

THE STATE OF TEXAS :  
:  
COUNTY OF HIDALGO :

**LEASE AGREEMENT**  
**C-11-163-08-09**

THIS AGREEMENT is made and entered into this 9<sup>th</sup> day of **August, 2011** by and between **RGV Towers, LLC** a Texas Corporation, hereinafter referred to as Lessor, and **COUNTY OF HIDALGO, TEXAS**, hereinafter referred to as Lessee.

**ARTICLE 1. DEMISE OF LEASE PROPERTY**

Lessor, for and in consideration of the rents, covenants, and promises herein contained to be kept, performed, and observed by Lessee, does hereby lease and demise to Lessee, and Lessee does hereby rent and accept from Lessor, that certain premises more particularly described on Exhibit A-1 and Exhibit A-2, **incorporated by reference herein for all purposes and herein after referred to as (“the Property”)**.

**ARTICLE 2. LEASE TERM**  
**Term**

**2.01** This lease shall be a term of **one (1) year** hereinafter referred to as the “initial lease term” commencing on **October 1, 2011 and expiring on September 30, 2012;** subject, however, to earlier termination as hereinafter provided.

**Renewal**

**2.02** Provided Lessee is not in default hereunder, Lessee is granted the option to renew this Lease for nine (9) additional one (1) year terms (the “Renewal Term(s) as stated in the Request for Bid (RFB) Procurement Packet in Exhibit “A”, under the same terms and conditions set forth in this Agreement except that the rent amount for the Property shall be established as proposed by Lessor in Exhibit “B” (the “Bid Page”) and which was accepted by County. Lessee shall give Lessor written notice of its intent to exercise its renewal option at least thirty (30) days prior to the expiration of the Initial Term or any Renewal Term.

**Voluntary Termination**

**2.03** Lessee may terminate this Contract at any time for any reason or no reason at all upon giving thirty (30) days prior written notice to the Lessor.

**Commitment of Current Revenues Only**

**2.04** In the event that, during any term hereof, the Commissioners Court does not appropriate sufficient funds to meet the obligations of Lessee under this Agreement, Lessee may terminate this Agreement upon sixty (60) days written notice to Lessor.

Lessee agrees, however, to use reasonable efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of Lessee pursuant to the provisions of Tex. Loc. Govt. Code Ann. ' 271.903 (Vernon Supp. 1996).

### ARTICLE 3. RENT

#### Monthly Rental

**3.01** Lessee agrees to and shall pay to Lessor as rent for the use and occupancy of the Property during the initial lease term the sum of \$375.00 per month for a **one (1) year period**. The rental amount during the Renewal Term, if Lessee exercises its renewal options, shall increase every year thereafter as described and attached hereto **Exhibit B– Bid Page 1, 2 & 3** during the nine (9) one (1) year renewal terms. Each Rental payment shall be due in advance on the first day of each month during the term of the lease, beginning on, October 1, 2011 rent hereunder, when and as the same may become due and payable, shall be paid in lawful money of the United States at the time to the Lessor at: P.O. Box 2973, McAllen, Texas, 78502, unless and until Lessor notifies Lessee in writing to make the payments to some other address.

**3.02** Lessor also leases to Lessee \_\_\_square feet of the interior of that certain air conditioned, solid concrete building with generator backup located on the property described on Exhibit A–2 (the “Equipment Building”) for location of Lessee’s transmitter and other ancillary equipment. Lessor grants Lessee unlimited access to the Equipment Building twenty–four hours of the day, seven days a week during the term of this Lease.

### ARTICLE 4. UTILITIES

Lessor shall pay or cause to be paid all charges for electricity, used on the Property throughout the term of this lease, including any connection fees.

### ARTICLE 5. USE OF PROPERTY

Lessee shall have the right to use the Property for any lawful purpose pertaining to the receipt, broadcast or rebroadcast of data or radio signals.

### ARTICLE 6. REPAIR AND MAINTENANCE

Lessor will, throughout the lease term, maintain the Property and keep it free of waste and nuisance. Lessor will, at Lessor’s own expense, during the term of this Lease, maintain air conditioning systems, all windows, the roof, the foundation, the structural soundness of the exterior walls, the electrical wiring, paving the doors, the guy wires, the tower structure, the tower warning lights or beacons and all other components of the Property. Lessor will maintain all records and make all reports required by the Federal Aviation Administration with respect to maintenance and operation of tower warning light

or beacons. In the event Lessor should neglect to reasonably maintain the Property. Lessee will have the right, but not the obligation, to cause repairs or corrections to made, with any reasonable costs therefor to be payable by Lessor to Lessee as an offset against rental on the next rental installment date. Lessee will, at its sole cost and expense, maintain and repair its own equipment, cables and antennae.

## ARTICLE 7. OBLIGATIONS OF LESSOR AND LESSEE

### Taxes

**7.01** Lessee shall be liable for, and shall pay and discharge before the same become delinquent, all taxes levied or assessed against personal property, furniture, or fixtures located in or upon the Property owned by Lessee, but not by other Lessees or by Lessor, on the real property. Lessor shall be liable for, and shall pay and discharge before the same become delinquent, all ad valorem taxes and assessments levied against the Property, including any fixtures and improvements.

### Alternation, Additions, and Improvements

**7.02** Lessee may, at Lessee's discretion, but shall not be required to, make any alterations, additions or improvements to the Property, provided Lessee obtains the prior written consent of Lessor, which consent shall not be unreasonably withheld. All alterations, additions or improvements made to the Property described in Article I, excluding equipment placed on the Property by Lessee, shall become the property of Lessor at the termination of this Lease Agreement.

**7.03 Addition of New and Replacement Equipment.** In accordance with provision 7.02 of this Lease Agreement, Lessee shall be allowed to replace existing equipment used on the Property with the prior written consent of Lessor as described in 7.02, without experiencing an increase in monthly rental costs. Should Lessee desire to add new equipment to the Property currently not in place at Lessee's expense, Lessee shall also seek the prior written consent of Lessor as described in 7.02 and Lessor shall submit a written proposal to Lessee of the additional rental costs associated with the new equipment. If the parties reach an agreement for additional rental costs due to new equipment, then the new equipment may be added.

### Damage or Destruction

**7.04** In the event the Property or any portion thereof is damaged or destroyed by fire, tornado, or other casualty, Lessee shall be entitled to an abatement of rent as a result and Lessor shall promptly repair any such damages or destruction using materials and workmanship of a similar nature and quality to the original construction.

## Insurance

7.05 Lessor agrees to insure the Property, at its sole cost and expense, against loss by fire, or other casualty, including extended coverage, with a policy or policies acceptable to Lessor. The coverages under such policy or policies shall provide for coverage in an amount reasonably required by Lessor to provide for the replacement or repair of the improvements located on the Property, or such portion thereof as may be damaged by a covered loss, but in no event less than the amount required by any party holding a security interest in or lien on the Property. Lessor agrees to hold Lessee harmless from any and all claims actions proceedings, damages, and liabilities arising from the use, condition and operation of the Property, and to carry liability insurance insuring at the sole cost and expense of lessor, both Lessor and Lessee against such loss and liability, in such amounts as Lessor may reasonably require. In the event Lessor should neglect to provide any insurance coverage required under this paragraph, Lessee shall have the right, but not the obligation, to purchase such coverage to protect Lessee's interest, with any reasonable costs therefor to be payable by Lessee.

## Lessee's Insurance

7.06 Lessee, at its own expense, shall provide and maintain in force effective [October 1, 2011](#) and continuing during the term of this Lease Liability insurance in the amounts deemed adequate by Lessee, naming Lessor as additional insured.

## ARTICLE 8. DEFAULT

### Events of Default

8.01 The following events shall be deemed to be events of default by Lessee under this lease. Lessee shall fail to pay any installment of rent hereby reserved and such failure shall continue for a period of thirty (30) days. Lessee shall fail to comply with any term, provision, or covenant of this lease, other than the payment of rent, and shall not cure such failure within thirty (30) days after written notice thereof to Lessee.

### Remedies

8.02 Upon the occurrence of any event to default specified in Paragraph 8.01 hereof, Lessor shall have the option to pursue any one or more of the following remedies without notice of demand whatsoever.

### Re-entry

Lessor may re-enter the Property immediately and remove all Lessee's personal property therefrom. Lessor may store the personal property in a public warehouse or at another

place at Lessor's choosing at Lessee's expense or to Lessee's account.

**Termination**

After re-entry, Lessor may terminate the lease on giving ten (10) days written notice of such termination to Lessee. Re-entry only, without notice of termination, will not terminate the lease.

**Re-letting Property**

After re-entering, Lessor may re-let the Property or any part thereof, for any term, without terminating the lease at such rent and on such terms as Lessor may choose. Lessor may make repairs to the Property at Lessee's expense.

**Quiet Enjoyment Pending Cure Period**

8.03 Notwithstanding anything to the contrary herein, Lessor understands, acknowledges and agrees that some of the Property is utilized in the receipt, transmission and/or retransmission of radio signals for law enforcement and emergency services, which Lessee is authorized to operate by virtue of a license issued by the Federal Communications Commission. Lessor shall not, except following written notice of a default and the failure to cure such default by Lessee within the time periods provided in Section 8.02 (a) and (b), exercise any remedy which may affect or in any manner interfere with Lessee's use, possession or quiet enjoyment of the property or the receipt, transmission or retransmission of any radio signal by Lessee. Further, except for any time period following expiration of any cure period for which Lessee has not satisfactorily cured any Lessee default, Lessee shall have full access to, use of any quiet enjoyment of the property undisturbed by Lessor.

**ARTICLE 9. INTENTIONALLY OMITTED**

**ARTICLE 10. MISCELLANEOUS**

**Notices and Addresses**

10.01 All notices provided to be given under this agreement shall be given by certified mail or registered mail addressed to the proper party, or in person against a receipt. The date of mailing of any notice under this agreement shall be deemed to be the date of such notice and shall be effective from such date. The addresses of the parties of this agreement are as follows:

**LESSOR**  
RGV Towers, LLC  
Attn: Alan Yoder

**LESSEE**  
County Of Hidalgo, Texas  
Attn: Ramon Garcia, County Judge

P.O. Box 2973  
McAllen, Texas 78502

1605 So. Closner, Ste., J  
Edinburg, Texas 78539

### **Parties Bound**

10.02 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives and assigns where permitted by this Agreement.

### **Texas Law to Apply**

10.03 This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Hidalgo County, Texas.

### **Legal Construction**

10.04 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 invalidity, illegality or unenforceability shall not affect any other provisions thereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

### **Prior Agreements Superseded**

10.05 This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understanding or written or oral agreements between the parties respecting the within subject matter.

### **Amendment**

10.06 No amendment, modification or alteration of the terms hereof shall be binding unless [same is made](#) in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

### **Waiver of Default**

10.07 No waiver by the parties hereto of any default of breach of any term, condition or covenant of this lease shall be deemed to be a waiver of any other breach of the same or any other term, conditions or covenant contained herein.

## **ARTICLE 11. WAIVER OF SUBROGATION**

Lessor hereby waives Lessor's right of recovery against Lessee for damages caused

by fire, explosion and other perils to any of the Property to the extent that recovery is made by Lessor under insurance policies in effect at the time of loss; and Lessee hereby waives Lessee's rights of recovery against Lessor for damages to any of Lessor's property caused by fire, explosion and other perils to the extent that recovery is made by the Lessee under insurance policies in effect at the time of loss. This agreement does not extend to and waiver does not apply to any damage suffered by either party hereto which is not recovered by the injured party under its insurance policies.

## ARTICLE 12. SPECIAL PROVISIONS

### Access to Property

12.01 During the term of this agreement, Lessor agrees that technical and maintenance employees and representatives and agents of Lessee shall have at all time rights of ingress and egress to the Property for the Purpose of installing, maintaining and repairing Lessee's equipment. Lessee agrees to insure that its subcontractors and employees performing maintenance or technical services on Lessee's equipment are covered by adequate levels of liability insurance and by any state-mandated worker's compensation insurance, if applicable.

### Duty Not to Impair Lessee's Operations

12.02 Lessor agrees not to lease or license the use of the Property, or any portion thereof, to any party which will interfere with Lessee's use of the Property, and to require that any other lessees and licenses use and operation of radio or television transmission equipment of the Property shall be performed in such a manner as not to interfere with the operation of any equipment which Lessee has therefore installed or may thereafter install on the Property. In the event interference should result, upon notice of such interference from lessee, Lessor shall cause its lessees and licenses to take all necessary steps, without costs or expense to lessee, to remove said interference or shut down communication equipment temporarily pending repair.

### Hazardous Substances

12.03 Lessor represents that it has no knowledge of any substance, chemical or waste (collectively "substance") on the Site that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Lessee will not introduce or use any such substance on the Site in violation of any applicable law.

**IN WITNESS WHEREOF**, the undersigned Lessor and Lessee hereto execute this Agreement as of the day and year first above written

APPROVED BY COMMISSIONER COURT ON \_\_\_\_\_, 2011

**Approved as to form:**  
District Attorney's Office

**Lessee:**  
County Of Hidalgo

By: \_\_\_\_\_  
Josephine Ramirez, Asst. DA

By: \_\_\_\_\_  
Ramon Garcia, County Judge

**Attest:**

**Lessor:**

\_\_\_\_\_  
Arturo Guajardo, Jr., County Clerk

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

**EXHIBIT "A"**  
REQUEST FOR BIDS (RFB) PROCUREMENT PACKET

**EXHIBIT "A-1"**  
**LEGAL DESCRIPTION**

**Kelly Pharr Tract S4.34 AC- N10.18AC-  
W444.8'- Lot 188, Pharr, Texas**

**EXHIBIT "A-2"**  
**PROPERTY LEGAL DESCRIPTION**  
**LEASE OF TOWER**

**1000 South Bluebonnet in Pharr, Texas**

**EXHIBIT "B"**  
**BID PAGE with BID TABULATION**

**EXHIBIT “C”**  
**INSURANCE CERTIFICATE**

