

iXP CONSULTING SERVICES AGREEMENT

This iXP Consulting Services Agreement (“Agreement”) is made and entered into as of ____ day of _____, 2014 (“Effective Date”) by and between iXP Corporation, a Delaware corporation, having its principal place of business at 1249 South River Road, Cranbury, NJ 08512 (“Consultant” or “iXP”), and the Town of Addison, Texas (“Client,” “Town of Addison,” or “Addison”) (Consultant and Client are sometimes referred to herein together as the “parties” and individually as a “party”).

Recitals:

1. Consultant is in the business of, among other things, analyzing the emergency communications systems of local governments, including emergency services dispatch systems, and facilitating the joint development and implementation of those systems by and among multiple local governments.

2. Client is one of four cities – the others being the City of Carrollton, Texas (“Carrollton”), the City of Coppell, Texas (“Coppell”), and the City of Farmers Branch, Texas (“Farmers Branch”) (collectively, the “Cities” and each being a home rule city) – that entered into an interlocal agreement entitled *Metrocrest Quad Cities Public Safety Radio System Interlocal Agreement* (effective June 26, 2013) (the “Radio System Interlocal Agreement”) for the purpose of establishing the Cities’ agreement regarding the purchase, installation, maintenance, operation, management, and use of a wide area, multi-site (“simulcast”) digital trunked radio system compliant with P-25 interoperability standards to be used jointly by the Cities for providing public safety dispatch and communications for the Cities’ respective Fire/EMS and Police departments (the “Radio System”).

3. In connection with and related to the Radio System and the Radio System Interlocal Agreement, the Cities commissioned a study, conducted by Consultant, regarding the method of public safety dispatching and communications conducted by each of the Cities, and the options, advantages, and disadvantages to consolidating the public safety dispatch and communications operations of the Cities into a single consolidated public safety communications center (the “Dispatch Study”).

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

5. Following the Cities’ receipt and evaluation of the Dispatch Study, the Cities entered into an interlocal agreement entitled *Interlocal Cooperation Agreement Regarding Establishment of the Metrocrest Quad Cities Local Government Corporation* (the “LGC Interlocal Agreement”) that, among other things, provides for the creation of a local government corporation pursuant to the authority of Subchapter D of Chapter 431, Texas Transportation Code, to be known as *Metrocrest Quad Cities Local Government Corporation* (the “Corporation”), which will be organized for the purpose of assisting and acting on behalf of the

Cities in the performance of their governmental functions and services, including, but not limited to, the construction, development, management, and operation of the Communications Center and other joint projects as authorized in the Certificate of Formation and the Bylaws of the Corporation, as may be amended from time to time. The LGC Interlocal Agreement further provides for the development of agreements regarding the operation of the Corporation.

6. The Cities are, as of the Effective Date, in the process of carrying out the terms of the LGC Interlocal Agreement, including the creation of the Corporation, the development of its organizational, operational, staffing, and support elements, and the provision of the Communications Center, so that the Corporation will become an emergency communications organization that supports the Cities and their public safety functions.

7. In order to help implement the LGC Interlocal Agreement, the Cities desire to engage the services of iXP to provide temporary management and related services to facilitate the establishment and the initial start-up and operation of the Corporation and the Communications Center in coordination with the Radio System project, and to provide assistance with management, operations, and technology of the Communication Center during the first year of its operation. The services to be provided by iXP are set forth in this Agreement, below.

8. Though the Corporation has not yet been created and established as of the Effective Date, the Cities desire that iXP begin promptly to provide the services described in this Agreement. Accordingly, Addison is entering into this Agreement with iXP, but the parties recognize and agree that, once the Corporation has been created and established and at such time as Addison deems appropriate, this Agreement will be assigned to the Corporation and Addison will no longer be a party to it. Additionally, this Agreement is subject to and contingent upon the Cities entering into an interlocal agreement that approves this Agreement and that provides for the sharing of the costs of this Agreement by the Cities (the “iXP Interlocal Agreement”).

NOW, THEREFORE, for and in consideration of the above and foregoing Recitals, the benefits flowing to each of the parties hereto, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties mutually agree as follows:

Section 1. Consultant’s Work and Services; Standards of Performance; Consultant Services Manager; Independent Contractor.

A. Client engages Consultant to provide, and Consultant agrees to provide to Client (and to the other Cities), the professional work and services set forth in **Schedule A** attached hereto and incorporated into and made a part of this Agreement by this reference (the “Services”). During the Term (as defined in Section 2, below), Consultant agrees to provide the Services to Client in accordance with this Agreement and to Client’s satisfaction.

B. The Services shall be performed and provided by Consultant in a professional manner, consistent with that level of care and skill ordinarily exercised by reputable members of Consultant’s profession in Dallas County, Texas. Consultant represents that it has the skill and the professional expertise necessary to provide the Services to the Client.

In providing the Services, Consultant shall at all times comply with all applicable federal, state and local laws, statutes, ordinances, codes, rules, regulations and standards adopted by any governmental entity, agency, commission, or authority having jurisdiction over the Services, and with all applicable professional standards pertaining to the Services.

Consultant represents to Client that its execution and delivery of this Agreement and its performance of the Services does not and will not: (1) result in any violation or breach of, or constitute a default under, or require a consent or waiver under, any of the terms, conditions or provisions of any license, contract or other agreement to which Consultant is a party; or (2) materially conflict with or violate any franchise, license, judgment, order, statute, law, rule or regulation applicable to Consultant.

All persons provided by Consultant to perform the Services under this Agreement shall be adequately trained and capable of properly performing the Services.

C. Consultant will designate an employee to manage and oversee all of the Services, and Consultant will identify such person to Client in writing. Among other things, such employee will coordinate the Services and provide general direction and guidance in connection with Consultant's performance of the Services.

D. In the performance of Services contemplated under this Agreement, Consultant acknowledges and agrees that Consultant is acting as an independent contractor, and nothing in this Agreement creates, nor is intended nor shall be construed to create, an employer-employee relationship, a joint venture relationship, a joint enterprise, or to allow Client to exercise discretion or control over the manner in which Consultant performs the Services which are the subject matter of this Agreement. Consultant is solely responsible for all labor and expenses in connection with the Services provided under or in connection with this Agreement, and for any and all damages, injuries, liability, or other harm of whatever nature to the extent caused by, arising out of, or resulting from any act or omission of Consultant, or Consultant's directors, partners, officers, managers, employees, agents, contractors, subcontractors, or any person or entity for whom Consultant is legally liable, under or in connection with this Agreement.

Section 2. Term; Termination.

A. *Term.* The term of this Agreement will commence on the later of the (i) date this Agreement has been signed by both Consultant and Client, and (ii) the date that the last of the Cities approves and executes the iXP Interlocal Agreement, and, unless earlier terminated as set forth in this Agreement, will continue through and terminate on March 31, 2015 (but if Consultant has not provided all of the Services by March 31, 2015, Client may extend this Agreement to a later date or dates to allow the completion of all the Services) (the "Term"). If all of the Cities do not approve and execute the iXP Interlocal Agreement on or before March 1, 2014, this Agreement shall be null and void and have no force or effect.

B. *Termination.* This Agreement may be terminated prior to expiration of the Term as follows:

(a) Client may terminate this Agreement at any time and for any reason (or for no reason) by giving Consultant at least thirty (30) days written notice of such termination. Upon receipt of the termination notice, Consultant will stop work in an orderly and expeditious manner, place no further subcontracts or orders in connection with this Agreement, and terminate all subcontracts (if any).

(b) If either party (the “defaulting party”) defaults in the performance of or violates any material term or provision of this Agreement (a “default”), the other party (the “non-defaulting party”) shall have the right to terminate this Agreement upon giving to the defaulting party written notice of such default (specifying the default in such notice) at least ten (10) business days' prior to such termination; provided, however, that such right of termination shall not be exercised by the non-defaulting party unless and until a default remains uncured by the defaulting party for the said ten (10) business day period, but if the default cannot with diligence be cured within said ten (10) business day period, if within such ten (10) business day period the defaulting party provides the non-defaulting party written notice of the curative measures which it proposes to undertake, and proceeds promptly to initiate such measures to cure such default, and thereafter prosecutes the curing of such default with diligence and continuity, the time within which such default may be cured shall be extended for such period as may be necessary to complete the curing of such default with diligence and continuity, but not to exceed fifteen (15) business days following the receipt of the said notice. If the default is not cured within the said period of time (as applicable) to the satisfaction of the non-defaulting party, this Agreement shall terminate upon the expiration of the said period of time. For purposes hereof “business days” means Monday through Friday of each week, excluding the following holidays: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Eve, and Christmas Day.

Should this Agreement be terminated for any reason prior to the completion of the Services, Client shall pay Consultant for the Services properly provided through the date of termination, subject to and in accordance with other provisions of his Agreement.

Section 3. Compensation.

A. Client will pay Consultant, for Consultant’s provision and performance of items 1 (“Governance and Organizational Setup”) through 7 (“Planning and reconfiguration of Carrollton’s existing PSAP so it can be used as the backup PSAP for the Corporation’s new facility”) of the Services as set forth in the attached Schedule A and rendered in accordance with the terms of this Agreement, the total sum of One Million One Hundred Thousand and No/100 Dollars (\$1,100,000.00) (the “Contract Amount”). Payment of the Contract Amount will be made in accordance with the following:

- The sum of \$85,000.00 (“Monthly Amount”) will be paid each month for a period of 12 consecutive months (for a total amount of \$1,020,000.00) commencing with March, 2014 (the last such payment to be made for the month of February, 2015).
- The sum of \$80,000.00 (the “Final Amount”) will be paid following the completion of the testing of the backup communication center identified in item 7 set forth in the attached Schedule A (the “Completion of Testing”).

- With respect to each Monthly Amount, on or before the 10th day of each month (beginning with March, 2014) Consultant shall submit to Client an invoice for the Services performed and provided by Consultant during the immediately prior month. Each invoice shall include (i) a description of the Services performed (and specifically identifying which of items 1 through 7 included in the attached Schedule A is the subject of or included within the invoice), (ii) true and correct copies of any and all documents and/or materials in support of the invoice, and (iii) any additional documents or materials as the Client may request in connection with the invoice and/or the compensation paid to Consultant.
- With respect to the Final Amount, within 10 days following the Completion of Testing, Consultant shall submit to Client an invoice for the Services performed and provided by Consultant since the date of the immediately prior invoice. Such invoice shall include the information described in the bullet point above.
- Client will pay Consultant the amount of an invoice, to the extent that such amount is not in dispute, within thirty (30) days after the City's receipt of each such invoice (and all accompanying materials) as described above.

B. The services described in item 8 of the attached Schedule A above can be provided to Client, at Client's sole discretion and election, on either a fixed-price basis or a "Time & Material" basis. Prior to go-live, the parties will meet and confer on the appropriate post go-live support model and establish pricing and payment terms at that time through an amendment to this Agreement, if the parties are able to agree on such amendment.

C. Notwithstanding the foregoing, if Client requests and as an optional service, iXP will conduct the technology system procurements and title transfers as described in item 4.4 included in the attached Schedule A at the direct cost of acquisition plus 3% for administrative processing. If Client requests the same, payments for these purchases (including any incremental payments required as part of the order, installation, testing, and acceptance cycle) will be made within 30 days of iXP's invoice to Client for each purchase.

D. Notwithstanding any other provision of this Agreement (including the attached Schedule A) to the contrary, Client shall not be obligated to make payment to Consultant hereunder if:

- (a) Consultant is in default of any of its obligations under this Agreement or any documents in connection with the Services (and payment may be withheld to the extent of any such default) subject to the cure period provision in Section 6(b);
- (b) Any part of any payment is attributable to any Services of Consultant which are not performed in accordance with this Agreement, subject to the cure period provision in Section 6(b);
- (c) Consultant has failed to make payment promptly to consultants or other third parties used by Consultant in connection with Consultant's Services hereunder for which the Client has made payment to Consultant; or

(d) If Client, in its good faith judgment and after consultation with Consultant, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the Services of Consultant, no additional payments will be due Consultant hereunder unless and until Consultant performs a sufficient portion of the Services so that such portion of the compensation remaining unpaid is determined by Client to be sufficient to complete the Services.

Section 4. Records, Documents; Confidentiality.

A. All records, reports, documents, materials, and all other information whatsoever, in whatever form or format, prepared by, for, or on behalf of Consultant in connection with or related to this Agreement and the Services shall belong to and are owned exclusively by the Client for all purposes, and shall be provided and delivered to the Client upon the earlier of the termination or expiration of this Agreement or at the City's request. This provision shall survive the expiration or termination of this Agreement.

B. Consultant agrees that any documents, records, materials, or other information (collectively, "confidential information") received from Client (or any of the Cities) and identified in writing as confidential (or if not identified in writing, if it is clear from the circumstances that the documents, records, materials, or other information are confidential) will not be disclosed or used by the Consultant, except for the purpose(s) set forth herein, without the prior written consent of Client. The Consultant will use the same degree of care to avoid publication or dissemination of such confidential information of Client as the Consultant employs with respect to its own information of similar importance and will only disclose the confidential information to those employees of Consultant who have a "need to know." Consultant will take appropriate action by way of instructions or written agreements with its employees receiving such confidential information to advise such employees of all obligations under this Agreement.

The Consultant will not be liable for disclosure of information received from Client (or any of the other Cities) if it:

- (a) is contained in a printed publication generally available to the public without restriction;
- (b) becomes publicly known without breach of this Agreement or through no wrongful act of Consultant;
- (c) is approved in writing for disclosure without restriction by a duly authorized officer of the Client;
- (d) is already known by Consultant without restriction when received, or thereafter is developed independently by Consultant and the Consultant's records clearly establish such independent development; or
- (e) is required by a court or other governmental or judicial authority to be disclosed (and in the event Consultant receives notice that Client's (or any other Cities')

information is the subject of a governmental or judicial inquiry, directive, or order, Consultant shall immediately make Client aware of such inquiry, directive, or order, and Client may take such steps as Client may deem appropriate or necessary to protect such information).

In the event that Consultant fails to comply with the terms of this confidentiality provision, Client may suffer irreparable harm, and monetary damages may be inadequate to compensate for such breach. Accordingly, in addition to any other remedies available to Client at law, in equity, or otherwise, Client may be entitled to injunctive relief to enforce the terms of this Agreement, and such further relief as may be proper from a court of competent jurisdiction.

Termination or expiration of this Agreement will not be deemed to affect Consultant's obligations with respect to confidential information, and such obligations will continue in full force and effect for a period of two (2) years after termination or expiration of this Agreement. Upon such termination or expiration of this Agreement, at Client's request, Consultant will return to Client all of Client's (and any of the other Cities') information that Client deems confidential, including all originals and any copies, and will not retain any originals or any copies of any such information; this obligation shall survive the termination or expiration of this Agreement.

C. Consultant shall keep complete and accurate records of the Services performed pursuant to this Agreement and any records required by law or government regulation and shall make such records available to the Client upon request. Consultant shall assure the confidentiality of any records that are required by law to be so maintained.

Section 5. Insurance; CONSULTANT'S INDEMNIFICATION OBLIGATION.

A. In connection with this Agreement and at all time relevant hereto or in connection herewith, Consultant shall acquire and maintain in a company or companies lawfully authorized to do business in Texas at least the following insurance:

(1) Workers' Compensation insurance at statutory limits under the laws of Texas, including Employers' Liability coverage at minimum limits of \$1,000,000 each occurrence each accident/\$1,000,000 by disease each-occurrence/\$1,000,000 by disease aggregate;

(2) Commercial General Liability insurance, with combined single limits of not less than \$1,000,000 per-occurrence and \$1,000,000 general aggregate for bodily injury and property damage; \$1,000,000 for personal injury; and a \$1,000,000 annual aggregate for Products/Completed Operations. Coverage must include Contractual Liability and Products/Completed Operations (and if such commercial general liability insurance contains a general aggregate limit, it shall apply separately to the Services under this Agreement);

(3) Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including Owned,

Non-Owned and Hired Car Coverage. This coverage must be written on a standard and approved ISO form; and

(4) Professional Liability Insurance to protect from liability arising out of the performance of professional services under this Agreement. Such coverage shall be in the sum of not less than One Million and No/100 Dollars (\$1,000,000.00) per claim and Two Million and No/100 Dollars (\$2,000,000.00) aggregate. This coverage must be maintained for at least two (2) years after the Services are completed. If coverage is written on a claims-made basis, the retroactive date must not be later than the inception date of this Agreement.

With reference to the foregoing insurance requirement, Consultant shall specifically endorse applicable insurance policies as follows:

1. The Town of Addison, Texas (and all other Cities) shall be named as an additional insured with respect to all liability policies.
2. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions applicable to the claims of the Town of Addison (and all other Cities).
3. A waiver of subrogation in favor of the Town of Addison, Texas, its officers, employees, and agents (and all other Cities and their respective officers, employees, and agents) shall be contained in each policy required herein.
4. All insurance policies shall be endorsed to the effect that the Town of Addison, Texas (and all other Cities) will receive at least thirty (30) days' notice prior to cancellation or non-renewal of the insurance.
5. All insurance policies, which name the Town of Addison, Texas (and other Cities) as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
6. Consultant may maintain reasonable and customary deductibles.
7. Insurance must be purchased from insurers that are financially acceptable to the Client and licensed to do business in the State of Texas.

All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, delivered to Consultant and the Town of Addison prior to the commencement of any Services or work by Consultant hereunder, and shall:

1. List each insurance coverage described and required herein. Such certificates will also include a copy of the endorsements necessary to meet the requirements and instructions contained herein.

2. Specifically set forth the notice-of-cancellation or termination provisions to the Town of Addison (and the Cities).

Upon request, Consultant shall furnish the Client with complete copies of all insurance policies certified to be true and correct by the insurance carrier.

B. Consultant's Indemnity Obligation. Consultant covenants, agrees to, and shall DEFEND (with counsel reasonably acceptable to Client), INDEMNIFY, AND HOLD HARMLESS the Town of Addison, Texas and each of the other Cities, and the elected and appointed officials, and the officers, employees, agents, and representatives of the Town of Addison, Texas and of each of the other Cities, individually or collectively, in both their official and private capacities (the said Town of Addison, Texas and each of the other Cities, the elected and appointed officials, and officers, employees, agents, and representatives of the Town of Addison, Texas and of each of the other Cities each being an "Indemnified Person" and collectively the "Indemnified Persons"), from and against any and all claims, liabilities, judgments, lawsuits, demands, harm, losses, damages, proceedings, suits, actions, causes of action, liens, fees, fines, penalties, expenses, or costs, of any kind and nature whatsoever made upon or incurred by the Indemnified Persons or any of them, whether directly or indirectly, (the "Claims"), that arise out of, result from, or relate to: (i) the Services to be provided by Consultant pursuant to this Agreement as described herein, including in Section 1.A. above and the attached Schedule A, (ii) any representations and/or warranties by Consultant under this Agreement, (iii) any personal injuries (including but not limited to death) to any Consultant Persons (as hereinafter defined) and any third persons or parties arising out of or in connection with Consultant's provision of Services under this Agreement, and/or (iv) any act or omission under, in performance of, or in connection with this Agreement by Consultant or by any of its owners, directors, officers, managers, partners, employees, agents, contractors, subcontractors, invitees, patrons, guests, customers, licensees, sublicensees, or any other person or entity for whom Consultant is legally responsible, and their respective owners, directors, officers, directors, officers, managers, partners, employees, agents, contractors, subcontractors, invitees, patrons, guests, customers, licensees, sublicensees (collectively, "Consultant Persons"). SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY INDEMNIFIED PERSON, OR CONDUCT BY ANY INDEMNIFIED PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND. However, Consultant's liability under this section shall be reduced by that portion of the total amount of the Claims (excluding defense fees and costs) equal to the Indemnified Person or Indemnified Persons' proportionate share of the negligence, or conduct that would give rise to strict liability of any kind, that caused the loss. Likewise, Consultant's liability for Indemnified Person's defense costs and attorneys' fees shall be reduced by that portion of the defense costs and attorneys' fees equal to Indemnified Person or Persons' proportionate share of the negligence, or conduct that would give rise to strict liability of any kind, that caused the loss.

Consultant shall promptly advise the Client in writing of any claim or demand against any Indemnified Person related to or arising out of Consultant's activities under this Agreement

and shall see to the investigation and defense of such claim or demand at Consultant's sole cost and expense. The Indemnified Persons shall have the right, at the Indemnified Persons' option and own expense, to participate in such defense without relieving Consultant of any of its obligations hereunder. This defense, indemnity, and hold harmless provision shall survive the termination or expiration of this Agreement.

Section 6. Miscellaneous.

A. *Notice.* Any notice or statement required or permitted to be given or delivered shall be in writing and shall be deemed to have been properly given or delivered for all purposes (i) if sent by a nationally recognized overnight carrier for next business day delivery, on the first business day following deposit of such notice with such carrier unless such carrier confirms such notice was not delivered, then on the day such carrier actually delivers such notice, or (ii) if personally delivered, on the actual date of delivery, or (iii) if sent by certified U.S. Mail, return receipt requested postage prepaid, on the third business day following the date of mailing. Addresses for any such notice, statement and/or report hereunder are as follows:

<u>To Client:</u>	<u>To Consultant:</u>
Town of Addison, Texas	_____
5300 Belt Line Road	_____
Dallas, Texas 75254	_____
Attn: City Manager	Attn: _____

Such addresses and addressees may be changed by giving notice of such change in accordance with this provision.

B. *Force Majeure.* In the event either the Consultant or the Client shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of fire, casualty, strikes, lockouts, labor trouble, inability to procure materials or supplies, failure of power, governmental authority, riots, insurrections, war or other reason of like nature, where such delay, hindrance or prevention of performance shall not be within the reasonable control of the party obligated to perform and not be avoidable by diligence, the party so delayed shall promptly give notice of such delay and the reasons therefor to the other party, and thereupon performance of such act shall be excused for such period of delay.

C. *Assignment.* Except as provided in this Agreement, neither party may assign, sell, transfer, subcontract, or otherwise convey (collectively, "assign") this Agreement or any of their rights or obligations hereunder, in any manner whatsoever (including by merger, consolidation, or by operation of law) to a third party without the prior written consent of the other party; and any such assignment without the other party's prior written consent shall be considered null and void *ab initio*.

Notwithstanding the foregoing provisions of this Section 6.C. or any other provision of this Agreement, Client may assign, in whole or in part and at any time whatsoever, this Agreement to the Corporation or to any of the other Cities; and if Client assigns this Agreement, Client shall be

fully released from, and shall have no further liability, responsibility, or obligations for or under, this Agreement.

D. *Binding Agreement; No Third Party Beneficiaries.* This Agreement shall be binding on and inure to the benefit of the parties, their respective permitted successors and permitted assigns. Except as provided herein, this Agreement and all of its provisions are solely for the benefit of the parties hereto and do not and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

Each of Carrollton, Farmers Branch, Coppell, and the Corporation are third party beneficiaries of this Agreement and of the obligations, duties and responsibilities of Consultant under this Agreement, and shall be entitled to the same rights and benefits of this Agreement as if each of the said Cities and/or the Corporation was the Client under this Agreement.

E. *Governing Law; Venue.* This Agreement and performance hereunder shall be governed by and construed in accordance with the laws of the State of Texas, without regard to choice of laws rules of any jurisdiction. Any and all suits, actions or legal proceedings relating to this Agreement shall be maintained in the state or federal courts of Dallas County, Texas, which courts shall have exclusive jurisdiction for such purpose. Each of the parties submits to the exclusive jurisdiction of such courts for purposes of any such suit, action, or legal proceeding hereunder, and waives any objection or claim that any such suit, action, or legal proceeding has been brought in an inconvenient forum or that the venue of that suit, action, or legal proceeding is improper.

F. *Mutual Drafting; Headings; "Includes".* This Agreement is the joint product of Client and Consultant, and each provision has been subject to the mutual consultation, negotiation, and agreement of Consultant and Client, and will not be construed for or against any party. The section and subsection headings contained herein are for convenience only and shall not be used in interpretation of this Agreement and are not intended to define or limit the scope of any provision of this Agreement. For purposes of this Agreement, "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

G. *No Waiver of Immunity.* Notwithstanding any other provision of this Agreement, nothing in this Agreement shall or may be deemed to be, or shall or may be construed to be, a waiver or relinquishment of any immunity, defense, or tort limitation to which the Client, its officials, officers, employees, representatives, and agents are or may be entitled, including, without limitation, any waiver of immunity to suit.

H. *Rights, Remedies; Waiver.* Except as set forth in or otherwise limited by this Agreement, the remedies and rights set forth in this Agreement: (a) are and shall be in addition to any and all other remedies and rights either party may have at law, in equity, or otherwise, (b) shall be cumulative, and (c) may be pursued successively or concurrently as either party may elect. The exercise of any remedy or right by either party shall not be deemed an election of remedies or rights or preclude that party from exercising any other remedies or rights in the future. Any rights and remedies either party may have with respect to the other arising out of

this Agreement shall survive the expiration or termination of this Agreement, except as otherwise provided in this Agreement. All waivers must be in writing and signed by the waiving party.

I. *Entire Agreement; Amendment.* This Agreement represents the entire and integrated agreement between Consultant and Client with regard to the matters set forth herein and supersedes all prior negotiations, representations and/or agreements, either written or oral. Any amendment or modification of this Agreement must be in writing and signed by authorized representatives of Consultant and Client or it shall have no effect and shall be void.

J. *Severability.* The terms, conditions, and provisions of this Agreement are severable, and if any provision of this Agreement shall be held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.

K. *Recitals.* The above and foregoing recitals are true and correct and are incorporated into and made a part of this Agreement for all purposes.

L. *Authorized Persons.* The undersigned representatives of the parties hereto are the properly authorized persons and have the necessary authority to execute this Agreement on behalf of the respective parties hereto.

SIGNED by the parties on the dates set forth below.

TOWN OF ADDISON, TEXAS

iXP CORPORATION

By: _____
Ron Whitehead, City Manager

By: _____

Date: _____

Date: _____

Schedule A
to iXP Consulting Services Agreement

iXP shall provide to Addison and to the other Cities the following work and services in connection with the establishment and initial start-up and operation of the Corporation and the Communications Center and in coordination with the Radio System project. For purposes hereof, the work and services to be provided with respect to the Corporation will be provided even though the Corporation may not have yet been created.

1. Governance and Organizational Setup
 - 1.1. Work with the Cities to establish the governance and operational structures of the Corporation and the initial operations agreement used to define the service level expectations and cost allocation mechanisms between the Corporation and the Cities.
 - 1.2. Assist the Corporation in establishing the required service relationships for accounting and human resource/benefits administration.
 - 1.3. Provide support and staffing for standing meetings of the governing board, operations board and technology coordination committee for the first 12 months of the Corporation.

2. Establishing Operational Policies and Procedures
 - 2.1. Collect and review the current operational policies and procedures of each of the four existing communications centers and identify common practices across multiple operations as well as unique processes or operational requirements.
 - 2.2. Facilitate a series of workshops with the leadership groups for the law enforcement, fire service and communications center groups to establish the service level expectations and operational requirements for the consolidated organization.
 - 2.3. Develop draft policies and procedures for the consolidated organization that build on existing processes while also addressing new requirements for the consolidated operation.
 - 2.4. Facilitate a review and edit process with the law enforcement and fire service leadership teams.
 - 2.5. Facilitate a formal adoption process through the operational and policy boards established to govern the Corporation.

3. Staffing Processes for the Corporation
 - 3.1. Based on the operational concepts and service level expectations of the Corporation, iXP will develop draft position descriptions and required knowledge, skills and abilities for each position in the Corporation.
 - 3.2. Facilitate a formal review, edit and adoption process through the operational and policy boards established to govern the Corporation.
 - 3.3. Provide administrative and process support to the policy board for the recruitment and hiring of an executive director for the Corporation (“Executive Director”).
 - 3.4. Provide administrative and process support to the Executive Director for the recruitment and hiring of an administrative assistant to the Executive Director.
 - 3.5. Provide administrative and process support to the Executive Director for the recruitment and hiring of the training and QA (quality assurance) supervisors.
 - 3.6. Provide administrative and process support to the Executive Director for the recruitment and hiring of the operational supervisory team for the Corporation.

- 3.7. Provide administrative and process support in the recruitment and hiring of the technology support positions for the Corporation.
 - 3.8. Provide administrative and process support to the leadership team of the Corporation for the recruitment and hiring of telecommunicator and CTO personnel for the Corporation.
 - 3.9. Assist in the development and delivery of training to newly hired personnel on the administrative and operational policies and procedures of the Corporation.
4. Technology Systems Specifications, Procurement and Implementation Support
 - 4.1. Facilitate a series of workshops to define the functional and operational requirements for each of the individual systems required for the new Communications Center.
 - 4.2. Development of procurement specifications for each of these technology systems. This will include:
 - 4.2.1. Coordination with the North Central Texas Council of Governments for 9-1-1 systems and services.
 - 4.2.2. Development of specifications for an administrative phone system and services for the balance of the organization.
 - 4.2.3. Development of specifications for a Computer Aided Dispatch (CAD) system for the Corporation and either a common Records Management System (RMS) or the appropriate interfaces to legacy RMS systems.
 - 4.2.4. Development of specifications for mobile computer equipment to work with the selected CAD and RMS environment.
 - 4.2.5. Coordination with the regional radio system project to integrate logging and recording needs into the centralized logging and recording system used by the radio network and development of specifications of supplementary/backup logging and recording capability at the Communications Center.
 - 4.2.6. Coordination with the regional radio system project for the placement of radio console system equipment and backup radio equipment at the new Communications Center.
 - 4.2.7. Development of a network architecture and necessary network equipment to establish an independent domain for the new Communications Center.
 - 4.2.8. Development of specifications for the specialized furniture for the Communications Center and the general office furniture for the balance of the facility where the Communications Center will be located (such location is anticipated to be, as of the Effective Date, at the property generally located at 1649 W. Frankford Road, Carrollton, Denton County, Texas, which property is owned by Cyrusone, Inc (the "Facility Location" or "Facility") (the Facility Location is subject to change as determined by the Cities).
 - 4.2.9. Development of specifications for ancillary systems and equipment such as workstations, master time synchronization, display screens, headsets, warning siren controllers and similar systems used to support the Communications Center operation.
 - 4.3. Facilitate the procurement process for the Corporation for each technology system, including:
 - 4.3.1. Development and publication of Requests for Proposals for each system.
 - 4.3.2. Facilitating the RFP process including responding to vendor questions,
 - 4.3.3. Organizing and tabulating responses,
 - 4.3.4. Facilitating a scoring and selection process, and

- 4.3.5. Facilitating the Corporation's process of negotiating and executing contracts for system procurement.
 - 4.4. As an optional service (at the Cities' discretion), iXP will directly complete the contract negotiation and contracting process with vendors selected by the Corporation and then pass the contracts and titles for these systems and equipment through to the Corporation at the completion of the implementation cycle for each system.
 - 4.5. iXP will serve as the program and integration manager of the Corporation and facilitate the individual vendor's installation, configuration, testing, operational training, technical training and readiness of each system for live operations.
5. Facility Planning and Construction
 - 5.1. iXP will act as the Corporation's project manager and coordinate the finalization of the physical design of the Facility Location space. As part of this process iXP will provide CyrusOne's design and technical staff (if the Facility Location remains the location described in subsection 4.2.8, above, or if the Facility Location is changed from that location, the design and technical staff of the applicable entity having control over the Facility Location (the "Other Facility Location Entity") the information required to allow them to configure the electrical, mechanical and related building infrastructure systems to meet the needs of a public safety communications center.
 - 5.2. iXP will monitor the construction activities of CyrusOne (or the Other Facility Location Entity, as applicable) and their contractors and provide information to both CyrusOne (or the Other Facility Location Entity, as applicable) and the Corporation to make sure the Facility meets the intended design specifications and requirements.
6. Transition to Live Operations
 - 6.1. iXP will position a team of individuals on-site for the first full week of live operation to assist the Corporation's staff as they transition from existing operations to consolidated operations at the new Facility. This will include managerial, operational and technical personnel to assist all portions of the Corporation.
7. Planning and reconfiguration of Carrollton's existing PSAP (public safety answering point) so it can be used as the backup PSAP for the Corporation's new Facility. Activities will include:
 - 7.1. Planning the technology system backups to be used at the new Facility
 - 7.2. Coordination with the Corporations vendors and partners to purchase and configure equipment that will be placed at the backup facility.
 - 7.3. Assisting the Corporation's staff in the development of operational and technical policies, procedures and training processes for operating in the backup facility.
 - 7.4. Coordinate the installation and testing of systems once the Facility is available for this activity.
 - 7.5. Coordinate an initial test operational cycle at the backup facility to assure that systems and staff can function as planned at the facility and then transition back to operations at the Facility.
8. Optional post go-live consulting and assistance – Following go-live, iXP will keep a team of managerial, operational and technology personnel available to support the Corporation and its staff during their first year of operations. Services that are typically required during this period include:

- 8.1.1. Assistance in monitoring performance metrics and reporting.
- 8.1.2. Assistance in developing adjustments to policies, procedures, working schedules and position responsibilities to match the service level expectations of the field personnel as new ways of doing business change and adapt in the early months of consolidated operation.
- 8.1.3. Consulting and coaching for the Executive Director and the Executive Director's supervisory team as they settle into their responsibilities and new employee teams.
- 8.1.4. Consulting for the governing boards of the Corporation as they go through their initial months of overseeing the consolidated operations and adapting their policies and procedures to meet the new ways of doing business.
- 8.1.5. Assisting the Executive Director and governing boards as they develop their budget and rate models for the 2nd year of operations.