

# INTERLOCAL AGREEMENT RADIO SERVICE

STATE OF TEXAS           §  
COUNTY OF HIDALGO   §

This Agreement made and entered into by and between the **RIO GRANDE VALLEY COMMUNICATIONS GROUP**, Texas non-profit corporation, (hereinafter sometimes referred to the “RGVCG”) and **HIDALGO COUNTY**, a county situated in the Rio Grande Valley of Texas, (hereinafter sometimes referred to as Hidalgo County).

The initial addresses of the parties, which one party may change by giving written notice of its changed address to the other party, are as follows:

RGVCG  
Randy Ashley  
Interim Communications Manager  
PO Box 220  
McAllen, Texas 78501

Hidalgo County  
Anacleto Martinez  
Chief Deputy  
PO Box 1228  
Edinburg, Texas 78540

## WITNESSETH:

WHEREAS, the RGVCG owns and maintains a multi-site 800 megahertz trunked radio system and is duly licensed by the Federal Communications Commission (hereinafter referred to as “FCC”) for the operation of same; and

WHEREAS, Hidalgo County desires to utilize the RGVCG’s 800 megahertz radio system for government functions, and

WHEREAS, RGVCG is able to accommodate additional radio units on its trunked 800 megahertz radio system and is willing to cooperate with Hidalgo County to affect usage of the system for said purposes; and

WHEREAS, the radio system recurring costs include annual radio maintenance fees, T-1 communication lines, and infrastructure up-grades as required; and

WHEREAS, the RGVCG is hereby furnishing a service related to homeland security activity under this interlocal agreement and as the furnishing local agency is not responsible for any civil liability that arises from the furnishing of the services under this contract; and

WHEREAS, the RGVCG and Hidalgo County are authorized to enter into an agreement for the provision of such services pursuant to the provisions of Interlocal Cooperation Act, Texas Government code Ann. § 791.001, et seq.

NOW, THEREFORE, the RGVCG and Hidalgo County hereby agree to the terms and conditions of this Contract. This Contract consists of the following sections:

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All of the above described sections and documents are hereby incorporated into this Agreement by this reference for all purposes.

IN WITNESS HEREOF, RGVCG and Hidalgo County have made and executed this contract in multiple copies, each of which is an original.

**RIO GRANDE VALLEY  
COMMUNICATIONS GROUP**

\_\_\_\_\_  
Pilar Rodriguez, Chairman                      Date

Attest:

\_\_\_\_\_  
Randy Ashley, Interim Board Secretary

Approved as to form:

\_\_\_\_\_  
Brendon Hall, RGVCG Attorney

**HIDALGO COUNTY**

\_\_\_\_\_  
Ramon Garcia, County Judge                      Date

Attest:

\_\_\_\_\_  
Arturo Guajardo, County Clerk

## I. DEFINITIONS

As used in this contract, the following terms shall have the meanings set out below:

“Contract” means the agreement the RGVCG and Hidalgo County.

“Contract Term” is defined in Article IV.

“RGVCG” is defined in the preamble to this contract and includes its successors and assigns.

“Communications Manager” means the Director of the RGVCG or the designee.

“Regional Radio System” (RRS) means the RGVCG’s trunked 800 megahertz radio system.

“Radio Unit” or “Unit” means a mobile, stationary, or portable radio communications device, which communicates at certain air wave frequencies.

## II. DUTIES OF RGVGC

### A. In General

During the Contract Term, RGVCG shall provide radio air time on and support for the Regional Radio System (RRS) for as many as 100 Radio Units. The numbers of units for either primary or back-up dispatch on the Radio System may be increased by mutual written agreement of the RGVCG and Hidalgo County.

Within 30 days of Countersignature, the RGVCG shall program the radio unit(s) according to the initial configuration agreeable to the RGVCG Communications Manager and Hidalgo County. RGVCG may program each radio unit, for a service charge, with the capability to access the Radio System within 30 days after submittal of such Unit to the RGVCG Radio Support Section for programming.

### B. Stolen Units

Upon notification that one or more of Hidalgo County’s radio units have been lost or stolen, the RGVGC shall take all reasonable actions to prevent the stolen or lost radio unit from gaining access to the Radio System.

### C. Optional Services

The RGVCG may provide radio repair and installation/removal services at Hidalgo County written request in accordance with the current radio systems management price list (updated annually in September).

### III. DUTIES OF HIDALGO COUNTY

#### A. Procurement of Radio Units

It is understood that Hidalgo County must procure its own radio units, which must be compatible with the Radio System.

#### B. Stolen Units

Hidalgo County shall notify the RGVCG when one or more unit(s) have been stolen or lost within 24 hours of Hidalgo County's discovery that the unit(s) have been lost or stolen.

#### C. Payment of Airtime

Hidalgo County shall pay the RGVCG for the access to the RRS provided herein at a rate of **\$10.00** per unit, per month for full- time radio air time and support. Hidalgo County shall prepay these yearly charges in full at the beginning of the Contract Term and each renewal thereof, based upon the number of radio units then in service. Should Hidalgo County change the number of radio units in service during the Contract Term, the following provisions shall apply:

1. In the event the number of Hidalgo County radio units in service increases during a Contract Term, the charge for each additional radio unit shall be prorated based upon the remaining fractional part of the current Contract Term. The entire amount owed for the additional radio units, for the time remaining in the then current Contract Term, shall be prepaid to the RGVCG.
2. In the event the number of Hidalgo County radio units in service decreases during the Contract Term, the RGVCG shall either allow a credit or make a refund to Hidalgo County for a prorated portion of the prepaid fee based on the remaining fractional part of the current Contract Term. The credit/refund allowed will be accomplished within sixty (60) days of the date Hidalgo County gives the RGVCG written notice of its decrease in the number of radio units it has in service.
3. Prorated portions of the Contract Term shall be calculated on a monthly basis with fractions rounded to the nearest whole month.

#### D. Payment for Programming

Hidalgo County shall pay the RGVCG for the programming and activation of the Hidalgo County's radios for use on the Radio System at a rate of \$40.00 per radio, upon initial access to the Radio System. The entire amount owed for the programming of radio units shall be paid to the RGVCG within sixty (60) days of the invoice date for such services.

The programming of radio units on the regional radio system can only be completed by RGVCG Radio Support Division or an approved vendor as authorized by the RGVCG. In the event Hidalgo County exercises the option to utilize an approved vendor, a Twenty Dollar (\$20.00) per radio activation fee shall still apply.

E. Fee Adjustment

It is expressly understood and agreed that the RGVCG may increase the annual fees provided for herein by giving Hidalgo County written notice of its intention to increase said fees at least ninety (90) days prior to the effective date of the proposed increase. Fee adjustments can only be made at the beginning of an annual contract term unless the initial contract is entered upon after the fee adjustment is approved.

F. Breach

The decision to exercise rights granted by this subsection shall be made by the Governing Board of the RGVCG. If the Hidalgo County commits a breach of this Contract, the Governing Board shall deliver a written notice of breach to the Hidalgo County that specifies the nature of the breach and indicates that unless the breach is cured within thirty (30) days, additional steps shall be taken. A breach in payment of the annual assessment can only be cured by paying that Annual Assessment. If the Hidalgo County does not cure that breach within thirty (30) days of receiving the written notice of breach, the Hidalgo County is in default and the Governing Board shall deliver a written notice of default to the Hidalgo County that specifies the following:

1. The nature of the default,
2. The date of the notice of breach,
3. The failure of the Hidalgo County to cure timely, and
4. The Hidalgo County's interest in the RRS is terminated on the effective date stated in the notice if the termination is approved by the Governing Board unless the default is cured by the Hidalgo County paying that Annual Assessment during the first quarter of the next budget cycle after that in which the breach occurred

If the Hidalgo County fails to make any payment of any sum due under this Agreement and such failure continues for forty-five (45) days after the RGVCG has given the Hidalgo County written notice of such failure, then the Hidalgo County is in default under this Agreement. In the event of the Hidalgo County's default, the RGVCG has the right to terminate the Agreement, deny the Hidalgo County any service provided by the RGVCG under this Agreement, and retain all moneys paid to the RGVC pursuant to the terms and conditions of this Agreement as liquidated damages. Each and every right and remedy of the RGVCG and Hidalgo County are cumulative to and not in lieu of each and every other such right and remedy afforded by law and equity.

Should the RGVCG fail to perform as provided under the terms of this Agreement, the Hidalgo County's sole remedy is termination of this Agreement, and the RGVCG agrees to make a refund to the Hidalgo County of the portion of the pre-paid fee based upon that fractional part of the one-year term remaining under this Agreement.

#### **IV. TERM AND TERMINATION**

The initial Contract Term will be prorated to December 31, 2011. The first full Contract Term shall be one (1) year from the date January 1, 2012. This Contract will automatically renew for as many as nine (9) additional one-year terms, unless it is terminated by either party giving the other party prior written notice of its intention to terminate. Said notice of termination shall be given to the other party not less than thirty (30) days prior to the expiration of the Contract Term. Notwithstanding the preceding provisions, the Contract Term will end:

- Immediately if all or substantially all of the authorizations held by the RGVCG or Hidalgo County are revoked by the FCC or its successor agency, or
- Upon either party giving the other party thirty (30) days prior written notice of its intent to terminate.
- Within thirty (30) days of termination of this Contract, Hidalgo County shall allow the RGVCG access to Hidalgo County's radio units for the purpose of removing its programming that allows access to the RGVCG Radio System.

#### **V. MISCELLANEOUS**

##### **A. Release**

TO THE EXTENT PERMITTED BY THE TEXAS CONSTITUTION AND TEXAS STATE LAW, HIDALGO COUNTY, ITS PREDECESSORS, SUCCESSORS, AND ASSIGNS HEREBY RELEASE, RELINQUISH, AND DISCHARGE THE RIO GRANDE VALLEY COMMUNICATIONS GROUP, ITS PREDECESSORS, ASSIGNS, LEGAL REPRESENTATIVES, AND ITS FORMER, PRESENT AND FUTURE AGENTS, EMPLOYEES, DIRECTORS AND OFFICERS FROM ANY LIABILITY ARISING OUT OF THE SOLE AND/OR CONCURRENT NEGLIGENCE OF RGVCG FOR ANY INJURY, INCLUDING DEATH OR DAMAGE TO PERSONS OR TO PROPERTY WHERE SUCH DAMAGE IS SUSTAINED IN CONNECTION WITH OR ARISING OUT OF THE WORK PERFORMED UNDER THIS CONTRACT.

Additionally, it is expressly understood and agreed that one hundred percent (100%) coverage of any area at all times is improbable. There may be acts of God or adverse transmission condition such as short-term unpredictable meteorological effects and sky-wave interference from distant stations that can interrupt the regional radio system. Likewise, there are other causes beyond reasonable control of the RGVCG, including, but not limited to, motor ignition and other electrical noise that may be minimized by corrective devices at the Hidalgo County's expense. Any surveys, studies, research, or other measures taken to ensure the adequacy of coverage provided to Hidalgo County under this Agreement are the sole responsibility and expense of Hidalgo County.

B. Independent Contractor

The RGVCG agrees to perform the services as an independent contractor and not as a subcontractor, agent or employee of Hidalgo County.

C. Force Majeure

"Force Majeure" includes, but is not limited to, acts of God, acts of the public enemy, war, blockades, insurrection, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, tornadoes, hurricanes, arrests and restraints of government and people, explosions, and any other inability of either party to carry out its obligations under this Contract, except strikes or labor disputes and breakage or damage to machinery or equipment, whether similar to those enumerated or otherwise, and not within the control of the party claiming such inability, and which by the exercise of due diligence and care such party could not have avoided.

In the event either party is rendered unable, wholly or in part, by Force Majeure, to carry out any of its obligations under this Contract, it is agreed that, upon such party's giving notice and full particulars of such Force Majeure in writing or by telegraph or telefax to the other party within five (5) business days after the occurrence of the cause relied upon, then the obligations of the party giving such notice, to the extent it is affected by Force Majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused as to the extent provided, but for no longer period. Such cause shall as far as possible be remedied with all reasonable dispatch.

D. Entire Agreement

This Contract merges the prior negotiations and understandings of the parties hereto and embodies the entire agreement of the parties, and there are no other agreements, assurances, conditions, covenants (expressed or implied) or other terms with respect to the Project, whether written or verbal, antecedent or contemporaneous, with the execution hereof.

E. Applicable Laws

This Contract is subject to all laws of the State of Texas, the Certificate of Formation and Bylaws of the Rio Grande Valley Communications Group, the City Charters and Ordinances of Hidalgo County, the laws of the federal government of the United States of America, and all rules and regulations of any regulatory body or officer having jurisdiction.

Venue for any litigation relating to this Contract shall be Hidalgo County, Texas.

F. Enforcement

The RGVCG Chairman or his or her designee shall have the right to enforce all legal rights and obligations under this Contract without further authorization.

G. Assignment

Hidalgo County shall not assign this Contract at law or otherwise without the prior written consent of the Board of Directors of the RGVCG.

H. Parties in Interest

This Contract shall not bestow any rights upon any third party, but rather shall bind and benefit the RGVCG and Hidalgo County only.