance. The System will be maintained through a service agreement with the System Vendor so that 1) the System can operate at the reliability level for which it is designed, and 2) effective System support is not dependent on the technical abilities of any individual Owner.
- 8.05 Owners may purchase Subscriber Equipment through the AARRS Contract, through direct contract with the System Vendor, or through a third party source. If Owner elects to use the AARRS Contract then the Owner's capital expenditures for the initial purchase of Subscriber Equipment will be included as part of the contractual commitment between the CITY and the System Vendor.
- 8.06 Unless otherwise specified in this Agreement, procurement of facilities, equipment, and services for System operations and maintenance will be processed through CITY as fiscal agent, except for procurement of Subscriber Equipment.
- 8.07 Maintenance of Subscriber Equipment. All work, including but not limited to installations, programming, repairs, and modifications, provisioning and configuration pertaining to Subscriber Equipment, shall be performed by the System Vendor, or a qualified service provider or the Owner's employees who are properly trained and skilled. An Owner may elect to self-maintain Subscriber Equipment or procure support directly from or any qualified service provider.
- 8.08 An Owner may use a different brand of Subscriber Equipment so long as the Owner validates to the Network Manager, in compliance with the AARRS Operational Manual, that the brand shall perform to P25 standards and not cause interference or disruption of the System. If an Owner elects to purchase a different brand of Subscriber Equipment

from a different vendor, Owner shall be responsible for maintenance of that Subscriber Equipment at its own cost, either by self-maintaining or through its own contract with the equipment provider. The AARRS Enterprise may establish a contract for the purchase and/or maintenance of a different brand of Subscriber Equipment for the benefit of any or all Owners who elect to use such a contract.

- 8.09 Access to Network Backbone Infrastructure. Access to Network Backbone Infrastructure will be strictly limited to authorized personnel only. Authorized personnel will have security badge / card key / physical key access during the construction phase of the project.
- 8.10 Use of System Capacity. To ensure continuous System capacity, Subscriber Equipment and talkgroups may only be programmed to access the AARRS with the approval of the Network Manager. Each Owner may program its own approved radios.
- 8.11 Each Owner shall have the ability to generate device related reports, with such restrictions as may be implemented by the Network Manager for System functionality and security, or as further described in the AARRS Operational Manual.
- 8.12 Project Office. Owners shall establish a common project office, for use during the System Construction phase of the project, at a location that is convenient for all Owners. The AARRS Vendor will likely be granted access to a portion of this space during System Construction.
- 8.13 Participation in System Construction. All Owners shall be active participants throughout System Construction, with a project manager assigned by each Owner. The combined Owners project managers shall assist the JOC in the creation of the System Construction Plan that will define individuals/resources and associated functions. The Network Manager will provide written notice of meetings for the implementation team, which shall include members selected by each Owner. The Network Manager will implement the System Construction Plan as approved by the EC.
- 8.14 AARRS Contract Signatures. Only the CITY shall be a party to and execute the AARRS Contract. Notwithstanding the foregoing, the Owners acknowledge that this Interlocal Agreement shall govern communications with the System Vendor, and the relationship with the System Vendor, including, but not limited to the rights, duties and obligations of the Owners with regard to amendments to the AARRS Contract and pursuing claims or litigation against the System Vendor.

## **ARTICLE IX - COLOCATION OF SYSTEM TOWER SITES**

- 9.01 Colocation refers to multiple communications providers leasing space on the same wireless towers for the installation of wireless facilities and equipment with antennas installed on individual array platforms at different heights separating the facilities of one communications provider from those of another. To protect the integrity and operation of the overall System, any co-location for any System Tower Site shall undergo a frequency intermodulation study and a stress/structural analysis. The EC, following review of the intermodulation study and the stress/structural analysis, shall authorize proposed

colocation. The approval will be subject to the approval of the colocation by the Owner of the tower.

## **ARTICLE X - TERMINATION OF PARTICIPATION IN AARRS ENTERPRISE**

- 10.01 Terms for Terminating Participation in AARRS Enterprise. An Owner may withdraw from the AARRS Enterprise and its obligations under this Agreement by providing at least one year's written notice to the other Owners. If an Owner elects to terminate its participation in the AARRS Enterprise, then the Owner shall be responsible for all costs associated with its departure from the System and for all capital and operational costs associated with maintaining the operation of the System without degradation of capability through the end of the current fiscal year, subject to appropriations by the governing body of the withdrawing Owner. In addition, the withdrawing Owner must continue to fund any contractual commitments made by the other Owner(s) with third parties on behalf of the withdrawing Owner for assets obtained specifically for that Owner's primary beneficial use for the life of such contract. For purposes of this paragraph, a fiscal year ends on September 30. An Owner who terminates participation surrenders its beneficial use of the jointly owned Network Backbone Infrastructure, until expiration of this Agreement, including any extensions hereof, in accordance with Section 3.01, and can take no action that would in any way be detrimental to the System or to the remaining Owners. Such a terminating Owner also surrenders its beneficial use of the solely owned assets it contributed to the Network Backbone Infrastructure to the extent such assets are being utilized by the System, until expiration of this Agreement, including any extensions hereof, in accordance with Section 3.01, and can take no action that would in any way be detrimental to the System or to the remaining Owners. All System Frequencies contributed by the departing Owner shall remain part of the System. Removal of one or more System Frequencies upon an Owner's withdrawal from the AARRS prior to the expiration or termination of this Agreement may be allowed if: (a) the removal does not impact system performance; or (b) the remaining Owners are able to obtain replacement frequencies; and (c) the remaining Owners are afforded sufficient time to obtain and implement replacement frequencies.
- 10.02 Appropriation of Funds. Each Owner represents and warrants that it has available the total amount of funds stated in Exhibit 1 for the purpose of satisfying that Owner's obligations under this Agreement. The liabilities of each Owner as to future payments to meet its obligations under this Agreement are contingent upon appropriation by the governing bodies of each Owner from sufficient, readily available funds under the laws and Constitution of the State of Texas. If funds are not appropriated to fulfill an Owner's obligations under this Agreement, other than for Network Backbone Infrastructure capital costs, then the Owner not appropriating funds shall be deemed to have elected to terminate under Section 10.01.

## **ARTICLE XI - EQUIPMENT ADDITIONS AND USER AGENCIES**

- 11.01 Equal Access to System. All Owners and Tenant Subscribers shall have equal access to identical System capabilities. The Owners and Tenant Subscribers shall be configured with the same system priorities, encryption levels, and other features and functions, as long as the Owner or Tenant Subscriber has the necessary hardware and/or software in

accordance with this Agreement and any use policies created by the EC. Each Owner may provision its Subscriber Equipment to have access to different features as appropriate to meet its communications needs. Notwithstanding the foregoing, only the Network Manager and Network Manager's staff shall have administrative rights on the Systems, to prevent unauthorized access or accidental catastrophic outages of the System. The Network Manager approval is required for establishment or assignment of talk groups.

- 11.02 Safeguarding of Programming Keys. Each Owner shall assist in maintaining the confidentiality and security of the programming keys to the System. All owners programming and encryption keys will be first inventoried and registered by the Network Manager prior to use. The keys will be physically inventoried by the Network Manager's staff on a quarterly basis. The inventory will be published and submitted to each Owner. To enhance that security, the Owners must conduct all programming at a designated site safeguarded by implementing security protocols set forth by Texas Department of Public Safety and the FBI Criminal Justice Information Systems policies.
- 11.03 No Unauthorized Changes to Subscriber Equipment. With the exception of the acquisition of Subscriber Equipment by the Owners, no Owner shall make any changes to its Subscriber Equipment which would require another Owner to incur additional expenses for any System related equipment, software, maintenance, or services without the prior approval of the EC. The process for integration of Subscriber Equipment as part of the System shall be outlined in the AARRS Operational Manual.

## **ARTICLE XII - REMEDIES**

- 12.01 Cure for Breach of Contract; Remedies for Failure to Cure. Upon a material breach of this Agreement by any Owner, any non-breaching Owner may give the breaching Owner and the EC written notice of such breach, which shall detail the nature of the breach. The Owner receiving the notice of breach shall have sixty (60) days to cure the breach, unless the breach is of such a nature that it jeopardizes the security of the System and/or Subscribers. If the breach is not corrected to the satisfaction of the non-breaching Owners, as determined by unanimous vote of the non-breaching Owners sitting on the EC, by the end of the sixty (60) day period, any non-breaching Owner may give written notice of termination to the EC and to the breaching Owner and seek to recover damages on behalf of and payable to the non-breaching Owners.
- 12.02 Failure to Pay Contributions.
- 12.02.01 If an Owner fails to make payment of any required Annual System Costs, the EC Chair shall issue a notice of nonpayment to such Owner and the Owner shall have thirty (30) days in which to provide payment. If the Owner fails to pay the sums due within the thirty (30) days, then the EC Chair shall issue notice that service from, and access to, the System will be discontinued on the 90<sup>th</sup> day after the date the payment was due and the notice shall include an invoice pro-rating the Owner's current share of the Annual System Costs according to the Owner's unpaid contributions. Prior to the expiration of the ninety (90) day period, the Owner may pay in full the unpaid invoices and

retain access to the System. Failure to make payment three times under this Agreement shall be considered a material breach of this Agreement.

12.02.02 If an Owner fails to make payment of any required Capital Investment Costs based on the terms of this Agreement, the EC Chair shall issue a notice to such Owner and the Owner shall have sixty (60) days in which to provide payment. If the Owner fails to pay the sums due within the sixty (60) days, the EC Chair shall issue notice to the Owner that Owner's participation in the AARRS is terminated. Upon termination, the nonpaying Owner:

- (1) surrenders its beneficial use of the jointly owned Network Backbone Infrastructure, until expiration of this Agreement, including any extensions hereof, in accordance with Section 3.01, and can take no action that would in any way be detrimental to the System or to the remaining Owners;
- (2) surrenders its beneficial use of the solely owned assets it contributed to the Network Backbone Infrastructure to the extent such assets are being utilized by the System, until expiration of this Agreement, including any extensions hereof, in accordance with Section 3.01, and can take no action that would in any way be detrimental to the System or to the remaining Owners;
- (3) forfeits all payments made prior to termination; and
- (4) shall contribute without any further payment any frequencies provided to the System.

Removal of one or more System Frequencies upon an Owner's termination from the AARRS hereunder may be allowed if: (a) the removal does not impact system performance; or (b) the remaining Owners are able to obtain replacement frequencies; and (c) the remaining Owners are afforded sufficient time to obtain and implement replacement frequencies.

This section does not relieve the Owner in breach of contract of its obligation to make all Capital Investments required by this agreement, or any damages that result from its nonpayment.

12.03 Billing Disputes. If any Owner disputes the amount invoiced during any fiscal year, then Owner shall timely make its monthly payments to the AARRS Enterprise pending resolution of the billing dispute. Billing disputes shall be resolved subject to the Dispute Resolution provisions found in Article XVIII.

12.04 Owner Suit Against System Vendor for Equitable Relief.

12.04.01 Any Owner may unilaterally seek equitable relief against the System Vendor, without the prior approval of the EC in accordance with this section 12.04. The Owner must provide the EC and the other Owners five (5) business days' written notice before initiating suit against the System Vendor for equitable relief, to afford the AARRS Enterprise the opportunity to resolve the issue on Owner's behalf.

12.04.02 An Owner's right to unilaterally seek equitable relief against the Vendor is limited to circumstances that

- pertain to Network Backbone Infrastructure equipment,
- pertain to the Owner's Subscriber equipment
- do not, upon reasonable analysis and due diligence, negatively impact the use or operation of the System by the other Owners.

12.04.03 If the EC determines that the proposed suit does not meet the guidelines established in this section, then the parties shall initiate and follow the dispute resolution process provided for in Article XVIII, beginning with section 18.04.

12.05 Cure for Material Breach of Agreement; Remedies Involving System Vendor. In addition to the remedies provided in section 12.01, the non-breaching Owner(s) may unilaterally sue the System Vendor under the AARRS Contract as long as the suit is related to CITY's material breach of this Agreement, and the CITY's breach relates to a material breach by the System Vendor of the AARRS Contract.

### **ARTICLE XIII - FUNDING FOR SYSTEM**

13.01 Issuance of Tax Exempt Obligations. Consistent with Section 791.013(c) of the Texas Government Code, all Network Backbone Infrastructure jointly purchased by the Owners, individually purchased by any Owner, or owned by any Owner and shared as part of the System shall be treated as tax exempt property by the AARRS Enterprise. If an Owner issues tax exempt obligations to jointly or individually purchase Network Backbone Infrastructure as part of the Owner's capital contribution to the AARRS Enterprise, then no other Owner shall take any action to adversely affect such tax-exempt status of the debt.

13.02 No Grants of Security Interest in Infrastructure. No Owner shall:

- (1) grant to a third party any form of security interest in another Owner's interest in Network Backbone Infrastructure or Subscriber Equipment,
- (2) take any action with regard to such infrastructure or equipment which could result in any claim or lien being placed on another Owner's infrastructure or equipment, or
- (3) cause the System to become inoperable due to the removal of any Network Backbone Infrastructure comprising a portion of the System.

13.03 Payments to AARRS Enterprise. The Owners acknowledge that operation of the System constitutes the performance of a governmental function which every Owner may perform for itself, and access to the System will result in the provision of radio communications services that every Owner may provide to itself. Accordingly, this Agreement meets the requirements of Section 791.011(c) of the Texas Government Code and each Owner shall make payments from current revenues available to the paying Owner.

### **ARTICLE XIV - PRIOR AGREEMENTS SUPERSEDED**

- 14.01 Owners acknowledge that COUNTY and CITY are operating the current EDACS System under a separate interlocal agreement. That interlocal agreement shall remain in full force and effect as long as CITY and COUNTY continue to jointly use that EDACS System. Except as provided above, this Agreement constitutes the sole and only agreement between the Owners hereto and supersedes any prior understandings or agreements, either written or oral, between the Owners with respect to the subject matter.

#### **ARTICLE XV - ASSIGNMENT OR TRANSFER OF INTEREST**

- 15.01 No Owner may sell or assign its rights, privileges and obligations under this Agreement, in whole, or in part, without the prior written consent of the other Owners. Any attempt to sell or assign without such approval shall be void *ab initio*.

#### **ARTICLE XVI COMPLIANCE WITH LAWS AND ORDINANCES**

- 16.01 Owners' Compliance with Law. Each Owner shall comply with all federal, state, and local laws and ordinances in connection with the work or services under this Agreement. No Owner shall take any action to adversely affect the tax-exempt status of the debt issued by another Owner to fund certain of their obligations under this Agreement, as applicable. If this covenant is breached, the non-defaulting Owner may exercise any remedy set forth in Article XII of this Agreement.

#### **ARTICLE XVII - LEGAL CONSTRUCTION**

- 17.01 **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE OWNERS CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.** Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.
- 17.02 Jurisdictional Authority of Owners Remains Intact. Nothing in this Agreement is intended to lessen the authority of a participating Owner's jurisdiction over and responsibility for events occurring within its jurisdiction, or to impose responsibility or liability on another Owner for events occurring within another Owner's jurisdiction. The governmental unit that would have been responsible for furnishing the services in the absence of this Agreement is responsible for any civil liability that arises from the furnishing of those services.
- 17.03 No Change in Tort Liability. Nothing in this Agreement adds to or changes the liability limits and immunities for a governmental unit provided by the Texas Tort Claims Act, Chapter 101, Civil Practice and Remedies Code, or other law.
- 17.04 No Joint Enterprise Created. This Agreement does not create joint enterprise for the purpose of assigning or determining liability.
- 17.05 Compensation. Except as otherwise stated in this Agreement, no Owner is required to pay compensation to another Owner or that Owner's personnel for services rendered

hereunder. Nothing in this Agreement shall be construed to place the personnel of an Owner under the control or employment of another Owner. Each Owner remains responsible for the pay, entitlement, employment decisions, and worker's compensation liabilities for its own personnel.

- 17.06 No Waiver of Rights. Unless otherwise specifically provided for in this Agreement, a waiver by an Owner of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of an Owner to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by an Owner hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Owner to be charged. No act or omission by an Owner shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Owner hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.
- 17.07 Severability of Contractual Provisions. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalid, illegal, or unenforceable provision shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- 17.08 No Third Party Beneficiary. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to enforcement, shall be strictly reserved to the Owners, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person or entity. It is the express intention of the Owners that any person or entity, other than the Owners to this Agreement, receiving service or benefits under this Agreement shall be deemed to be incidental beneficiaries only. Notwithstanding the foregoing, CITY, COUNTY and CPS acknowledge that CPS and COUNTY are intended third-party beneficiaries of the AARRS Contract.
- 17.09 **IN NO EVENT SHALL AN OWNER BE LIABLE TO ANOTHER OWNER FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES INCLUDING, WITHOUT LIMITATION, DAMAGES ATTRIBUTED TO ANY MALFUNCTION OF THE SYSTEM, REGARDLESS OF THE CAUSE OF ACTION, ARISING OUT OF OR IN CONNECTION WITH AN OWNER'S PERFORMANCE.**
- 17.10 Attorney's Fees. In the event of litigation, each Owner is responsible for its attorney's fees.

## ARTICLE XVIII - DISPUTE RESOLUTION

- 18.01 The Owners shall exercise best efforts to resolve any dispute concerning this Agreement in an amicable manner and to initiate litigation only as a last resort to avoid significant and unavoidable harm to the System or Owner operations that rely on the System.
- 18.02 If a dispute arises between any of the Owners, the affected Owner shall provide written notice to the Network Manager and other Owners of the dispute explaining the details giving rise to the dispute. The Network Manager shall attempt to resolve the dispute promptly, but if the dispute is not resolved, then the Network Manager shall place the disputed matter on the agenda in the following order unless the dispute is resolved:
- JOC meeting
  - EC meeting
- 18.03 If the matter cannot be resolved by the EC, then the disputed matter shall be escalated to the SAPD and SAFD Chiefs, the CPS CIO and the Bexar County Sheriff. After reviewing the matter this group will provide a recommendation to the EC for resolution.
- 18.04 If the matter is still not resolved, then the EC shall escalate the unresolved issue to the City Manager, County Manager and CPS CEO for resolution. Throughout the stages of the escalation process all Owners will stay apprised of the status of the dispute.
- 18.05 Disputes that arise during System Construction shall be resolved in an expeditious manner and shall not impede or delay System Construction. System Construction shall continue in accordance with the AARRS Contract schedule while the dispute is in the resolution process.
- 18.06 If at any time during the term of this Agreement 1) an Owner causes unreasonable delays in the dispute resolution process, 2) the dispute cannot be resolved through the processes outlined in this article, or 3) the matter is an urgent matter that if not addressed in an expedient manner will likely significantly impact the performance of obligations under the AARRS Contract then the EC Chairperson shall make the final decision resolving the dispute. The EC shall provide as much notice as practical to the Owners that a disputed matter may potentially fall into one of the criteria under this Section 18.06.
- 18.07 If at any time an Owner feels an operational issue is not being addressed by the Network Manager in a timely basis, or that the Network Manager is not escalating the issue to the JOC as requested by the Owner in a timely basis, the Owner may request that the SAPD and SAFD Chiefs, the CPS CIO and the Bexar County Sheriff address the issue directly, and provide their recommended resolution directly to the Network Manager, JOC, or EC, as applicable.

## **ARTICLE XIX - AMENDMENTS**

- 19.01 Written Amendment Required. No amendment, modification, or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof, and duly executed by the Owners hereto, and authorized by each Owner's governing body, as may be required.

## ARTICLE XX - NOTICES

20.01 All notices to be given under this Agreement shall be in writing, and shall either be personally served against a written receipt therefor or given by certified mail or registered mail, return receipt requested, postage prepaid and addressed to the proper party at the address which appears below, or at such other address as the Owners hereto may hereafter designate in accordance herewith. All notices given by mail shall be deemed to have been given at the time of deposit in the United States mail and shall be effective from such date.

If to COUNTY:

Bexar County Judge  
Bexar County Commissioners Court  
Paul Elizondo Tower  
101 W. Nueva, Suite 1000  
San Antonio, Texas 78205

With copies to:

Bexar County Manager  
Office of the County Manager  
Paul Elizondo Tower  
101 W. Nueva, Suite 1000  
San Antonio, Texas 78205

Bexar County Sheriff  
Bexar County Sheriff's Office  
200 N. Comal  
San Antonio, Texas 78207

Chief Information & Technology Officer  
Bexar County Information Technology  
203 W. Nueva, Suite 100  
San Antonio, Texas 78207

If to CITY:

Director, Information Technology Services Dept.  
City of San Antonio  
515 South Frio St.  
P.O. Box 839966  
San Antonio, Texas 78283-3966

With copy to:

City Clerk  
City of San Antonio  
100 South Flores, 2nd Floor  
P.O. Box 839966

San Antonio, Texas 78283-3966

If to CPS:

Chief Information Officer  
CPS Energy  
P.O. Box 1771  
San Antonio, Texas 78296-1771

With copy to:

Chief Legal & Administrative Officer  
CPS Energy  
P.O. Box 1771  
San Antonio, Texas 78296-1771

If to the Executive Committee:

Chair, Executive Committee  
C/O City Manager or Designee  
100 S. Flores, S.A., TX. 78205 or  
P.O. Box 839966  
San Antonio, Texas 78283-3966

**ARTICLE XXI - MULTIPLE COUNTERPARTS**

- 21.01 This Agreement may be executed in several counterparts, and by the Owners hereto on separate counterparts, and each counterpart, when so executed and delivered, shall constitute but one and the same instrument.

**ARTICLE XXII - FORCE MAJEURE**

- 22.01 No Owner, nor the AARRS Enterprise, shall be responsible for delays or lack of performance by such entity or its officials, agents, representatives, or employees which result from acts beyond that entity's reasonable control caused by Acts of God, strikes or other labor disturbances, or delays by federal or state officials in issuing necessary regulatory approvals and/or licenses. Upon any delay or failure excused by this section, the time of delivery or of performance shall be extended for a reasonable period to compensate for delay.

**ARTICLE XXIII - INCORPORATION OF EXHIBITS**

- 23.01 Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the Owners, and shall be interpreted in the order of priority as appears below, with this Agreement taking priority over all exhibits:

Exhibit 1 – Owners' Original Capital Investment

- Exhibit 2 – Network Backbone Infrastructure List, Including Tower Sites and Owner Responsibilities  
Exhibit 3 – Form of Subscriber Agreement for Tenant Subscribers.

#### **ARTICLE XXIV - OWNER'S BOUND**

- 24.01 This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

#### **ARTICLE XXV - ENTIRE AGREEMENT**

- 25.01 This Agreement, together with its authorizing ordinance and its exhibits constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless they are in writing, dated subsequent to the date hereto, and duly executed by the parties.

DRAFT

**EXECUTED** on the dates indicated below.

**CITY OF SAN ANTONIO**

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Printed Name)*

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(Date)*

Approved as to Form:

\_\_\_\_\_  
Andrew Segovia, City Attorney

**COUNTY OF BEXAR**

By: \_\_\_\_\_  
NELSON W. WOLFF  
County Judge

ATTEST:

\_\_\_\_\_  
GERARD C. RICKHOFF  
County Clerk

APPROVED AS TO LEGAL FORM:

By: \_\_\_\_\_  
ED SCHWENINGER  
Assistant Criminal District Attorney  
Civil Division

APPROVED AS TO FINANCIAL  
CONTENT:

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SUSAN YEATTS  
County Auditor

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DAVID SMITH  
County Manager

APPROVED:

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JAVIER SALAZAR  
Bexar County Sheriff

**CPS ENERGY**

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*(Signature)*

---

*(Printed Name)*

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*(Title)*

---

*(Date)*

Approved as to Form:

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Legal Counsel for CPS