

COMMUNICATIONS SITE AGREEMENT
BETWEEN COUNTY of TYLER, TEXAS AND TEXAS A&M FOREST SERVICE

This Communications Site Agreement (the "Site Agreement"), entered into as of the 13th day of July 2012 by and between the County of Tyler "County." ("Site Owner" or "Lessor") having an address at 100 West Bluff, Room 102, Woodville, Texas. 75979, and Texas A&M Forest Service, a member of The Texas A&M University System, an agency of the state of Texas, "TFS" ("Site User" or "Lessee") having an address at 200 Technology Way, suite 1151, College Station, Texas 77845. TFS and County are collectively called "the Parties."

In consideration of the mutual promise, conditions, covenants and considerations passing between the Parties hereto, it is understood and agreed by and between the Parties to this Site Agreement as follows:

Site Agreement is for tower and/or antenna and /or shelter and/or antenna space, including any wires, generators(s), equipment, etc. necessary to carry out Lessee's operation of the radio tower ("Tower Equipment") as listed in Exhibit "A" on Doucette site located in Tyler County, Texas. Latitude: 30-50-08.90 Longitude: 094-25-52.20 together with access thereto ("Site"). Lessee is responsible for installing and maintaining Lessee's Tower Equipment at Lessee's expense.

1. **TERMS:** The Term of this Site Agreement shall be for a period of 5 years commencing on the 1st day of November, 2017, and terminating on the 31st day of October, 2022.
2. **CONSIDERATION:** The consideration of this Site Agreement is the sum of (\$1.00) per year.
3. **TITLE:** Lessee shall have no right, title or interest in the Site except the non-exclusive use thereof as expressly set forth in this Site Agreement. Lessee shall retain ownership of and title to all equipment and structures Lessee installs on the Site, even though such equipment and structures may be permanently affixed to the real property.
4. **ELECTRICITY:** Site Owner will provide electricity at the Site for the benefit of Lessee. Lessee shall have the right to use the existing emergency stand-by generator(s) at the Site, if available; however Site Owner makes no representations or warranties as to the fitness of such generator(s) for Lessee requirements.
5. **PERMITS, LICENSES AND REGULATIONS:** Lessee agrees and understand that it is Lessee's responsibility to abide by all federal, state and local rules and regulations pertaining to Lessee's operation at the Site and to Lessee's equipment; including without limitations, those pertaining to the installation, maintenance, height, location, use, operation and removal of Lessee's equipment, antenna systems, and other alterations or improvements authorized herein. Lessee hereby represents that Lessee has obtained the necessary licenses and permits required to use said Site, or that Lessee will obtain said licenses or permits, at Lessee's own expense, prior to any such use. Upon Lessee's request, Site Owner will provide Lessee a copy of the Antenna Structure Registration, if any, as provided to the Site Owner by the FCC.
6. **USE:** It is expressly agreed by Lessee that: (1) while using the Site, Lessee shall be responsible for proper operation and compliance with Federal Communication Commission ("FCC") rules; (2) if Site Owner is providing the tower to Lessee, Lessee hereby consents to the execution of agreements between Site Owner and other parties eligible to share the Site, whereby such parties may utilize and share said Site with Lessee; and (3) Lessee represents that it has independently ascertained that the Site is adequate and proper for Lessee's intended use and has entered into this Site Agreement based solely upon said independent investigation, and not by any representation by Site Owner. If the Site Owner is providing

the tower to Lessee, Lessee will not increase the size of its Tower Equipment or alter the wind load or structural impact of its equipment upon the tower, without the prior written consent of Lessor.

7. **COVERAGE AND INTERFERENCE:** Site Owner makes no representations concerning the distance at which useable radio signals may be transmitted and received from the Site or location thereof. Lessee is hereby notified that the Site is subject to degradation of performance from, but not limited to, natural and man-made phenomena such as so-called "skip" interference, power line and ignition noise, intermodulation, co-channel interference and interference from users of the same or other radio frequencies.

Lessee shall be responsible for taking such reasonable steps as may be necessary to prevent any spurious radiation or objectionable interference with the broadcasting or transmission facilities of Site Owner or other users on the Site, if any, caused by Lessee. The determination of what is reasonable shall be within the sole discretion of Site Owner. If Lessee has not taken corrective measures within three business days after Site Owner notifies Lessee that Lessee's equipment is causing objectionable interference, then Site Owner may, in addition to its other rights or remedies, at its discretion:

- (1) Disconnect power to Lessee's equipment and/or
- (2) Terminate this Site Agreement by giving Lessee written notice.

Site Owner or its designated representatives shall have the sole right, initially and during the term of this Site Agreement, to:

- (1) Determine the location of the equipment on the Site, and
- (2) Require Lessee to take whatever action is necessary to eliminate objectionable interference by Lessee's equipment with devices approved by Site Owner.

Nothing contained in this Site Agreement shall be deemed to entitle Lessee to the exclusive possession of any vertical span of space on the Site, it being the intention of the Parties that the vertical span of space may be used by others at the direction of the Site Owner provided no objectionable interference is caused to the Lessee's radio transmission activity. It is understood and agreed that Site Owner intends to and shall have the right to accommodate other transmitters and/or receivers at the Site, and in that connection it is understood and agreed that Site Owner shall have the right at any time during the term of this Site Agreement to locate the antenna or other equipment of other users within the same vertical space on the Site as Lessee may occupy, including the right to require the multiplexing or the transmission of other user(s) provided no objectionable interference is caused to Lessee's transmission activities thereby and, provided, further, that Lessee is not put to any cost in connection therewith. For purposes of this Site Agreement, objectionable interference shall be deemed to exist if:

- (1) A determination to that effect is made by an authorized representative of the FCC, or
- (2) A condition exists which constitutes interference within the meaning of the provisions of the Rules and Regulation of the FCC at the time in effect, or
- (3) There is a material impairment of sound, picture, data or other transmission in any material portion of the protected service area of such activity as such area is or may be defined by the FCC at any hour during the period of operation of such activity, as compared with that which would be obtained if no other users were transmitting from the Site or had any equipment at the Site, or
- (4) A user is prevented from using or having access to its equipment at reasonable and usual times to an extent to which interferes to a material degree with the operation and maintenance thereof, it being understood that a reasonable temporary interference which does not materially interfere with the operation or maintenance of said equipment and which is occasioned by the installation of the new equipment by another user or by repairs to or maintenance of existing equipment of another user shall not be considered objectionable interference.

If appropriate to maintain safe or efficient operation of the Site, Lessee shall be required to participate in any transmitter and receiver combining and multi-coupling systems operating from one or more antennas installed by Site Owner.

8. **LESSEE'S MAINTENANCE AND REMOVAL OF EQUIPMENT AND COAXIAL CABLES:**

Lessee shall install only the equipment, (including antenna and transmission line) which the Site Owner has approved in writing. The Lessee agrees that the installation will be done in a neat, professional manner and in compliance with all applicable laws and regulations. All costs (including repair of damages caused thereby to Lessee's equipment) will be the responsibility of the Lessee. If Lessee wants to add any additional equipment, other than Lessee's equipment referenced herein, Lessee cannot install such additional equipment until the parties execute a written amendment to this Site Agreement, authorizing the additional equipment.

Lessee shall properly ground all antenna equipment at the uppermost location of its equipment on the tower and properly ground its coaxial cable at the base of the tower, or at locations identified by the Site Owner.

Site Owner retains the right to paint all coaxial cables attached to the tower, including Lessee's coaxial cable, as necessary, in order to prevent "black leg."

9. **INSPECTION AND ACCESS:** Site Owner will provide Lessee unlimited ingress and egress to the Site for the purposes of constructing, reconstructing, operating, maintaining, inspecting, using, replacing, repairing, moving, removing, etc. the Tower Equipment (including any Lessee radio tower, footings, supporting foundations, guy wires, equipment, shelters and any and all necessary appurtenances thereto) and for complying with any reasonable request for inspection by representatives of the FCC. Lessee shall have access only to its own equipment and under no circumstances will Lessee gain access to other equipment located at the Site or allow anyone else access to equipment other than its own.

10. **COORDINATION OF INSTALLATION, REPAIR AND MAINTENANCE:** In the event of the need for installation, repair or maintenance of the Site Owner's tower, equipment building or other common facility, Site Owner agrees to coordinate such activities in such a manner as to minimize any downtime that may be caused to Lessee's operations. Lessee agrees to reduce or shut down the power of its transmitter if necessary at a coordinated time so that such installation, repair or maintenance may take place.

11. **FAILURES AND MAINTENANCE:** Lessee is hereby notified and understands that the Site will not provide communications 100% of the time and it will, by its very nature, fail and require maintenance from time to time without notice. Lessee has taken such facts into consideration prior to the execution of this Site Agreement, and such failures shall not constitute nonperformance or negligence on the part of the Site Owner. The Site Owner is not liable or responsible for interruptions or termination of service caused by strikes, lockouts, governmental acts, acts of God or other conditions beyond its control. Any such interruption or termination of service shall not be considered as a breach of this Site Agreement by Site Owner. The Lessee at its own expense shall be totally responsible for any and all maintenance of its equipment due to lightning, power line surges, ground faults, excessive voltage, or any other causes beyond the control of Site Owner.

12. **TERMINATION OF LESSOR'S RIGHT TO SITE:** In the event that any state, local or federal government agency causes the Site and/or its location to become unavailable, or Site Owner's ground lease (if any) is

terminated for any reason or Site Owner transfers the real property to another, Site Owner shall have the right to terminate this Site Agreement without liability to Lessee.

The Site Owner must notify Lessee within ten (10) calendar days of the occurrence of either of the following; however, Site Owner must also notify Lessee as soon as possible if either of the following becomes likely to occur: 1) the sale of the real property on which the Site is located; or 2) the termination of the Site Owner's ground lease or other authority to lease the real property on which the Site is located, if applicable.

13. **INSURANCE:** Site Owner provides no insurance on the Site or on Lessee's Tower Equipment or personnel.
14. **GENERAL PROVISIONS:** The undersigned certifies that he has read and understand all of the terms and conditions of this Site Agreement, and each party acknowledges receipt of a true copy hereof at the time of execution.
15. **CONTACTS AND COMPLAINTS:** Any contacts or notice required under this Site Agreement between the Parties shall be submitted in writing to the other party to the contact person and address listed below. If either party wants to change the contact person or address, the party shall provide reasonable written notice of the change to the contact person and address listed below.

In addition to other remedies contained in this Site Agreement, the Parties may direct their written complaints, as well as any contract claim, to the following office:

Texas A&M Forest Service

ATTN: Texas A&M Forest Service
200 Technology Way, Suite 1151
College Station, Texas 77845
979-458-7382

Tyler County

ATTN: County Judge
Facsimile: (409) 331-0028
100 West Bluff, Room 102
Woodville, Texas 75979

16. **AUDIT CLAUSE:** The State Auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this Site Agreement or indirectly through a subcontract under this Site Agreement. Acceptance of funds directly under this Site Agreement or indirectly through a subcontract under this Site Agreement acts as acceptance of the authority of the State Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the State Auditor must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.
17. **GOVERNING LAW:** This Site Agreement shall be governed by the substantive and procedural laws of the State of Texas. The conflicts of law principles and rules of any other jurisdiction shall not apply.
18. **FORCE MAJURE:** Except as otherwise provided, neither Site Owner, nor Lessee shall be liable to the other for any delay in performance of, or failure to perform, any obligation contained herein caused by force

majeure, provided the party seeking to be excused has prudently and promptly acted to take any and all reasonable corrective measures that are within such party's control. The existence of such causes delay or failure shall extend the period of performance until after the causes of delay or failure have been corrected.

Force majeure is defined as those causes beyond the control of the party required to perform that are generally recognized under Texas Law as a force majeure event, such as acts of God, acts of war, epidemic and court orders. The party claiming a force majeure event shall immediately upon discovery notify the other party in writing of any delays or failure to perform.

19. **SEVERABILITY:** If one or more provision of this Site Agreement, or the application of any provision to any party or circumstance, is held invalid, unenforceable, or illegal in any respect by a final order/judgement of the State Office of Administrative Hearings or a court of competent jurisdiction, the remainder of this Site Agreement and the application of the provision to other parties or circumstances will remain valid and in full force and effect.
20. **SURVIVAL:** Any provision of this Site Agreement that impose continuing obligations on the Parties including, but not limited to the following, will survive the expiration or termination of this Site Agreement for any reason:
 - (1) Audit rights and
 - (2) Any other provisions of this Site Agreement that impose continuing obligations on either of the Parties or that govern the rights and limitations of either of the Parties after the expiration or termination of this Site Agreement.
21. **NON-WAIVER OF DEFAULTS:** Any failure of either party, at any time, to enforce or require the strict keeping and performance of any provision of this Site Agreement will not constitute a waiver of such provision, and will not affect or impair same or the right of either party at any time to avail itself of same.
22. **NO LIABILITY FOR EMPLOYEES AND OFFICERS:** Each party to this Site Agreement shall have no liability whatsoever for the actions or omissions of an individual employed by either party, regardless of where the individual's actions or omissions occurred. Each party is solely responsible for the actions and/or omissions of its employees, officers and agents; however, such responsibility is only to the extent required by Texas law. Where injury or property damage result from the joint or concurring negligence of the Parties, liability, if any, shall be shared by each party in accordance with the applicable laws of the State of Texas, subject to all defenses, including governmental immunity. These provisions are solely for the benefit of the Parties hereto and not for the benefit of any person or entity not a party hereto; nor shall any provision hereof be deemed a waiver of any defenses available by law.
23. **LEGISLATIVE ACTION:** Each party's authority is subject to the actions of the Texas Legislature and the United States Congress. If either party and/or the subject matter of this Site Agreement become subject to a legislative or regulatory change or the revocation of statutory or regulatory authority that would render the services and/or goods to be provided under this Site Agreement impossible, unnecessary, void or substantially amended or that would terminate the appropriations for this Site Agreement or the Site, either party may immediately terminate this Site Agreement without penalty to, or any liability whatsoever on the part of such party, the State of Texas and the United States. This contract does not grant Lessee a vested property right.

24. **TERMINATION BY DEFAULT:** In the event that either party fails to carry out or comply with any of the requirements of this Site Agreement, the other party may notify the failing party of such failure or default in writing and demand that the failure or default be remedied within ten (10) days. In the event that the failing party fails to remedy such failure or default within the ten (10) day period, the other party will have the right to cancel this Site Agreement upon ten (10) days written notice.
25. **TERMINATION FOR CONVENIENCE:** Either party, without cause, may terminate this Site Agreement without penalty by giving thirty (30) days written notice of such termination to the other party.
26. **TERMINATION LIABILITY (FOR TERMINATION FOR CONVENIENCE):** In no event will termination for convenience by either party give rise to any liability whatsoever on the part of the terminating party. However, if the Lessee is required by this Site Agreement to pay for use of the Site, Lessee is obligated to pay Site Owner the pro rata amount of compensation owed for the number of days on which Lessee used the Site during the term at issue. The phrase "used the Site" includes any days on which Lessee kept any of its equipment on the Site.
27. **NO JOINT ENTERPRISE:** Lessee is associated with Site Owner only for the purposes and to the extent set forth herein, and with respect to the provision of the Site or the performance of any services herein, Site Owner is and shall be an independent contractor and shall have the sole right to supervise, manage, operate, control, and direct the performance of the details incident to its duties hereunder. Nothing contained herein shall be deemed or construed to create a partnership or joint venture, to create the relationships of an employer-employee or principal-agent, or to otherwise create any liability for either party whatsoever with respect to the indebtedness, liabilities, and obligations of the other party.
28. **ASSIGNMENT BY EITHER PARTY:** Neither party is authorized to assign or transfer any interest in this Site Agreement without the express, prior written consent of the other party.
29. **SUCCESSORS:** This Site Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors, heirs, administrators, personal representatives, legal representatives and permitted assigns.
30. **REMOVAL OF LESSEE'S EQUIPMENT:** Lessee is required to remove all of Lessee's Tower Equipment (including any radio tower, footings, supporting foundations, guy wires, equipment, shelters and any and all necessary appurtenances thereto) at Lessee's sole risk and expense, within a reasonable amount of time, not to exceed 120 days, after the termination of this Site Agreement. Lessee is also required to remove any debris associated with the removal of the Tower Equipment.
31. **CONTRACT AMENDMENTS:** No modification or amendment to this Site Agreement will become valid unless in writing and signed by both Parties. All correspondence regarding modifications or amendments to this Site Agreement must be forwarded to Tyler County for prior review and approval. Only the County Judge will be authorized to sign changes or amendments for Tyler County and only with approval of the Tyler County Commissioners Court.
32. **INTERPRETATION AGAINST THE DRAFTER:** Regardless of which party drafted the Site Agreement or the language at issue, any ambiguities in the Site Agreement or the language at issue will not be interpreted against the drafting party.
33. **NON-INCORPORATION CLAUSE:** This Site Agreement embodies the entire agreement between the Parties regarding the Site and Tower Equipment, and there have been and are no oral or written

covenants, agreements, understandings, representations, warranties or restrictions between the Parties regarding the Site and Tower equipment described in this Site Agreement other than those specifically set forth herein.

34. **MULTIPLE CONTRACTS:** This Site Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. In making proof of this Site Agreement, it shall not be necessary to produce or account for more than one such counterpart.
35. **HEADINGS:** The headings, captions and arrangements used in this Site Agreement are, unless specified otherwise, for convenience only and shall not be deemed to limit, amplify or modify the terms of this Site Agreement, nor to affect the meaning thereof.
36. **AUTHORITY:** Any individual signing this Site Agreement on behalf of an entity represents and warrants that he has full authority to do so.

This Site Agreement shall be binding upon the respective successors, assigns and personal representatives of the parties.

SITE OWNER:

TYLER COUNTY

(Signature)


Jacques L. Blanchette, County Judge

10/19/17 (Date)

LESSEE:

TEXAS A&M FOREST SERVICE

(Signature)

_____ (Date)

EXHIBIT A

- (a) This agreement provides for one antenna mounted at highest level below the top of the tower where existing antennas are mounted so that there is separation and no cross interference with the existing radio systems performance. The amateur radio antenna is to be mounted at or below that same level so that it does not interfere with existing or Lessee's radio performance.
- (b) Floor space within Site Owner's existing equipment shelter, sufficient to accommodate the equipment of Lessee without encroaching on space utilized and occupied by existing equipment in the shelter.
- (c) Lessee agrees to install air conditioning unit in the shelter purchased and installed at Lessee's expense that is sufficient to maintain an appropriate inside temperature of the building suitable for the safe and efficient operation of both Site Owner's and Lessee's equipment housed in the building Site Owner will provide, at Site Owner's expense, electrical service for the operation of this air conditioning equipment the same as with other equipment housed in the building.
- (d) In addition to other terms and agreements provided for this in this document. Lessee agrees, at the time of the installation of Lessee's equipment, to provide the professional services and labor for installation of Lessee's equipment of an antenna and transmission line on Site Owner's Tower. This antenna is to be utilized by an amateur radio system and/or repeater system. The equipment, transmission line and equipment for this Amateur Radio system is not the financial responsibility of Lessee to provide and the labor only will be provided if the Equipment is present and available for installation at the time Lessee's equipment is installed. Lessee's only obligation is the placement of the antenna on the tower and the connection of the transmission line to the antenna with routing of the transmission line to the equipment shelter.