

STATE OF TEXAS)

) **MEMORANDUM OF UNDERSTANDING**

COUNTY OF HIDALGO)

THIS Memorandum of Understanding (“MOU”) is made on and entered into, effective as of the **25th** day of **July, 2023**, by and between **COUNTY OF HIDALGO, TEXAS**, hereinafter referred to as (“County” or “Donor”), and **RIO GRANDE VALLEY AMATEUR RADIO CLUB**, a charitable organization, hereinafter referred to as (“RGVARC”, “Organization” or “Donee”), collectively referred to as (“Parties”). The purpose of this MOU is for Donor to transfer surplus property as outlined in the attached **Exhibit “A”** to the Donee in accordance with Tex. Local Gov’t. Code §263.152(a)(4).

WITNESSETH:

WHEREAS, RGVARC is a non-profit organization, qualified under Section 501(c)(3) of the United States Internal Revenue Code, and has provided documentation of its status as a section 501(c)(3) non-profit organization, attached as **Exhibit B**.

WHEREAS, the County is a political subdivision organized under the laws of the State of Texas;

WHEREAS, on or about July 22, 2021, RGVARC and the County entered into a Memorandum of Understanding (C-21-0614-07-13) for the public purposes of the performance of emergency management functions and/or services required or authorized by the Department of Homeland Security, or the laws of the State of Texas

WHEREAS, more specifically, RGVARC agreed to provide volunteer licensed radio amateurs to activate and operate in the County as requested by the County for the benefit of residents of the County and public during emergency/disaster situations.

WHEREAS, provision number four (4) of the July 22, 2021, MOU provides that the *“County will offer when possible any surplus radio equipment and or related items for example used antennas, used coax cable, duplexers, or other surpluses of communication-related items. RGVARC is a 501C3 organization and allowed donations primarily if it would improve communications during emergent events.”*

WHEREAS the PARTIES listed above have a common goal to promote the health, safety and welfare of the general public and are desirous of entering into this MOU to collaborate for the public purposes indicated herein.

WHEREAS County is the owner/operator of radio related equipment as outlined in the attached Exhibit “A”, which are no longer needed by the County for any purpose;

WHEREAS, the County, through its Commissioners Court, hereby declares that the radio related equipment as outlined in the attached Exhibit “A” are surplus property in accordance with Tex. Local Gov’t. Code §263.151(2);

WHEREAS, The County, through its Commissioners Court, hereby determines that the donation of said surplus County property identified in Exhibit “A” to Donee complies with the requirements of Tex. Local Gov’t. Code §263.152(a)(4); and

WHEREAS, Donee will accept the donation of the surplus equipment identified in Exhibit “A.”

NOW THEREFORE, Donor and Donee in consideration of the mutual covenants expressed hereinafter, agree as follows:

1. **Surplus Property.** In accordance with Tex. Local Gov’t. Code §263.151(2), the County hereby declares that the items identified in the attached Exhibit “A” is surplus property, wherein the property (A) is not salvage property or items routinely discarded as waste; (B) is not currently needed by its owner; (C) is not required for the owner's foreseeable needs; and (D) possesses some usefulness for the purpose for which it was intended.
2. **Donation.** In accordance with Tex. Local Gov’t. Code §263.152(a)(4), the County hereby finds that the transfer of the surplus items as identified in the attached Exhibit “A” to Donee complies with the requirements therein; wherein the donation is being made to a charitable organization located in the County, undertaking to sell the property under §263.152(a)(1) would likely result in no bids or a bid price that is less than the county's expenses required for the bid process; the donation serves a public purpose, and the organization will provide the county with adequate consideration, such as relieving the county of transportation or disposal expenses related to the property.
3. **County Conveyance.** For value received, County conveys the surplus items identified in Exhibit “A” to Donee.
4. **Consideration.** In consideration for the donation of the surplus items as identified in Exhibit “A” to Donee by the County, Donee hereby agrees that the County shall have no financial or other responsibility for any relocation and transportation expenses related to the surplus items as identified in Exhibit “A”, and Donee shall be responsible for the relocation and transportation of the same within forty-five (45) calendar days of the effective date of this MOU.

5. Donee hereby accepts the donation of the surplus items identified in Exhibit "A." By the acceptance of this Donation, Donee is taking the Property "as is" and "with all faults", and without any representations or warranties whatsoever, express or implied, written or oral, it being the intention of Donor and Donee to expressly negate and exclude all representations and warranties, including, but not limited to (i) the physical condition of the property or any element thereof, including, without limitation, warranties related to suitability for habitation, merchantability or fitness for a particular purpose; (ii) the nature or quality of construction, structural design and engineering; (iii) the quality of the labor and materials; (iv) all warranties created by any affirmation of fact or promise or by any description of the property; and (v) all other warranties and representations whatsoever, except the warranty of title expressly set forth herein. Donee shall pay all insurance and taxes, and assessments, if any, on the property.
6. Donee understands and acknowledges that entering into this Agreement does not constitute an endorsement by the County of Donee's organization, its financial stability, or the quality of its programs.

7. **Miscellaneous Terms**

- A. Nature of Relationship.** Nothing contained in this Agreement shall be deemed or constructed to create the relationship of principal and agent or that of partnership or joint venture or any association between the County and Donee, and any intention to create a joint venture or partnership relationship between the Parties hereto is hereby expressly disclaimed. Donee shall not represent that it or any of its agents or employees are agents or employees of the County.
- B. Term.** This MOU becomes effective as of the effective date indicated above and remains in effect until Donee removes the surplus items from County property. Donee is to remove surplus property from County property during the time period indicated above and should advise County in writing if an extension is required. County is not obligated to provide said extension.
- C. Termination.** Either party may terminate this MOU prior to execution of Donee's obligations without cause by giving written notice to the other party, which is effective upon receipt of the other party.
- D. Conflict of Applicable Law.** Nothing in this MOU shall be construed to require the commission of any act contrary to law; and when any conflict between this MOU and any present or future law, ordinance, or administrative, executive or judicial regulation,

order or decree, or amendment thereof, contrary to which the parties have no legal right to contract, the latter shall prevail. In such event, the affected provision or provisions of this MOU shall be modified only to the extent necessary to bring them within the legal requirements, and only during the time such conflict exists.

- E. Governing Law.** This MOU shall be governed by and construed in accordance with the laws of the State of Texas and shall be performable in Hidalgo County. The parties hereby consent to personal jurisdiction in Hidalgo County, Texas.
- F. Indemnification.** To the extent authorized by the Constitution and the laws of the State of Texas, Donee shall indemnify and hold harmless Hidalgo County, its elected officials, employees and agents from any and all claims, damages, losses, and expenses including attorney's fees for the defense of any action against Hidalgo County arising out of, resulting from, or connected with acts or omissions by Donee, its agents or employees, under this Agreement.
- G. No Waiver.** No waiver by any party hereto of any breach of any provision of the MOU shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.
- H. Entire Agreement.** This MOU contains the entire contract between the parties hereto, and each party acknowledges that neither has made (either directly or through any agent or representative) any other representation or agreement in connection with this MOU, not specifically set forth herein. This MOU may be modified or amended only by agreement in writing, executed by Donee and County, and not otherwise.
- I. Notice.** Except as may be otherwise specifically provided in this MOU, all notices, demands, requests or communication required or permitted hereunder shall be in writing, and shall either be (i) personally delivered against a written receipt, or (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or at such other addresses as may have been heretofore specified by written notice and delivered in accordance herewith:

If to Donee:

Rio Grande Valley Amateur Radio Club
Attention: Eduardo Olivarez, President
511 East 15th Street
Mission, TX 78572

If to County:

Hidalgo County
Attention: County Judge
100 E. Cano, Second Floor
Edinburg, TX 78539

Each notice, demand, request or communication delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addressee, or if mailed, at such time as it is deposited in the United States mail.

- J. Provisions.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- K. Successors.** This MOU shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.
- L. Assignment.** This MOU shall not be assignable.
- M. Headings.** The headings and captions contained in this MOU are solely for convenience reference and shall not be deemed to affect the meaning or interpretation of any provision or paragraph hereof.
- N. Gender and Number.** All pronouns used in this MOU shall include the other gender, whether used in the masculine, feminine or neuter gender, and singular shall include the plural whenever and as often as may be appropriate.
- O. Performance of Governmental Functions.** The County is entering into this MOU for the purpose of providing the services and functions outlined in this document and, if applicable, will pay for such services and any associated costs to execute this MOU out of current revenues available to the paying party as herein provided.
- P. Liabilities.** This MOU is not intended to extend the liability of the County beyond that provided by law.
- Q. Immunities.** Nothing in this MOU is intended to and County does not hereby waive, release or relinquish any right to assert any of the defenses County enjoys by virtue of the state or federal constitution, laws, rules or regulations, and any sovereign, official or qualified immunity available to County as to any claim or action of any person, entity, or individual against County.

- R. Additional Documents.** The Parties agree that they will use reasonable, good faith efforts to execute any other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this MOU.
- S. Non-Discrimination.** The MOU and all related activities shall be conducted in a manner that does not discriminate against any person on a basis prohibited by applicable law or County policy, including without limitation race, color, national origin, religion, sex, age, veteran status, or disability.
- T. Commitment of Current Revenues Only (If Applicable).** In the event that, during any term hereof, the Commissioners Court does not appropriate sufficient funds to meet the obligations of County under this Agreement, County may terminate this MOU upon ninety (90) days written notice to Organization. County agrees, however, to use reasonable efforts to secure funds necessary for the continued performance of this MOU. The parties intend this provision to be a continuing right to terminate this MOU at the expiration of each budget period of County. *Agreements for the acquisition, including lease of real or personal property under Tex. Loc. Govt. Code §271.903:* In the event that, during any term hereof, the Commissioner's Court does not appropriate sufficient funds to meet the obligations of County under this MOU, County may terminate this MOU upon ninety (90) days written notice to Company, County agrees, however, to use a best efforts attempt to obtain and appropriate funds for payment of the MOU. The parties intend this provision, if applicable, to be a continuing right to terminate this at the expiration of each budget period of County in accordance with Tex. Loc. Govt. Code §271.903 (Vernon Supp. 1996).
- U. Required Contract Provision for Contracts Subject to Federal Award (if applicable):** Pursuant to 2 CFR 200.327, if applicable, the provisions of Appendix II 2 CFR 200, as well as any contract clauses required by the Federal Emergency Management Agency (FEMA) are incorporated by reference into this agreement for all purposes should it be subject to Federal award.
- V. Authority to Execute.** The execution and performance of this MOU by Donee and County have been duly authorized by all necessary laws, resolutions or corporate action, and this MOU constitutes the valid and enforceable obligations of Donee and County in accordance with its terms.

[SIGNATURE PAGE TO FOLLOW]

EXECUTED as of the day and year first written above.

APPROVED BY COMMISSIONERS' COURT ON July 25, 2023.

Agenda Item No. 91621

Executive Office: _____

DONEE:

RIO GRANDE VALLEY AMATEUR
RADIO CLUB

COUNTY:

COUNTY OF HIDALGO, Texas

Eduardo Olivarez, President

Hon. Richard F. Cortez, County Judge

APPROVED AS TO FORM

Office of the Hidalgo County
Criminal District Attorney,
Toribio "Terry" Palacios

ATTEST:

Robert Viña, III, ADA

Arturo Guajardo, Jr., County Clerk

EXHIBIT "A"

SURPLUS PROPERTY

Description of Items:

| | | |
|------------|---------------------------------|-------------------|
| I. 2004 | UHF PORTABLE/W Keypad & Charger | SERIAL # 1M120856 |
| II. 2004 | UHF PORTABLE/W Keypad & Charger | SERIAL # 1M120855 |
| III. 2004 | UHF PORTABLE/W Keypad & Charger | SERIAL # 1M120853 |
| IV. 2004 | UHF PORTABLE/W Keypad & Charger | SERIAL # 1M120854 |
| V. 2004 | UHF PORTABLE/W Keypad & Charger | SERIAL # 1M120847 |
| VI. 2004 | UHF PORTABLE/W Keypad & Charger | SERIAL # 1M120848 |
| VII. 2004 | UHF PORTABLE/W Keypad & Charger | SERIAL # 1M120850 |
| VIII. 2004 | UHF PORTABLE/W Keypad & Charger | SERIAL # 1M120851 |
| IX. 2004 | UHF PORTABLE/W Keypad & Charger | SERIAL # 1M120852 |
| X. 2004 | UHF PORTABLE/W Keypad & Charger | SERIAL # 1M120849 |
| XI. 2004 | UHF PORTABLE/W Keypad & Charger | SERIAL # 1M120858 |
| XII. 2004 | UHF PORTABLE/W Keypad & Charger | SERIAL # 1M120857 |
| XIII. 2004 | Vertex UFH, Desktop Repeater | SERIAL # 1M120865 |