

**1. MEMORANDUM OF UNDERSTANDING
FOR THE TEXAS DEPARTMENT OF PUBLIC SAFETY
USE OF COMMUNICATIONS PERSONNEL AND EQUIPMENT**

This **Memorandum of Understanding for the Texas Department of Public Safety** (“Agreement”) is entered into, by and between the Texas Department of Public Safety (“TXDPS”) a state agency, hereinafter referred to as TXDPS, and the local government, municipality, city, county, council of governments, river authority, municipal utility district, special utility district, state agency, non-profit or not-for-profit organization, non-governmental organization, private entity or individual (hereinafter referred to as the “Owner”) designated in paragraph 12, (and collectively referred to as the “parties”).

1. PURPOSE

- A. The purpose of this Agreement is to establish protocol and procedures for the TXDPS through the Communications Coordination Group (CCG) to request, use and reimburse the Owner for the use of communication equipment/personnel upon the execution of an ICS 213 by the State Operations Center (SOC).
- B. This Agreement shall not affect the provisions of any other agreement between the parties, including a Mutual Aid Agreement, regarding the provision of communications personnel, communications equipment or other services.
- C. This Agreement details the procedures under which equipment/personnel provided by the Owner will be used and returned, and provisions for reimbursement for the use of equipment and personnel. This Agreement does not obligate the Owner to provide communications personnel or equipment.

2. DEFINITIONS

- A. **Communications Coordination Group (CCG)** – an organization established in state law that functions at the direction of the Texas Division of Emergency Management (TDEM) to facilitate interagency coordination and collaboration to provide efficient and effective planning and execution of communications support to joint, interagency and intergovernmental task forces.
- B. **Emergency Communications Operators** – Texas Military Forces Personnel, trained in emergency communications equipment and techniques available to local jurisdictions who do not have sufficient personnel to operate their equipment
- C. **Emergency or Disaster Event** – An event that impacts property and/or lives and requires assistance from agencies outside the city or county in which it occurred. The event could be a state or nationally declared emergency.
- D. **Federal Emergency Management Agency (FEMA)** – a division of the federal Department of Homeland Security (DHS) charged with managing federal resources when called on by state authorities.
- E. **ICS 213** – A form used by local jurisdictions to indicate a need for resources that is passed to the SOC. In the case of communications request the ICS 213 is passed to the CCG for sourcing of resources.
- F. **Incident Command System (ICS)** – a formalized organization used by the federal, state and local governments to respond to emergency or disaster events.

- G. **Mutual Aid Agreement** – an agreement between entities detailing the circumstances under which they may call for aid in the event of a need.
- H. **National Incident Management System (NIMS)** – a set of rules and procedures used by federal, state and local jurisdictions to respond to emergency or disaster situations.
- I. **Rapid Response Task Forces** – a system used by Texas to organize and respond to emergencies or disasters.
- J. **Reserve Unit** – designation for communications equipment and people who could be used in an emergency or disaster event.
- K. **State Communications Annex (Annex B) to the State Emergency Plan** – document that details communications responses to emergencies and disasters.
- L. **State Operations Center (SOC)** – an organization under the Texas Division of Emergency Management that is activated under circumstances of emergency or disaster.
- M. **Texas Department of Public Safety (TXDPS)** – a unit of state government.
- N. **Texas Division of Emergency Management (TDEM)** – a unit of TXDPS charged with supervising the SOC and handling emergencies and disaster in the State of Texas.
- O. **Training Event** – Any event directed by local authorities, state or federal authorities that test equipment and/or personnel in communications.

3. **PROCEDURES**

- A. Equipment and/or personnel provided by the Owner for use in an emergency must meet the criteria established in paragraphs 3 B. through I. to be eligible for use under the terms of this Agreement.
- B. Equipment provided by the Owner must be compatible with the State Communications Plan and the needs of the state in an emergency, and have been previously reviewed or approved by the TXDPS.
- C. The Owner certifies it has the capability and resources to maintain the equipment and assures the equipment will be in usable condition if requested.
- D. The Owner certifies the personnel who would operate the equipment are knowledgeable about the operation and maintenance of the equipment they will operate.

- E. If the Owner will accept the help of the “Emergency Communications Operators” from the Texas Military Forces to supplement or replace the Owner’s operators in a training or deployment event the Owner will indicate their agreement in Annex 1 to this agreement.
- F. Personnel provided by the Owner must be capable of operating in an Incident Command System (ICS) and National Incident Management System (NIMS) environment.
- G. The Owner will complete the “Equipment and/or Personnel Description Listing” provided in Annex 1 and submit quarterly updates for the duration of the Agreement for all equipment and/or personnel approved by the TXDPS.
- H. The listing will detail the type and capabilities of equipment and personnel and the Owner will notify the TXDPS of any changes to the equipment or personnel either by subtracting or adding capabilities within 10 business days.
- I. Equipment and/or personnel provided by the Owner will operate under the direction and supervision of the Incident Commander at the location assigned.
- J. The owner certifies that it has not been debarred as a vendor by either the federal government or the State of Texas as a condition of entering into this agreement.

4. COMPENSATION

A. Training Events

(1) All equipment will be type rated using a combination of the current Federal Emergency Management Agency (FEMA) rating system and the TXDPS rating system. The Owner and the TXDPS will agree on the type rating assigned to each piece of equipment and the Owner will be compensated, if appropriate, based on that type rating.

(2) The current FEMA and/or state of Texas reimbursement rates for equipment used will be based on the type rating assigned. If the Owner is a participant in the State of Texas Satellite Air Time program, no compensation will be paid during training events for satellite air time. The compensation will be reviewed bi-annually and revised as necessary. If equipment is added or subtracted from a previously rated collection of equipment or communications platform, the equipment or platform may need to be re-rated and that re-rate may affect the amount of compensation.

(3) The TXDPS will authorize and facilitate reimbursement for the base pay, and benefits actually incurred by the Owner, if allowed by the Owner’s charter, incorporation status or other factors. The TXDPS will authorize and facilitate reimbursement for the backfill cost of personnel if necessary to allow the Owner to continue to operate their communications function during a time when their communications personnel are engaged in a TXDPS training event.

(4) The TXDPS will also authorize and facilitate reimbursement for meals, lodging and mileage as provided by the General Appropriations Act of the state of Texas unless meals and lodging are furnished by or through the TXDPS.

B. Emergency or Disaster Event

- (1) When an **ICS 213** is issued by the State Operations Center (SOC) for an actual emergency or disaster requesting communications equipment and/or personnel under this Agreement, and the Owner of the equipment and/or personnel is willing and able to commit the equipment, the TXDPS will become the coordinator of the use of the equipment and/or personnel until demobilized.
- (2) Reimbursement requests after demobilization will be initiated by the Owner and the TXDPS will authorize and facilitate payment by the appropriate agency. The reimbursement request will be at the current TXDPS or FEMA rates and will follow the rules for reimbursement in place at the time the **ICS 213** was issued for actual event reimbursement.
- (3) The TXDPS will provide forms and administrative assistance to complete the forms to the Owner and track the process from initiation to payment by the appropriate agency.

5. LIABILITY

- A. All personnel provided by the Owner shall not be considered employees of the TXDPS, TDEM or the CCG or of any other party for any purpose. Other than as provided in this Agreement, the Owner thus remains solely responsible for supervision, work schedules, performance appraisals, compensation, overtime, vacations, retirement, expenses, disability, and all other employment-related benefits incident to the assignment of its personnel to the TXDPS.
- B. The Owner is responsible for notifying the Owner's insurance carrier concerning the possible intended use of the Owner's equipment and/or personnel under this Agreement. Work records, injury reports, equipment damage or loss will be documented through the Owner's insurance structure. The Owner will look to their regular insurance structure for payment.
- C. Unless specifically addressed by the terms of this Agreement or other written agreement, the parties agree to only be responsible for the negligent or wrongful acts or omissions of their respective officers and employees, but only to the extent they would be liable under the laws of the jurisdiction(s) to which they are subject.
- D. It is expressly understood and agreed that in the execution of this Agreement, no party waives, nor shall be deemed to waive, any immunity or defense otherwise available to it against any claims by third parties.
- E. To the extent authorized by law, the Owner, agrees to indemnify and save harmless TXDPS, its director and employees from and against any and all claims, demands, actions and suits, or any cause of action whatsoever, arising out of or involving any negligence on the part of the Owner or its employees in the exercise or enjoyment of this Agreement.

6. ACTIVATION

- A. After the Owner agrees to allow their equipment and/or personnel to be used they will be put on a list kept by the CCG as communications resources. A pre-scripted ICS 213 will be developed describing the equipment by type. Upon approval by the SOC, the ICS 213 will become a tasking document and the basis to activate the equipment and/or personnel.

- B. The TXDPS will develop, in conjunction with the Texas Military Forces, a manpower pool of “Emergency Communications Operators” who, with the Owner’s permission, may be used to supplement the Owner’s personnel if the Owner’s personnel are not available for deployment but the Owner’s equipment is offered to be deployed. Agreement to use “Emergency Communications Operators” will be noted on the “Equipment and/or Personnel Description listing” at Annex 1.

7. DEMOBILIZATION

- A. When equipment and/or personnel are no longer needed in an incident command as determined by the ICS Commander the equipment and/or personnel will be released to the CCG for further assignment as necessary.
- B. If there is no further need for the equipment and/or personnel they will be demobilized at a demobilization point and returned to the Owner.
- C. If a need for the equipment and/or personnel exists, the TXDPS will direct the Team Leader to a new location and to become part of another ICS command.
- D. When equipment and/or personnel are finally demobilized the Team Leader will complete CCG Forms FN 1 through 1.5 to document the personnel; their meals; lodging; travel; supplies and equipment costs. The forms must be submitted to the CCG Administration/Finance Division.
- E. After review for administrative completeness and conformance with the equipment cost agreed to in this Agreement, the reimbursement request will be forwarded by the CCG to TDEM to the paying agency requesting reimbursement to the Owner.

8. APPEALS

- A. Disputes arising out of the operation of this Agreement must be submitted in writing to the Coordinator of the CCG. If the dispute is not settled, it will be forwarded to TDEM for resolution.
- B. This Agreement is governed by the law of the state of Texas and any venue for suits related to this agreement shall be in Travis County, Texas.

9. TERM

- A. This Agreement will be in force for a period of two years. The Agreement will be reviewed biennially by the parties, and may be renewed if mutually agreed in writing for an indefinite number of two year periods provided the reason for entering into the Agreement has not been materially changed.
- B. This Agreement may be terminated with 30 days notice in writing on the part of TXDPS or the Owner.
- C. If this Agreement expires while equipment and/or personnel are deployed in a Training Event, or Emergency or Disaster Event, the provision of this Agreement will remain in force until the equipment and/or personnel are demobilized.

10. RIGHT TO AUDIT

- A. TXDPS and the Owner agrees the representatives of the State Auditor's Office or the Owner, or other authorized representatives of the state of Texas or the Owner, shall have access to, and the right to audit, examine, or reproduce, any and all records of TXDPS and the Owner related to the performance under this Agreement. TXDPS and the Owner shall retain all such records for a period of two (2) years or until all audit and litigation matters TXDPS or the Owner has brought to the attention of each other are resolved, whichever is longer.
- B. TXDPS and the Owner shall include the above section in all subcontractor agreements, if any, entered into in connection with this Agreement.

11. ASSIGNMENT


A party to this Agreement may not assign or transfer its interests under this Agreement.

12. THIRD PARTY BENEFICIARIES

Nothing in this MOA, express or implied, is intended to confer upon any person, other than the parties hereto, any benefits, rights, or remedies under or by reason of this Agreement.

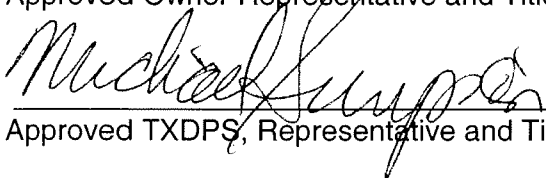
SIGNATURES OF AUTHORIZED REPRESENTATIVES

By signature below, the parties to this Agreement certify that they are authorized representatives of their respective entity and consent to the terms mentioned herein.



Approved Owner Representative and Title

12/3/10
Date



Approved TXDPS, Representative and Title

12/8/10
Date