

**MINUTES OF A REGULAR MEETING
OF THE BOARD OF DIRECTORS
MONTGOMERY COUNTY HOSPITAL DISTRICT**

The regular meeting of the Board of Directors of Montgomery County Hospital District was duly convened at 4:00 p.m., May 22, 2018 in the Administrative offices of the Montgomery County Hospital District, 1400 South Loop 336 West, Conroe, Montgomery County, Texas.

1. Call to Order

Meeting called to order at 4:00 p.m.

2. Invocation

Led by Mr. Cole

3. Pledge of Allegiance

Led by Ms. Whatley

4. Roll Call

Present:

Chris Grice
Mark Cole
Kenn Fawn
Sandy Wagner
Brad Spratt
Georgette Whatley

Not Present:

Bob Bagley

5. Public Comment

There were no comments from the public.

6. Special Recognition:

Non-Field – Andrew Adams

Special Recognition – Lee Gillum

7. CEO Report to include update on District operations, strategic plan, capital purchases, employee issues and benefits, transition plans and other healthcare matters, grants and any other related district matters. (attached)

Mrs. Melissa Miller, COO presented report to the board.

8. Consider and act on pay grade changes to the non-field pay scale. (Ms. Whatley, Chair – Personnel Committee) (attached)

Ms. Whatley made a motion to consider and act on pay grade changes to the non-field pay scale.
Mr. Spratt offered a second and motion passed unanimously.

9. **Consider and act on Hudson & O’Leary engagement agreement amendment. (Mr. Fawn, Chairman – MCHD Board) (attached)**

Mr. Fawn made a motion to consider and act on Hudson and O’Leary engagement agreement amendment. Ms. Whatley offered a second and motion passed unanimously.

10. **EMS Director Report to include updates on EMS staffing, performance measures, staff activities, patient concerns, transport destinations and fleet.**

Mr. Jared Cosper, EMS Director presented a report to the board.

11. **COO Report to include updates on facilities, radio system, supply chain, staff activities, community paramedicine, emergency preparedness and IT.**

Mrs. Melissa Miller, COO presented a report to the board.

12. **Consider and act on PSAP Improvement Program with Montgomery County Emergency Communications District 9-1-1. (Mr. Cole, Chair – PADCOM Committee) (attached)**

Mr. Cole made a motion to consider and act on PSAP Improvement Program with Montgomery County Emergency Communications District 9-1-1. Mr. Fawn offered a second and motion passed unanimously.

13. **Consider and act on granting a “public safety” exception 262.024 (a)(2) for the new fiber from ICTX so as to maintain redundancy and thereby preserve and protect public safety. (Mr. Cole, Chair – PADCOM Committee) (attached)**

Mr. Cole made a motion to consider and act on granting a “public safety” exception 262.024 (a)(2) for the new fiber from ICTX so as to maintain redundancy and thereby preserve and protect public safety. Mr. Spratt offered a second. After board discussion motion passed unanimously.

14. **Consider and act on installing ICTX fiber MCHD back-up dispatch to Conroe PD dispatch center. (Mr. Cole, Chair – PADCOM Committee) (attached)**

Mr. Cole made a motion to consider and act on installing ICTX fiber MCHD back-up dispatch to Conroe PD dispatch center. Mr. Grice offered a second. After board discussion motion passed unanimously.

15. **Consider and act on the approval of Dailey Wells being a sole source for purchasing Harris dispatch consoles for the dispatch center. (Mr. Cole, Chair – PADCOM Committee) (attached)**

Mr. Cole made a motion to consider and act on the approval of Dailey Wells being a sole source for purchasing Harris dispatch consoles for the dispatch center. Mr. Grice offered a second and motion passed unanimously.

16. **Consider and act on the purchase of a radio console. (Mr. Cole, Chair – PADCOM Committee) (attached)**

Mr. Cole made a motion to consider and act on the purchase of a radio console. Mr. Grice offered a second and motion passed unanimously.

17. **Consider and act on the purchase of 2 Dispatch Consoles. (Mr. Cole, Chair – PADCOM Committee) (attached)**

Mr. Cole made a motion to consider and act on the purchase of a radio console. Mr. Grice offered a second and motion passed unanimously.

- 18. Consider and act on agreement with TXDOT for Emergency vehicle preemption. (Mr. Cole, Chair – PADCOM Committee) (attached)**

Mr. Cole made a motion to consider and act on agreement with TXDOT for Emergency vehicle preemption. Mr. Grice offered a second. After a board discussion motion passed unanimously.

- 19. Consider and act on the Magnolia Radio Tower Lease Agreement with Montgomery County Sheriff's Department. (Mr. Cole, Chair – PADCOM Committee) (attached)**

Mr. Cole made a motion to consider and act on the Magnolia Radio Tower Lease Agreement with Montgomery County Sheriff's Department. Mr. Grice offered a second. After board discussion motion passed unanimously.

- 20. Consider and act on the Magnolia Radio Tower Lease Agreement Amendment with Montgomery County Sheriff's Department. (Mr. Cole, Chair – PADCOM Committee)(attached)**

Mr. Cole made a motion to consider and act on the Magnolia Radio Tower Lease Agreement Amendment with Montgomery County Sheriff's Department. Mr. Grice offered a second and motion passed unanimously.

- 21. Update and discussion of Station Lease Agreement with City of Shenandoah. (Mr. Cole, Chair – PADCOM Committee) (attached)**

Mrs. Melissa Miller, COO gave and update on the Station Lease Agreement with City of Shenandoah.

- 22. Consider and act on purchase of Microsoft Exchange Email System Upgrade. (Mr. Cole, Chair – PADCOM Committee) (attached)**

Mr. Cole made a motion to consider and act on purchase of Microsoft Exchange Email System Upgrade. Mr. Spratt offered a second and motion passed unanimously.

- 23. Health Care Services Report to include regulatory update, outreach, eligibility, service, utilization, community education, clinical services, epidemiology, and emergency preparedness.**

Mrs. Ade Moronkeji, HCAP Manager presented a report to the board.

- 24. Consider and act on Healthcare Assistance Program claims from Non-Medicaid 1115 Waiver providers processed by Boon-Chapman. (Mrs. Wagner, Chair - Indigent Care Committee)**

Mrs. Wagner made a motion to consider and act on Healthcare Assistance Program claims from Non-Medicaid 1115 Waiver providers processed by Boon-Chapman. Ms. Whatley offered a second and motion passed unanimously.

- 25. Presentation of preliminary Financial Report for seven months ended April 30, 2018 – Brett Allen, CFO, report to include Financial Summary, Financial Statements, Supplemental EMS Billing Information, and Supplemental Schedules.**

Mr. Brett Allen, CFO presented financial report to the board.

- 26. Consider and act on ratification of payment of District invoices. (Mr. Grice, Treasurer - MCHD Board)**

Mr. Grice made a motion to consider and act on ratification of payment of District invoices. Mr. Spratt offered a second and motion passed unanimously.

27. Consider and act on salvage and surplus. (Mr. Grice, Treasurer – MCHD Board) (attached)

Mr. Grice made a motion to consider and act on salvage and surplus as listed. Mr. Spratt offered a second and motion passed unanimously.

28. Secretary's Report - Consider and act on minutes for the April 24, 2018 Regular BOD meeting. (Mrs. Wagner, Secretary - MCHD Board)

Mrs. Wagner made a motion to consider and act on minutes for the April 24, 2018 Regular BOD Meeting. Ms. Whatley offered a second and motion passed unanimously.

29. Convene into executive session pursuant to section 551.074 of the Texas Government Code to deliberate personnel matters related evaluation of Chief Executive Officer, Randy E. Johnson. (Ms. Whatley, Chair – Personnel Committee)

Mr. Fawn made a motion to convene into executive session at 4:37 p.m. pursuant to section 551.074 of the Texas Government Code to deliberate personnel matters related evaluation of Chief Executive Officer, Randy E. Johnson.

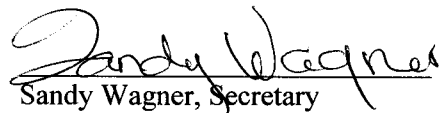
30. Reconvene from executive session and make recommendations if needed on matters relating to the evaluation of Chief Executive Officer, Randy E. Johnson. (Ms. Whatley, Chair – Personnel Committee)

The board reconvene from executive session at 5:06 p.m.

Ms. Whatley made a motion to approve a 4% increase for CEO, Randy Johnson and that Mr. Fawn will get with him to go over the executive session discussion and the board members evaluation at a later date. Mr. Grice offered a second. Motion passed with a vote of five (5) for (Ms. Whatley, Mrs. Wagner, Mr. Fawn, Mr. Cole and Mr. Grice) and one (1) abstained (Mr. Spratt)

31. Adjourn

Meeting adjourned at 5:06 p.m.


Sandy Wagner, Secretary

Agenda Item # 8

To: Board of Directors
From: Randy Johnson, CEO
Date: May 22, 2018
Re: **Payscale Upgrade**

Consider and act on pay grade changes to the non-field pay scale. (Ms. Whatley, Chair – Personnel Committee)

Requested changes to the Non-Field Payscale for are:

1. EMS Clinical Quality Supervisor and Clinical Education Supervisor from paygrade 302 to 400
 - a. Paygrade 302 range \$55,120 - \$82,680
 - b. Paygrade 400 range \$59,280 - \$88,920
 - c. Field range \$69,500 - \$86,000
2. Community Paramedic Project Coordinator from paygrade 301 to 400
3. Community Paramedic, Clinical Quality Coordinator and Alarm QA/QI coordinator from 301 to 302
4. Rationale for items 1-3:
 - a. Keep Clinical and Community Paramedic staff pay in line with the field changes that went into effect April 29.
5. Support Service Administrative Assistant from 201 to 203 due to expanded job responsibilities.
 - a. Paygrade 201 range \$36,400 - \$54,600
 - b. Paygrade 203 range \$41,800 – \$61,970

MCHD				
NON-FIELD PAYSCALE 2017				
Pay Grade	Minimum	Midpoint	Maximum	Position
502				CHIEF EXECUTIVE OFFICER * Salary is at the discretion of the Board of Directors
500	\$106,080	\$140,540	\$175,000	CHIEF FINANCIAL OFFICER CHIEF OPERATIONS OFFICER EMS DIRECTOR
402	\$76,960	\$96,200	\$115,440	ASST EMS DIRECTOR OF OPERATIONS CLINICAL SERVICES MANAGER ALARM MANAGER ACCOUNTING MANAGER IT MANAGER
401	\$70,720	\$88,400	\$106,080	HUMAN RESOURCES MANAGER QUALITY IMPROVEMENT MANAGER RADIO SYSTEMS MANAGER
400	\$59,280	\$74,100	\$88,920	ASSISTANT ALARM MANAGER HCAP MANAGER BILLING MANAGER BUSINESS ANALYSIS UNIT MANAGER FACILITIES MANAGER FLEET MANAGER RECORDS MANAGER & COMPLIANCE OFFICER SUPPLY CHAIN MANAGER PROGRAM ADMINISTRATOR TIER 2 QUALITY SUPERVISOR EDUCATION SUPERVISOR COMMUNITY PARAMEDIC PROJECT COORDINATOR
302	\$55,120	\$68,900	\$82,680	BILLING SUPERVISOR QUALITY SUPERVISOR EDUCATION SUPERVISOR EMERGENCY PREPAREDNESS & RISK MANAGER EMS IT SPECIALIST PROGRAM ADMINISTRATOR TIER 1 COMMUNITY PARAMEDIC QUALITY COORDINATOR QA/QI COORDINATOR
301	\$50,960	\$63,700	\$76,440	COMMUNITY PARAMEDIC PROJECT COORDINATOR COMMUNITY PARAMEDIC CLINICAL DATA ANALYST HUMAN RESOURCES GENERALIST PROFESSIONAL DEVELOPMENT COORDINATOR QUALITY COORDINATOR QA/QI COORDINATOR
300	\$47,840	\$59,800	\$71,760	CASE MANAGER PAYROLL/BENEFITS COORDINATOR ACCOUNTANT EMS ADMINISTRATIVE COORDINATOR FIRST RESPONDER & OUTREACH COORDINATOR HCAP COORDINATOR HCAP ELIGIBILITY SUPERVISOR LEAD TECHNICIAN RADIO FOREMAN PUBLIC INFORMATION OFFICER MATERIALS COORDINATOR
203	\$41,080	\$51,525	\$61,970	FACILITIES TECHNICIAN III MECHANIC III PHARMACY BENEFITS REPRESENTATIVE II SUPPORT SERVICES ADMINISTRATIVE ASSISTANT
202	\$38,480	\$48,100	\$57,720	ACCOUNTS PAYABLE SPECIALIST ACCOUNTS RECEIVABLE SPECIALIST EQUIPMENT SERVICE SPECIALIST FACILITIES TECHNICIAN II MECHANIC II
201	\$36,400	\$45,500	\$54,600	MECHANIC I SUPPORT SERVICES ADMINISTRATIVE ASSISTANT RECORDS ADMINISTRATOR
200	\$34,320	\$42,900	\$51,480	FACILITIES TECHNICIAN I RADIO TECHNICIAN BILLING REPRESENTATIVE III IT WEB ADMINISTRATOR PHARMACY BENEFITS REPRESENTATIVE I SUPPLY CHAIN SPECIALIST
102	\$29,640	\$37,050	\$44,460	BILLING REPRESENTATIVE II CLAIMS REPRESENTATIVE ELIGIBILITY SPECIALIST II SCHEDULER

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101	\$27,768	\$34,710	\$41,652	COMMUNITY HEALTH WORKER DOCUMENT IMAGING SPECIALIST HR ASSISTANT/RECEPTIONIST INTAKE SPECIALIST
100	\$25,376	\$31,720	\$38,064	BILLING REPRESENTATIVE MATERIALS MANAGEMENT TECH DISTRIBUTION TECHNICIAN MAKE READY TECHNICIAN MECHANIC HELPER

Effective October 1, 2017

HUDSON & O'LEARY LLP

ATTORNEYS AT LAW

1717 W. SIXTH ST., SUITE 258
AUSTIN, TEXAS 78703
(512) 441-9941 FAX (512) 441-1501
GHUDSON@HOLAW.NET
TOLEARY@HOLAW.NET

May 14, 2018

*Via Email &
First Class Mail*

Mr. Kenn Fawn, Chairman
Montgomery County Hospital District
P.O. Box 478
Conroe, Texas 77305-0478

Re: Amendment to engagement Agreement regarding representation of Montgomery
County Hospital District in the capacity of General Counsel

Dear Chairman Fawn:

I want to thank you and the Board of Directors of the Montgomery County Hospital District for continuing to use our law firm to represent MCHD as its General Counsel.

The purpose of this letter is to amend our agreed billing arrangements, transitioning from an hourly billing arrangement to a monthly flat fee. As you know, our current billing requires us to bill in increments of 1/10 of an hour, which is cumbersome and time consuming, oftentimes resulting in my firm being delinquent in submitting invoices to MCHD on a timely basis.

I have spoken with Brett Allen, MCHD's CFO regarding these matters and it appears that our firm's monthly billings, on average, approximate Five Thousand Dollars (\$5,000) per month, save and except those months where there are non-routine matters, such as litigation, complex financial transactions (such as funding capital purchases through public facility corporations or the like) or matters before the Legislature affecting MCHD that take a concentrated focus.

For the parties' mutual convenience, we propose to transition our billing structure to a flat monthly retainer of Five Thousand Dollars (\$5,000) per month, rather than an hourly billing arrangement. The retainer would cover all of our billable time spent each month in providing general counsel services to representatives of MCHD. Only if there were to arise a matter that required extraordinary time and efforts would we approach MCHD and request, in advance, a separate billing agreement for that matter. We would discuss and agree upon a separate fee arrangement that is mutually beneficial for such extraordinary engagements.

The monthly retainer would take immediate affect and cover all months for which MCHD has yet to be invoiced. Expenses would continue to be billed at cost, however, we do not bill for travel to MCHD's monthly meetings per a prior agreement with the Board.

It is my hope this arrangement will add simplicity and certainty to MCHD and my firm's affairs. If this arrangement is acceptable to you, please sign below and email or fax it to me at your convenience

We truly appreciate the opportunity to continue to be of service to the Montgomery County Hospital District.

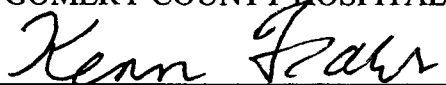
Sincerely,



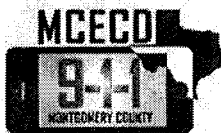
Greg Hudson, Partner
Hudson & O'Leary LLP

AGREED TO AND ACCEPTED:

MONTGOMERY COUNTY HOSPITAL DISTRICT

By: 
Kenn Fawn, Board Chairman

Date: 22 May 2018



Montgomery County Emergency Communication District

RESOLUTION

STATE OF TEXAS §

COUNTY OF MONTGOMERY §

IN THE MATTER OF PUBLIC SAFETY ANSWERING POINT IMPROVEMENT PARTICIPATION PROGRAM

On the 20th day of September, 2017, at a duly posted and called meeting of the Board of Managers (Board) of the Montgomery County Emergency Communication District (District), adopted the following:

WHEREAS, agencies that operate a Public Safety Answering Point (PSAP) in Montgomery County are critical partners to the District in delivering 9-1-1 service; and

WHEREAS, these agencies dedicate significant resources toward the improvement of their PSAPs with the purchase of facilities, equipment, furnishings, and services (Improvement); and

WHEREAS, the public benefits from a PSAP that is properly equipped and furnished and is operating under the best practices of the industry; and

WHEREAS, the board finds that sharing resources with PSAPs improves the level of 9-1-1 service,

NOW THEREFORE, BE IT RESOLVED by the Board of Managers of the Montgomery County Emergency Communication District, upon motion of Board Member: **Mr. James Simon**, seconded by member: **Chief Robert Hudson**, duly put and carried, the District will participate with PSAPs within Montgomery County, Texas in the purchase of equipment, furnishings or services that improve 9-1-1 call taking, under the following guidelines:

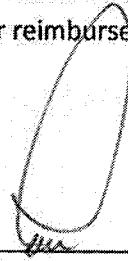
- This program is available during the fiscal year that begins October 1, 2017 and ends September 30, 2018
- The District will reimburse a total maximum of \$110,000 per PSAP during the fiscal year for one or more approved Improvements
- The PSAP operated by the City of Conroe Police Department will be eligible for an additional \$49,311 of program funds that are carried forward from FY 2017.
- The PSAP operated by the Montgomery County Sheriff's Office will be eligible for an additional \$100,000 of program funds that are carried forward from FY 2017.
- The PSAPs will pay at least 10% of the cost of each approved Improvement
- The PSAPs must submit their request for the district to participate in an Improvement to the executive director no later September 7, 2018
- The executive director will determine the eligibility of the request(s) and present it to the board for review and consideration

- If an improvement request is approved by the Board, the District will reimburse the PSAP for the District's portion of the improvement once the improvement is substantially complete and the PSAP submits documentation showing it has disbursed at least as much as the District's contribution plus 10%
- The Improvement must be complete and the request for reimbursement must be provided to the District no later than September 19, 2018

Passed and approved this 20th day of September, 2017.



Name: **Ryan Gable**
Secretary



Name: **Paul Virgadamo**
President

Sec. 262.024. DISCRETIONARY EXEMPTIONS. (a) A contract for the purchase of any of the following items is exempt from the requirement established by Section 262.023 if the commissioners court by order grants the exemption:

(1) an item that must be purchased in a case of public calamity if it is necessary to make the purchase promptly to relieve the necessity of the citizens or to preserve the property of the county;

(2) an item necessary to preserve or protect the public health or safety of the residents of the county;

(3) an item necessary because of unforeseen damage to public property;

(4) a personal or professional service;

(5) any individual work performed and paid for by the day, as the work progresses, provided that no individual is compensated under this subsection for more than 20 working days in any three month period;

(6) any land or right-of-way;

(7) an item that can be obtained from only one source, including:

(A) items for which competition is precluded because of the existence of patents, copyrights, secret processes, or monopolies;

(B) films, manuscripts, or books;

(C) electric power, gas, water, and other utility services; and

(D) captive replacement parts or components for equipment;

(8) an item of food;

(9) personal property sold:

(A) at an auction by a state licensed auctioneer;

(B) at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; or

(C) by a political subdivision of this state, a state agency of this state, or an entity of the federal government;

(10) any work performed under a contract for community and economic development made by a county under Section 381.004; or

(11) vehicle and equipment repairs.

(b) The renewal or extension of a lease or of an equipment maintenance agreement is exempt from the requirement established by Section 262.023 if the commissioners court by order grants the exemption and if:

(1) the lease or agreement has gone through the competitive bidding procedure within the preceding year;

(2) the renewal or extension does not exceed one year; and

(3) the renewal or extension is the first renewal or extension of the lease or agreement.

(c) If an item exempted under Subsection (a)(7) is purchased, the commissioners court, after accepting a signed statement from the county official who makes purchases for the county as to the existence of only one source, must enter in its minutes a statement to that effect.

(d) The exemption granted under Subsection (a)(8) of this section shall apply only to the sealed competitive bidding requirements on food purchases. Counties shall solicit at least three bids for purchases of food items by telephone or written quotation at intervals specified by the commissioners court. Counties shall award food purchase contracts to the responsible bidder who submits the lowest and best bid or shall reject all bids and repeat the bidding process, as provided by this subsection. The purchasing officer taking telephone or written bids under this subsection shall maintain, on a form approved by the commissioners court, a record of all bids solicited and the vendors contacted. This record shall be kept in the purchasing office for a period of at least one year or until audited by the county auditor.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 59(c), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 962, Sec. 1, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 1001, Sec. 2, eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1060, Sec. 1, eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 16, Sec. 13.03, eff. Aug. 26, 1991; Acts 1997, 75th Leg., ch. 442, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1065, Sec. 1, eff. June 15, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1272 (H.B. 3517), Sec. 3, eff. September 1, 2007.



Service Order Proposal Metro Ethernet

Montgomery County Hospital
District

SOP / SO # 180522-MCHD-2300Plantation-
BBS-01

Customer Information												Date	5/22/2018
Company Name	Montgomery County Hospital District											New	X
Contact Name	Randy Johnson											Amendment	
Street, Suite, City ZIP	1400 South Loop West Conroe, TX 77304											Renewal	
Contact Phone												Replacement	
Contact Email												Ref	

#	Requires	Loc A / Z (# Street, Clty ZIP)	Product Description	(Qty) Service	NRC	MRC	Term - Months	Protect (Item)		Location License	WM Demarc (existing)	Service Demarc	Extend Demarc	Space	Power	Service Handoff
								Circuit	Path							
1	All	1400 S Loop 336 W, Conroe 77304	Metro Ethernet Dedicated (ME-D-10G)	(1) 10,000 Mbps (Gigabit)	\$ 32,500	\$ 750	60	2	2	Customer	MPoE	WM Demarc	NA	4 RU Wall	1x 120v- 20a	10G-SR
		2300 Plantation, Conroe 77303								Customer	MPoE	WM Demarc	NA	4 RU Wall	1x 120v- 20a	10G-SR
2	All	2300 Plantation, Conroe 77303	Metro Ethernet Dedicated (ME-D-10G)	(1) 10,000 Mbps (Gigabit)	\$ 36,500	\$ 750	60	1	1	Customer	MPoE	WM Demarc	NA	4 RU Wall	1x 120v- 20a	10G-SR
		14575 FM-1488, Magnolia 77354								Customer	MPoE	WM Demarc	NA	4 RU Wall	1x 120v- 20a	10G-SR
3	All	14575 FM-1488, Magnolia 77354	Metro Ethernet Dedicated (ME-D-10G)	(1) 10,000 Mbps (Gigabit)	\$ 2,500	\$ 750	60	1	1	Customer	MPoE	WM Demarc	NA	4 RU Wall	1x 120v- 20a	10G-SR
		9951 Grogans Mill, The Woodlands 77380								Customer	MPoE	WM Demarc	NA	4 RU Wall	1x 120v- 20a	10G-SR
4	All	9951 Grogans Mill, The Woodlands 77380	Metro Ethernet Dedicated (ME-D-10G)	(1) 10,000 Mbps (Gigabit)	\$ -	\$ 750	60	1	1	Customer	MPoE	WM Demarc	NA	4 RU Wall	1x 120v- 20a	10G-SR
		1400 S Loop 336 W, Conroe 77304								Customer	MPoE	WM Demarc	NA	4 RU Wall	1x 120v- 20a	10G-SR
5b	All	1300 S Loop 336 W, Conroe 77304	IP Transit (IA-D-1000M)	(1) 1000 Mbps	\$ -	\$ 995	36	None	None	Customer	MPoE	WM Demarc	NA	4 RU Wall	1x 120v- 20a	1G-SR
		ICTX-WaveMedia Gateway								NA	NA	NA	NA	NA	NA	NA
6	All	1300 S Loop 336 W, Conroe 77304	Dark Fiber Lease	(2) Strands	\$ -	\$ 300	36	None	None	WM	MPoE	WM Demarc	NA	NA	NA	SM-SC
		405 Sgt. Ed Holcomb Blvd N, 77304								WM	MPoE	WM Demarc	NA	NA	NA	SM-SC



Service Order Proposal Metro Ethernet

Montgomery County Hospital
District

SOP / SO # 180522-MCHD-2300Plantation-
BBS-01

Product and/or Service Notes			
> replaces xxxx			
Loc A / Z Notes			
> Unless otherwise noted, pricing does not include fees for building access, colocation or cross-connection at Loc A or Z.			
Service Handoff Notes			
> None			
Other Notes			
> None			
Billing Information		Technical Contacts	
Company Name		Primary Contact	
Contact Name		Primary Contact Phone	
Street, Suite		Primary Contact Email	
City, State ZIP		Second Contact	
Contact Phone		Second Contact Phone	
Contact Email		Second Contact Email	
General Notes / Additional Terms and Conditions			
<p>This document is used in conjunction with the WaveMedia ("WM") MPSA and applicable Supplement.</p> <p>1. NRC - Non-Recurring Charge, MRC - Monthly Recurring Charge. NRC is due at execution of this Service Order.</p> <p>2. Pricing does not include applicable taxes or other fees imposed by local, state, or federal authorities / This service is considered "Enhanced Data". ICTX does not provide E911 capabilities.</p> <p>3. Unless otherwise noted, pricing does not include any building access fees imposed by building owner or operator. Unless otherwise noted, pricing does not include any 3rd party cross-connect fees.</p> <p>4. Early Termination fee is 100% of remaining Term, plus any outstanding amounts due.</p> <p>5. Subject to change without notice. Subject to availability. Not binding until final agreement is executed by WaveMedia. Last date of execution (Acceptance) below is the effective date ("Effective Date").</p>			
Acceptance			Process Flow
By Customer		By ICTX	ICTX Job#
Print Name		Print Name	MPSA
Title		Title	Supp
Date		Date	Rep



8105 North Beltline Road
Suite 170
Irving, Texas 75063
Tele. 972.550.2302
Fax. 972.550.2364

October 24, 2014

Randy Johnson
Montgomery County Hospital District
1400 South Loop 336 West
Conroe, Texas 77304

Dear Mr. Johnson:

The Montgomery County Hospital District has purchased and installed an Enhanced Digital Access Communications Systems (EDACS) manufactured by M/A-COM, Inc., now known as Harris Corporation. This system provides the critical Public Safety and Public Service communications for the hospital district as well as the city of Conroe and many other agencies throughout the surrounding area.

At this time, EDACS/P25 equipment for this system falls under Harris Corporation intellectual property rights and the proprietary protocols represent a patent, copyright or secret process and are, therefore, currently only available from the manufacturer, Harris Corporation.

Dailey-Wells Communications is the only authorized Harris Corporation Network Solutions Provider to provide system sales, service, system upgrades and repairs to include mobiles, portables, control stations and other EDACS/P25 equipment for agencies operating on this communications system. This assignment was made effective September 2004 and does not have an end date. If this status should change at some point in the future you will be notified by Harris Corporation in writing. Orders for Harris Corporation equipment, service and associated accessories should be placed through Dailey-Wells Communications.

Thank you for your attention in this matter. Harris Corporation and Dailey-Wells Communications look forward to the opportunity to continue the service and sales support of EDACS/P25 Systems throughout your area.

Sincerely,

Brian Beatty
Manager Indirect Sales, Harris Corporation

Cc: Jim Sawyer, Director of Sales, Dailey-Wells Communications

DAILEY-WELLS COMMUNICATIONS

3440 E. Houston St., San Antonio, TX 78219



To: Montgomery County HD, Justin Evans
From: Dennis Vickery (281) 804-7970
Date: 4-May-18

Consoles - Symphony Hardware, Encrypted - Package

Item	Part Number	Description	Qty.	Unit Sale	Ext Sale
1	UD-ZN4Z	CONSOLE, SYMPHONY, BUNDLE, PREMIER	1	\$ 42,839.80	\$ 42,839.80
		Each Console Package Includes:			
1a	NS-SG2B	LICENSE, CONSOLE	1	Included	Included
1b	NS-SG2C	LICENSE, CONSOLE TALKPATH	12	Included	Included
1c	UD-SG4W	LICENSE, AES AND DES LEVEL ENCRYPTION	1	Included	Included
1d	UD-AB1A	SPEAKER, NANO, SYMPHONY	2	Included	Included
1e	UD-CU6X	MONITOR, 21.5" CLASS, TOUCHSCREEN, HD	1	Included	Included
1f	UD-AB1K	CABLE, DISPLAYPORT TO DVI-D, 10FT	1	Included	Included
1g	UD-AB1F	MOUSE, OPTICAL, USB, SCROLL WHEEL	1	Included	Included
1h	UD-AB1G	KEYBOARD, 104 KEY, USB, HUB	1	Included	Included
1i	UD-AB1D	SINGLE FOOTSWITCH, USB, SYMPHONY	1	Included	Included
1j	UD-AB1M	DESK MIC, DB9	1	Included	Included
1k	UD-AB1B	JACK BOX, 6 WIRE	2	Included	Included
1l	CM-022218-001101	License, Vocoder	1	Included	Included
1m	MM100UD	MANUAL, OP/INSTA/CONFIG, SYMPHONY, CD	1	Included	Included
				SUB TOTAL	\$ 42,839.80

NOTE:

Price Valid Until June 30, 2018.

Terms: Net 30 Days.

Shipping: FOB Source, prepay and add to invoice.



PRICE QUOTATION

Montgomery County Hospital District

Project Name: Montgomery County Hospital District - Dispatch Office

Project Location: Conroe, Texas, United States

Project Number: U10-0152 Phase 10 Revision 2

Issue Date: May 18, 2018

Sales Lead: Scott Mathews

Project Manager: Mark Halvorsen

Manufactured Product				
	Code	Unit Price	Qty	Extended Price
01 - (DSP) Dispatch Console	DSP-C	17,033.01	2	34,066.02
Sub-Total				34,066.02
Logistics				
Packaging				Included
Freight				3,136.69
Install				2,829.35
Sub-Total				5,966.04
Project Total (USD, All Sales Taxes Excluded)				40,032.06

Note: Products on TXMAS Schedule are marked as 'T'. Items without a 'T' are open market items. TXMAS Contract No: TXMAS-5-7110180; Effective until June 13, 2022.

Freight INCO Terms: FOB Destination to Conroe, Texas, United States

Payment Terms:

100% due upon Shipment of Work, NET 30

Quote is NOT valid without the Evans Terms & Conditions document.

Quote validity period is 90 days for product (only). See Evans Terms & Conditions document for more details.

Evans accepts all major credit cards subject to service fees.

P.O. #: _____

☐ Accept Evans Terms and Conditions

Accepted by: _____

Date: _____



MANUFACTURED PRODUCT PROJECT DETAILS

Shipment A	
Includes all product	
Packaging	Price
Blanket Wrapped	Included
Freight	
Shipment by Truck (LTL) to Conroe, Texas, United States	3,136.69
Evans Offload to Room of Rest	Included
Debris Removal	Included
Transit Time: 10 Days	
Install	
Evans Installation	T 2,829.35
* The client must identify and provide a POC (point of contact) responsible for decision making or whom will have access to a person of authority for the duration of the scheduled installation activity. The appointed POC must ensure that either he/she or the authorized representative will be available upon completion of the installation activity to sign off the Evans PCR (Project Completion Report) * Failure to provide such a contact assumes the activity as reported has been accepted.	
** Assumes that site preparedness has been met in accordance with the attached contract terms and conditions.	



MANUFACTURED PRODUCT BILL OF MATERIALS

01 - (DSP) Dispatch Console

Dispatch - Qty: 2

	Part Number	Description	Measure	Unit Price	Qty	Extended Price
PRODUCT STRUCTURE						
1	CO-PF-HPL	High Pressure Laminate panel finish	Each	Included	1	Included
2	DSP-FD-B	Base Full Depth Console	Units	437.22 T	5	2,186.10
3	DSP-RD-B	Base Reduced Depth Console	Units	393.92 T	2.5	984.80
4	DSP-FD-MK	Full Depth Mitre kit (0° to 45°)	Each	337.04 T	2	674.08
5	DSP-FD-EP-TR	Full Depth Traditional style end panel	Each	392.22 T	2	784.44
6	CO-WS	HPL Worksurface with Ergonomic PVC Edge	Units	131.58 T	11.5	1,513.17
7	CO-WS-UFE	Upgrade Worksurface Edge to Ergonomic Soft Urethane	Units	53.48 T	5	267.40
8	CO-WLS-LC-HD-2	Two heavy duty Lift Columns with control equipment; Main Platform; Includes worksurface support cage	Each	1,573.97 T	1	1,573.97
9	CO-WLS-SLS	Base cavity safety limit system (SLS) (per module)	Each	254.69 T	3	764.07
10	CO-SW-S-2T	Double Tier Slatwall system	Units	244.50 T	10	2,445.00
EQUIPMENT/ACCESSORIES						
11	CO-ESS-BSOS	Base Slide-Out Shelf	Each	196.11 T	2	392.22
12	CO-CL	Cavity Light	Each	39.90 T	3	119.70
13	CO-EL-CCS	EnviroLinc core control system (power module not included)	Each	1,053.40	1	1,053.40
14	CO-EL-DF	EnviroLinc desktop fans (pair)	Each	110.24	1	110.24
15	CO-EL-PM-AC	EnviroLinc AC power module	Each	299.96	1	299.96
16	CO-EL-TSC	EnviroLinc touch screen controller	Each	274.98	1	274.98
17	CO-HT-R	Radiant Heat Panel mounted to front panel	Each	407.50 T	1	407.50
18	CO-IGL	Internal Console Grounding Lugs	Each	9.34 T	13	121.42
19	CO-IGL-C	Continuous Braided Copper Grounding Cable	Units	5.10 T	13	66.30
20	CO-PB-NA-6-6	North America Power Bar with mounting bracket; 120V/15A, 6 outlets, 6' power cord, CSA/UL	Each	84.05 T	2	168.10
21	CO-PB-NA-8-15	North America Power Bar with mounting bracket; 120V/15A, 8 outlets, 15' power cord, CSA/UL	Each	127.34 T	1	127.34
22	CO-PDO-DT-MHO	MHO Desktop Power Unit; 2 AC, 2 Configurable Data Ports	Each	216.49 T	1	216.49
23	CO-TL-SW-ZB	Z-Bar task light by Konzept with Slatwall/Slatrail mount	Each	192.71 T	2	385.42
24	CO-MA-E-SW-DT	Slatwall/Slatrail mounted Double Tier Monitor Arm by Evans (max 40 lbs. (18.1 kg) per arm)	Each	382.03 T	3	1,146.09
25	CO-MA-E-SW-ST	Slatwall/Slatrail mounted Single Tier Monitor Arm by Evans (max 40 lbs. (18.1 kg) per arm)	Each	266.57 T	2	533.14
26	CO-LST-LCE-PM	LED Signal Tower with Continuous Light; Pole mount; Beige; 1 light; AC/DC 24V	Each	150.26 T	1	150.26
27	CO-LST-LCE-U-L	Upgrade LED Signal Tower with additional light	Each	89.14 T	3	267.42
Sub-Total (single unit)						17,033.01

The following standard terms and conditions apply to the attached quotation (the "Quotation"), unless expressly stated otherwise in the Quotation provided by Evans Consoles Corporation and/ or Evans Consoles Incorporated and/or Evans Consoles B.V. (collectively, "Evans") to the purchaser (the "Buyer") of the products and/or services (the "Work").

1.0 Quotation

- 1.1 Unless otherwise stated, the Quotation prices are valid for ninety (90) days and freight and installation prices are valid for thirty (30) days from the date of the Quotation.
- 1.2 The prices in the Quotation are valid for Work shipped or completed within twelve (12) months from the date of the confirmed order (the "Purchase Order"). Evans reserves the right to revise or adjust pricing, in their sole discretion, on orders not shipped or completed within the twelve (12) month period. Requests to defer the installation service beyond six (6) months from product shipment are subject to a revised installation Quotation.

2.0 Price and Payment

- 2.1 Except as otherwise agreed in writing by the parties, the prices of the Work shall be paid as per the following payment terms:
 - Thirty percent (30%) net thirty (30) due upon Sign Off, as herein defined, two percent (2%) net fifteen (15);
 - Sixty percent (60%) net thirty (30) upon shipment of Work, two percent (2%) net fifteen (15);
 - Ten percent (10%) net thirty (30) after installation of Work, two percent (2%) net fifteen (15); and
 - One point five percent (1.5%) late payment penalty shall be applied per calendar month per payment if payment not received within 30 days of invoice issuance.
- 2.2 For Purchase Orders which require the Work to be shipped and/or installed outside of Canada or the United States, credit approval from a third party agency previously approved by Evans must be obtained and provided in a form satisfactory to Evans in their sole discretion. Payment must be provided through an irrevocable letter of credit (the "ILC"). The terms of the ILC shall be:
 - The ILC shall be in the English language and all supporting or related documents requiring execution shall also be in English;
 - The ILC shall be drawn on the Bank of Montreal or an affiliated bank in the currency stated in the Quotation;
 - The expiry of the ILC must extend at least six (6) months past the installation or shipping date set out in the Quotation, whichever is later; and
 - All documents requiring execution relating to the ILC must be within the control of Evans or produced by Evans, such as the bill of lading, commercial invoice, certificate of origin, statement of compliance to product specification.
- 2.3 The Quotation price includes all transportation, carriage and insurance from Evans' manufacturing facility to the designated place for delivery specified in the Quotation.
- 2.4 Any specific or extra shipping or insurance requirements of the Buyer must be disclosed prior to the issuance of the Purchase Order, and may result in an amendment to the Quotation to consider any additional costs incurred.
- 2.5 Unless stated otherwise, sales taxes are not included in the Quotation price. For shipments within the United States or Canada Evans is required by law to collect the appropriate provincial, state and municipal State sales and use taxes at the time of invoice, for the products supplied. Evans will require a certificate of tax exemption prior to the time of invoicing if applicable to this procurement. For shipments outside of the United States or Canada, payment of importation fees and customs clearance, duties, sales taxes or any other taxes at the shipping destination are the sole responsibility of the Buyer.

3.0 Scheduling

- 3.1 Evans will not begin the procurement of materials for the Work, or fabrication until the Buyer has paid the payment set out in 2.1.1., and provided acceptance of the signed off drawings, in writing, authorizing Evans to proceed with fabrication of the Work. This milestone is referred to as the "Sign Off".
- 3.2 Evans will establish a formal project schedule, based on dates mutually agreeable to the Buyer and Evans, to ensure a timely delivery the Work after receipt of the Purchase Order and Sign Off. The project size, scope and shipping destination will affect the project schedule.

4.0 Packing

- 4.1 For shipments to the United States or Canada, the Quotation includes packaging suitable for dedicated air-ride moving van shipment. Components such as panels, work surfaces and baseboards may be packaged separately. The console framework will be segmented into convenient lengths for handling.
- 4.2 At the Buyer's request, Evans can supply rugged crating for general freight, ocean freight, air freight or less than truckload (LTL) shipment at an additional charge. All projects requiring crating will be quoted and furnished with Evans standard frame crates (plywood on bottom only) unless noted otherwise. If alternate crating requirements are requested after the Purchase Order has been issued, Evans will provide a revised Quotation or change order for any additional services.

5.0 Shipment and Storage

- 5.1 The shipping price is valid only for the shipment of the Work described in the Quotation, based upon single shipping activity unless noted otherwise. If the Buyer requests additional shipments, expedited shipments or off-site storage of the products, Evans will provide a revised Quotation or change order for the additional services.
- 5.2 Evans follows the international trade terms under INCOTERMS 2010.
- 5.3 When Evans is responsible for shipping the Work, unless otherwise stated, the shipping terms shall be CIP (carriage, insurance paid to) named destination point. Title and risk shall pass to the Buyer when the Work delivered to the carrier by Evans who pays for transportation and insurance to the named destination.
- 5.4 If damage occurs during shipment, these damages must be identified and Evans notified within forty-eight (48) hours of delivery. In the case of an ocean shipment, the damaged goods must be set aside for a formal marine survey and it must be noted whether or not the container's seal was intact upon arrival at the destination. The surveyor shall determine where the damages occurred and assign liability to the appropriate party. The carrier has the right to take physical possession of the Work against which damages are being claimed. If the carrier is assessed a financial sum for the damaged product, they have the right to sell the damaged Work for salvage.
- 5.5 For deliveries within the United States or Canada a single offloading activity is included in the Quotation. The Quotation is based upon clean and clear access from the point of unloading to the room of rest. For international deliveries, container unloading is not included in the Quotation.
- 5.6 If the Buyer is responsible for shipping the Work, the shipping term will be ex works (named place of delivery) as defined in Incoterms 2010. Evans will place the Work on Evans' loading dock, suitably packaged for export shipment. The Buyer shall communicate to Evans the method of transport to ensure the packaging is appropriate, subject to the shipping provisions contained herein. Title passes to the Buyer when the Work is removed from Evans' dock and the Buyer or their representative carrier, signs the bill of lading. The Buyer is responsible for damages during loading, transport or off-loading.

5.7 The Work is designed for indoor control room environments with temperature and humidity control. Evans requires, in circumstances where any Work is to be stored by Buyer, that Work, including the Work contained in crates or shipping materials, be housed in indoor warehouse conditions maintaining a constant temperature range between fifteen to twenty-five (15 to 25) degrees Celsius or sixty to seventy (60-75) degrees Fahrenheit and between forty-five to fifty-five percent (45 to 55%) humidity range. Adequate temperature control and ventilation must be provided during storage and handling to protect the Work from extreme climate fluctuations. Evans will not replace under warranty, nor will it be deemed a breach of any representation or warranty regarding the quality of the Work, any Work damaged by improper or negligent storage conditions, or conditions which do not meet the standards outlined herein at the sole discretion of Evans.

6.0 Site Preparation and Installation

- 6.1 The Buyer shall make the destination and/ or project site (the "Site") clean, clear, and prepared for the installation or delivery of the Work upon the agreed delivery date. For installation, all flooring, carpeting, walls, painting, and electrical construction that could in any way affect or impact the installation of the Work must be complete.
- 6.2 The Buyer shall appoint a representative who will be available at the Site to direct Evans installation team regarding security, site safety and Work placement.
- 6.3 The price for the installation of the Work contained in the Quotation is firm and fixed for a single installation visit for the Work at a non-union Site for affiliated furniture systems installers. If the Buyer requests union labor for off-loading or installation after a Purchase Order has been accepted, all additional costs will be the responsibility of the Buyer. Unless otherwise agreed, the installation price contained in the Quotation is based upon a single installation of the Work during weekday, regular work hours. Evening or weekend installation activities may be subject to additional charges to the Buyer.
- 6.4 Evans requires a minimum of 10 business days to coordinate resources prior to the installation activity.
- 6.5 Multiple installation activities, additional time required for unscheduled safety training sessions or drug testing, Work requiring relocation by Evans at the Site or general delays caused by Site conditions not being prepared for the Work will be an additional charge to the Buyer.
- 6.6 All installations of the Work must be performed by an authorized Evans Representative or an Evans' certified dealer (collectively the "Installer"). For Purchase Orders made excluding installation services, it is understood that Evans products are customized and do not come with installation or assembly manuals. If the Buyer wishes to purchase the Work contained herein without installation services provided by Evans, they shall execute an installation waiver in favor of Evans. If the Buyer is a dealer not certified by Evans to act as an Installer, the Buyer is required to use an Installer.

7.0 Changes

- 7.1 The parties may, by written or electronic notification, request changes to the drawings, designs, specifications, method of shipment or packing, quantity, or time or place of delivery of the Work, reschedule the installation, or require additional or diminished Work (the "Changes").
- 7.2 All Changes requested must be agreed to in writing by both parties, otherwise they are unenforceable. Only an authorized representative of Evans may issue Changes to the Purchase Order. If any Change causes an increase or decrease in the price of, or the time required for, performing the Purchase Order, an equitable adjustment will be made in the Purchase Order price, delivery dates or both, and Evans will provide a revised Quotation or change order for the adjustment.

8.0 Buyer Acceptance

- 8.1 Upon completion of the installation, the Buyer shall arrange for a representative to receive a product demonstration and training on the operation and maintenance of the installed Work.
- 8.2 Upon completion of the installation of the Work, a report will be produced by the Installer and will be executed by the Buyer's representative signifying acceptance of the installed Work subject to the resolution of any damaged or deficient items. If the installation is not substantially completed, the final acceptance will be delayed until the resolution of all identified deficient or damaged items is complete. Signed acceptance including a punch list of any noted deficiencies and/or damages must be reported back to Evans corporate office with 48 hours of installation completion. All Installers must provide a signed acceptance from the Buyer to Evans.

9.0 Evans Warranty

- 9.1 Unless otherwise stated in the Quotation, Evans warrants that all the Work will be free from defects in materials and workmanship from the date of purchase. Terms of the warranty are as follows:
- 9.1.1 LIFETIME WARRANTY on all fixed structural frame components;
- 9.1.2 LIFETIME WARRANTY on all static exterior panels and work surface components parts; with 5 years for labor;
- 9.1.3 LIFETIME WARRANTY on all adjustable, sliding or hinged mechanisms or parts; with 5 years for labor;
- 9.1.4 OEM (original equipment manufacturer) warranty on all buyouts
- 9.1.5 5 years on the Evans branded E-Arm family
- 9.1.6 5 YEAR WARRANTY on electrical actuated lift columns;
- 9.1.7 3 YEAR PRODUCT WARRANTY on Evans' PowerLinc™ system;
- 9.1.8 3 YEAR PRODUCT WARRANTY on Evans' EnviroLinc™ system;
- 9.1.9 3 YEAR PRODUCT WARRANTY on Evans' LumiLinc™ system
- 9.2 The warranty period will begin on the date the Work receives final acceptance from the Buyer at the Site. Notification of any defect or failure must be delivered in writing to Evans within the applicable warranty period. In the event that a written notice of a warranty claim is not delivered to Evans prior to the expiration of the relevant warranty period, Evans shall not be obligated to provide any warranty to the Work.
- 9.3 At Evans option, products will be repaired at the Site or, if deemed necessary, will be returned to Evans, with Evans being responsible for shipping and handling charges and insuring the shipment. Evans will return the repaired or replacement products to the Buyer via prepaid freight. If Evans does not accept a notice of defect or failure based on their sole discretion that the defect or failure was caused by causes or situations outlined in section 9.5 below, the decision is binding and final upon the Buyer.
- 9.4 The warranty periods shall not be extended or modified due to any warranty claims, repairs or replacements made under this section 9.
- 9.5 This warranty does not cover damage due to external causes, including accident, abuse, problems with electrical power, improper application and misuse, installation by parties other than Installers, alterations, improper storage, servicing unauthorized by Evans, neglect, problems caused by the use of parts and components not supplied by Evans, or the effects of normal wear and tear.
- 9.6 The warranty on Evans Urethane Ergonomic Waterfall Nosing is void and unenforceable if any ammonia based cleaners are used on the Work.
- 9.7 This warranty does not cover any consumable items such as, but not limited to, light bulbs, filters, and any third party software.
- 9.8 The provision of installation labor is at the sole discretion of Evans, and is excluded on all buy-out products that are not directly incorporated into the design/manufacture of Evans' custom-fabricated products.
- 9.9 Rights and benefits of this section 9 are given solely to the original Buyer of the Work and may not be transferred or assigned to a third party without the prior written consent of Evans.

10.0 Confidentiality

- 10.1 The Buyer agrees to maintain confidentiality with regard to secret, confidential, and proprietary information, as well as all trade secrets and intellectual property disclosed or developed by Evans in connection with the Work or the Purchase Order, and shall require the similar undertaking from any employees, subcontractors, representatives or agents. Any drawings, plans and data, furnished by Evans to the Buyer and all related technical and commercial information that the Buyer may receive in the course of the Purchase Order and the Work, shall be confidential and shall not be used for any purpose other than performing this contract. Such confidential information shall not be reproduced or copied by the Buyer without Evans written consent and shall remain the sole property of Evans, even upon completion of the Work and Purchase Order.

11.0 Jurisdiction

- 11.1 All Purchase Orders entered by a Buyer residing primarily, or having head offices, in the United States, regardless of its place of negotiation, execution, or performance, shall be governed by and subject to the laws of the Commonwealth of Virginia and exclusive jurisdiction of the state courts of Fairfax County, Virginia and the United States District Court for the Eastern District of Virginia, Alexandria Division, as appropriate, shall have exclusive jurisdiction regarding any related disputes.
- 11.2 All Purchase Orders entered by a Buyer residing primarily, or having head offices, in Canada or any other country internationally, regardless of its place of negotiation, execution, or performance, shall be governed by and subject to the laws of the Province of Alberta and of Canada applicable therein, and exclusive jurisdiction of the courts of Calgary, Alberta, as appropriate, shall have exclusive jurisdiction regarding any related disputes.

12.0 Limitation of Liability

- 12.1 The parties agree to indemnify and hold harmless the other party from any and all claims for damage, loss, injury or expense, including reasonable attorney fees, to any property or persons, arising out of, or in any way incidental to the negligent performance of their respective obligations under the Purchase Order or by anyone for whom they are in law responsible.
- 12.2 Evans does not provide professional architectural, electrical engineering, mechanical engineering or structural engineering services. Evans shall be held harmless for such work based on design recommendations provided by the Buyer or Buyer's representatives during the course of the Purchase Order.
- 12.3 EVANS IS NOT LIABLE FOR ANY LIQUIDATED, SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING ANY DAMAGES FROM BUSINESS INTERRUPTION, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, OR LOSS OF USE OF ANY PROPERTY OR CAPITAL) EVEN IF ADVISED, OR OTHERWISE AWARE, OF THE POSSIBILITY OF ANY SUCH DAMAGES. THE EXCLUSION OF SUCH DAMAGES IS INDEPENDENT OF, AND WILL SURVIVE, ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY UNDER THESE TERMS AND CONDITIONS. IN NO EVENT SHALL EVANS' LIABILITY EXCEED THE VALUE OF THE PURCHASE ORDER.

13.0 Force Majeure

- 13.1 If, by reason of a force majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under the Purchase Order, then such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable period of time. Upon such notice, the obligations of the party giving such notice, so far as it is affected by such force majeure, shall be suspended during the continuance of the event then claimed, and such party shall endeavor to remove or overcome such inability with all reasonable diligence. The term force majeure as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, insurrection, riots, epidemics, landslides, lightning storms, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, or any other

causes not reasonable within the control of the party claiming the force majeure.

- 13.2 Each party shall take all commercially reasonable steps to mitigate any loss or damages as a result of the force majeure.
- 13.3 The Buyer shall pay for the portion of the Work completed and/ or delivered up until the point of delay by force majeure.

14.0 Termination

- 14.1 If the Buyer is in material breach of the Purchase Order and fails to remedy the breach within 10 days of written notice of the breach, Evans may terminate this Purchase Order at their sole discretion. If the material breach continues, Evans may terminate this Purchase Order and Buyer will be responsible for any costs incurred by Evans in their performance under the Purchase Order to the date of termination.
- 14.2 The solvent party may terminate this Purchase Order upon written notice if the other party commits an act of insolvency or the Buyer is unable to produce satisfactory evidence of solvency at the request of Evans.

15.0 Waiver

- 15.1 The failure of either party to enforce at any time any of the provisions of the Purchase Order will not be construed to be a continuing waiver of those provisions, nor will any such failure prejudice the right of the party to take any action in the future to enforce any provision.

16.0 Survival & Severability

- 16.1 All provisions of these terms and conditions which by their nature should apply beyond its term will remain in force after any termination or expiration of the Purchase Order, including but not limited to sections 9, 10, 11, 12, 15 and 17.
- 16.2 If any provision of these terms and conditions are held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, that provision will be severed from these terms and conditions and the Purchase Order and the remaining provisions will remain in full force and effect.

17.0 TAXES AND DUTIES – ONLY APPLICABLE FOR U.S. ORDERS

- 17.1 Evans is required by US Federal law to provide a federal tax identification number on all shipments delivered within the United States of America. This information must be included in the Purchase Order prior to shipment of any Work.
- 17.2 Notwithstanding anything to the contrary contained in the Quotation, the Buyer and Evans acknowledge and agree that as of the date of the Quotation that no duties, levies, import charges or assessments are levied or assessed by the Government of the United States of America on the importation of the goods and services described in the Quotation into the United States of America and accordingly, the price does not include any duties, levies, import charges or assessments levied or imposed by the Government of the United States of America upon the importation of the goods or services described in the Quotation. Any such duties, levies, import charges or assessments as are levied or imposed at any time hereafter by the Government of the United States of America upon the importation into the United States of America of the Work shall be paid by in whole by the Buyer. If such duties, levies, import charges or assessments are paid by Evans, they shall be reimbursed by the Buyer to Evans upon invoice thereof. The price set forth in the Quotation for the Work includes all transportation, carriage and insurance from Evans' manufacturing facility in Calgary, Alberta, Canada to the designated place or places for delivery specified in the Quotation.

rev. January 10, 2018

THE STATE OF TEXAS §

THE COUNTY OF TRAVIS §

**AGREEMENT FOR THE FURNISHING, INSTALLING AND
MAINTENANCE OF TRAFFIC SIGNAL PREEMPTION EQUIPMENT**

THIS AGREEMENT is made by and between the State of Texas, acting through the Texas Department of Transportation, hereinafter called the "State", and the Montgomery County Hospital District, hereinafter called "MCHD", acting by and through its duly authorized officers.

W I T N E S S E T H

WHEREAS, the State owns and maintains a system of highways and roadways in MCHD pursuant to Transportation Code, Section 201.103; and

WHEREAS, MCHD or its contractor has requested to install emergency vehicle preemption systems at the locations listed on Exhibit A;

WHEREAS, the State and MCHD are in agreement that the proposed systems will be installed;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

A G R E E M E N T

ARTICLE 1. CONTRACT PERIOD

This agreement becomes effective on final execution by the State and shall remain in effect as long as said traffic signal preemption equipment is in operation at the described locations.

ARTICLE 2. TERMINATION

This agreement may be terminated by one of the following conditions:

- 1) By mutual agreement of both parties;
- 2) By the State giving written notice to MCHD or its contractor as consequence of failure by MCHD or its contractor to satisfactorily perform the services and obligations set forth in this agreement, with proper allowances being made for circumstances beyond the control of MCHD or its contractor;
- 3) By either party upon thirty (30) days written notice to the other.

ARTICLE 3. COMPENSATION

No compensation shall be paid for this agreement.

ARTICLE 4. PERSONNEL, EQUIPMENT, AND MATERIAL

- A.** MCHD or its contractor will use labor and supervisory personnel employed directly by MCHD or its contractor, and use MCHD owned or its contractor owned machinery, equipment, and vehicles necessary for the work. In the event that MCHD or its contractor does not have the machinery, equipment, and vehicles necessary to perform the work, the machinery, equipment, and vehicles may be rented or leased as necessary.
- B.** No reimbursement shall be paid for any materials supplied by MCHD or its contractor. All materials shall be new and undepreciated stock.

- C. Any necessary changes to the existing signal required to install the preemption system will be at MCHD's expense.
- D. If it becomes necessary to adjust, replace or reinstall the preemption system due to reconstruction of the intersection or upgrading of the signals, it shall be done by MCHD at MCHD's expense.

ARTICLE 5. INSPECTION OF WORK

- A. The State shall make suitable and complete inspection of all materials, and equipment, and the work of installation to determine and permit certification that the components meet all applicable requirements and are in suitable condition for operation and maintenance by MCHD or its contractor after its completion. All components of the system will be subject to random testing and inspections by the State.
- B. MCHD or its contractor will provide opportunities, facilities, and representative samples, as may be required, to enable the State to carry on initial and random inspections of all materials and application methods; sufficient to afford determination and certification by the State that all parts of the installation and the component materials comply with the State standards and specifications. The State will promptly notify MCHD or its contractor of any failure of materials, equipment, or installation methods, and MCHD or its contractor will take such measures necessary to obtain acceptable systems components and installation procedures without delay.

ARTICLE 6. RESPONSIBILITIES OF THE PARTIES

The parties agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives and agents. State shall not be held responsible for the operation (or non-operation) of the preempt equipment, or for any effect it may have on emergency vehicle response.

ARTICLE 7. DE-ACTIVATION OF THE PREEMPT SYSTEM

The State reserves the right to disconnect the preempt system from the traffic signals should any problem arise affecting the State including that the State has determined that the preemption is being abused. The State will notify the appropriate MCHD office of the de-activation of the preempt system. Upon correction of the problem the preempt system would be re-connected.

ARTICLE 8. PREEMPTION INSTALLATION REQUIREMENTS

MCHD or its contractor shall furnish and install an aluminum lockable cabinet for the preemption system equipment. The preemption cabinet shall be attached to the State's traffic signal cabinet by means of a two (2) inch Myer's hub supplied by MCHD or its contractor. MCHD or its contractor will furnish and install a Cannon type disconnect plug between the State's traffic signal cabinet and the preemption cabinet. The State will furnish 120 volts AC power to the preemption cabinet for all auxiliary equipment. All transformation of power shall take place within the preemption cabinet. The State will allow the preemption equipment to monitor all outgoing green traffic signal indications. The preemption equipment will supply a maximum of four preemption inputs.

ARTICLE 9. REPORTS

Upon written request, MCHD will be required to supply the State with a list of preemptions. The list shall show date, time, intersection, direction, and duration of each preemption and vehicle identification information of the emergency vehicle requesting each preemption. At the request

of the State, the Local Government shall submit any information required by the State in the format directed by the State.

ARTICLE 10. REMEDIES

Violation or breach of contract terms by MCHD or its contractor shall be grounds for termination of the agreement, and any increased cost arising from MCHD or its contractor's default, breach of contract, or violation of terms shall be paid for by MCHD or its contractor. This agreement shall not be considered as specifying the exclusive remedy for default, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

If at any time, MCHD or its contractor fails to assume the maintenance and operations responsibilities for the preemption systems in a satisfactory manner as determined by the State, the State reserves the right to arrange for maintenance and operations at the expense of MCHD or its contractor. The State shall contact the appropriate MCHD authority prior to the arrangement for alternative maintenance.

ARTICLE 11. INSURANCE

MCHD shall provide necessary safeguards to protect the public on State-maintained highways including adequate insurance for payment of any damages which might result during the construction, maintenance and operation of the preemption equipment, and to save the State harmless from damages, to the extent of said insurance coverage and insofar as it can legally do so. Prior to beginning work on the State's right-of-way, MCHD's construction contractor shall submit to the State a fully executed copy of the State's form 1560 Certificate of Insurance and shall maintain the required coverage during the construction of all work associated with this agreement.

ARTICLE 12. SUBLETTING

MCHD or its contractor shall not sublet or transfer any portion of its responsibilities and obligations under this agreement unless specifically authorized in writing by the State. In the event MCHD or its contractor enters into subcontracts, the subcontractors must adhere to the provisions of this agreement.

ARTICLE 13. SUCCESSORS AND ASSIGNS

MCHD or its contractor shall not assign or otherwise transfer its rights or obligations under this agreement except with the prior written consent of the State.

ARTICLE 14. LEGAL CONSTRUCTION

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.

ARTICLE 15. INSPECTION OF CITY'S BOOKS AND RECORDS

- A.** The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract 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.
- B.** The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract.

Acceptance of funds directly under the contract or indirectly through a subcontract under this contract 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. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

ARTICLE 16. NOTICES

All notices to either party by the other required under this Agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to such party at the following respective addresses:

Montgomery County Hospital District: <hr/> <hr/> <hr/> <hr/>	State: <u>TEXAS DEPARTMENT OF TRANSPORTATION</u> <u>DISTRICT ENGINEER</u> <u>P.O. BOX 1386</u> <u>HOUSTON, TEXAS 77251-1386</u>
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All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party hereto may change the above address by sending written notice of such change to the other in the manner provided herein.

ARTICLE 17. GOVERNING LAWS AND VENUE

This agreement shall be construed under and in accordance with the laws of the State of Texas. Any legal actions regarding the parties' obligations under this agreement must be filed in Travis County, Texas.

ARTICLE 18. PRIOR AGREEMENTS SUPERSEDED

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

IN WITNESS WHEREOF, the State and MCHD have signed duplicate counterparts of this agreement.

MONTGOMERY COUNTY HOSPITAL DISTRICT

Executed on behalf of MCHD by:

By _____ Date _____

Typed or Printed Name and Title _____

THE STATE OF TEXAS

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By _____ Date _____
District Engineer

TOWER LICENSE AGREEMENT

This Tower License Agreement ("**Agreement**") is made by and between The Montgomery County Hospital District, a political subdivision of the State of Texas; The City of Conroe, Texas, a political subdivision of the State of Texas, both of which are jointly referred to as Licensors, and The Montgomery County, Texas, a political subdivision of the State of Texas, ("**Licensee**"), for the installation and operation of certain described communications equipment for the Montgomery County Sheriff's Office.

I. **TOWER INFORMATION:**

Site Name: Magnolia Communications Tower

Address and/or location of Tower Facility: 14583 FM 1488, Magnolia, TX 77354

Tower Facility Coordinates: Lat. 30-13-38 N NAD83 Long. 095-41-36 W NAD83

II. **NOTICE & EMERGENCY CONTACTS:**

- Licensors' local emergency contact: Justin Evans MCHD 936-537-9309
Tammie Rushing, City of Conroe Facilities Manager, 936-520-8979
- Licensee's local emergency contact: Damon Hall, Captain 936-538-3272
- Notices to Licensors shall be sent to the address below to the attention of
City of Conroe
Attn: Tammie Rushing, Facilities Manager
300 West Davis, Suite 230
Conroe, TX 77301

With a copy to:
Montgomery County Hospital District
Attention: Accounting
1400 S. Loop 336W
Conroe, TX 77304

- Notices to Licensee shall be sent to the address below to the attention of:
Montgomery County Sheriff's Office
Attn: Damon Hall, Captain
104 Academy Drive
Conroe, TX 77301

III. **PERMITTED USE OF TOWER FACILITY BY LICENSEE:**

- Permitted Frequencies: Transmitting and Receiving Frequencies: See Exhibit A for specific frequencies.
- Antenna mount height on tower: See Exhibit A for specific location
- All other permitted uses of the Tower Facility including Licensee's Approved Equipment ("Approved Equipment"), and the Licensed Space are further described in section 4 of this Agreement and Exhibits A and B attached hereto.

IV. **FEES & TERM**

Monthly License Fee: 3 microwave dishes \$2,970 and 3 antennas \$3,000.00 = (\$5,970.00), adjusted on the anniversary of the Commencement Date of this Agreement and on each anniversary thereafter during the Initial Term and during any Renewal Terms by the "Annual Escalator". The Annual Escalator shall be three percent (3%) per year. Payment of the monthly license fee shall be made and subject to the Texas Prompt Payment Act, Chapter 2251 of the Texas Government Code.

Site Inspection Fee : 0.

Electricity will be provided by _____ Licensor or X Licensee. If electricity for operation of Approved Equipment is to be provided by Licensor, with the cost of such electricity to be paid by Licensee at cost subject to adjustment pursuant to Section 5(b). If electricity for operation of Approved Equipment is to be provided by Licensee, all cost of such electricity and installation costs are the sole responsibility of Licensee.

Initial Term: A period of five (5) years beginning on the Commencement Date. The "**Commencement Date**" shall be April 25, 2018 (date).

Renewal Terms: Additional periods of five (5) years each.

V. TERMS & CONDITIONS

The attached terms and conditions are incorporated herein by this reference.

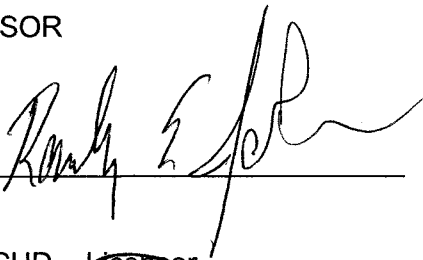
VI. OTHER PROVISIONS:

Notwithstanding anything to the contrary in this Agreement, the offer expressed to Licensee in this Agreement shall automatically become null and void with no further obligation by either party hereto if a structural analysis of the Tower Facility completed after the execution of this Agreement by Licensor but before the commencement of the installation of Licensee's Approved Equipment indicates that the Tower Site is not suitable for Licensee's Approved Equipment unless Licensor and Licensee mutually agree that structural modifications or repairs shall be made to the Tower Site on mutually agreeable terms.

- A) In no event shall Licensee's use of the Tower Facility, or operation of any of its equipment thereon, be conducted in a manner that interferes with Licensor's lighting system located on any of the towers, building systems, or related facilities. In the event that such interference does occur, Licensee and Licensor shall meet and confer regarding the cause of interference, and if it is determined that such interference is caused by Licensee's equipment, then Licensee shall immediately take steps necessary to mitigate the interference. In the event that Licensee is unable to mitigate such interference, then Licensee shall be solely responsible to reimburse Licensor for any and all costs required to modify and/or upgrade Licensor's lighting system, to comply with all necessary FAA/FCC regulations, as a result of said interference. In the event that Licensee's equipment causes interference as described in this paragraph, Licensee shall have the option of terminating this License Agreement immediately without penalty and shall not be required to pay any costs to modify or upgrade Licensor's lighting system(s).
- B) In the event that Licensor determines a Shared Site Interference Study is required, Licensor and Licensee agree and acknowledge that this Agreement shall be contingent upon a satisfactory result of said Shared Site Interference Study.

Magnolia Communication Tower
14583 FM 1488
Magnolia, TX 77354
Site #1282225

LICENSOR

By: 

For MCHD - Licensor

By: 

For City of Conroe - Licensor

Date: May 24, 2018

LICENSEE,
MONTGOMERY COUNTY, TEXAS

By: 
CRAIG DOYAL,
COUNTY JUDGE

Date: APR 24 2018

TERMS AND CONDITIONS

1. **DEFINITIONS.** Capitalized terms defined in the body of this Agreement are indexed by location on Appendix I attached hereto. Capitalized terms used in Agreement but not defined herein are defined in Appendix I.
2. **GRANT OF LICENSE.** Subject to the other terms of this Agreement, Licensors hereby grants Licensee a non-exclusive license to install, maintain, repair, and operate the Approved Equipment at the Licensed Space. All Approved Equipment shall be and remain Licensee's personal property throughout the Term of this Agreement. Licensors shall maintain the communication facility located on the Tower Facility in good order and repair, wear and tear, damage by fire, the elements or other casualty excepted. In no event shall Licensee's license as granted herein include rights to use in any fashion the air space above the Approved Equipment, and Licensors reserves the right to install, construct and/or operate additional improvements or equipment of Licensors or others above Licensee's Approved Equipment, including Licensee's shelter (commonly referred to as "stacking"), provided that such additional improvements or equipment do not materially and adversely interfere with the access to and operation of the Approved Equipment, including Licensee's shelter. Licensee is not required to utilize a stackable shelter, provided that, if Licensee opts to install a shelter that is not stackable and if Licensors receives an offer to license the air space above the Licensee's non-stackable shelter by a proposed subsequent user, Licensors may, at its election, upon 45 days prior written notice require the Licensee to replace such non-stackable shelter with a stackable shelter of a comparable size, provided that the proposed subsequent user agrees in writing to be wholly responsible for the cost of the Licensee's shelter replacement. Licensors grants Licensee a right of access to the Tower Facility 24 hours per day, 7 days per week during the Term and a designated location for the installation, maintenance, and repair of Licensee's utilities over, under or across the Tower Facility (collectively, "**Easement**"). Licensee shall be responsible for any and all damage or loss that results from the installation of any cables or utility wires by Licensee or any company or person retained by Licensee (including a public utility company), including, without limitation, any damage or loss that results from the accidental cutting of utility wires or cables of any other party operating at the Tower Facility. Licensors shall provide Licensee with one set of keys and/or codes to access the Tower Facility. Licensee shall be responsible for ensuring that Licensors has, at all times, a complete and accurate written list of all employees and agents of Licensee who have been provided the keys or access codes to the Tower Facility. Licensors shall have the right to continue to occupy the Tower Facility and to grant rights to others for the Tower Facility in its sole discretion. Licensee shall have no property rights or interest in the Tower Facility or the Easement by virtue of this Agreement, other than those rights specifically granted herein.
3. **EXHIBITS.** In the event of inconsistency or discrepancy between (a) Exhibit A and Exhibit B hereto, Exhibit A shall govern.
4. **USE.** Licensee shall be permitted the non-exclusive right to install, maintain, repair, operate, service, modify and/or replace its Approved Equipment at the Licensed Space, which Approved Equipment shall be utilized for the transmission and reception of wireless voice and data communications signals (such transmission and reception to be solely within the Permitted Frequencies and, if applicable within the spectrum licensed to Licensee by the FCC). If as of the Effective Date, Licensee's wireless business consists of a one-way network which requires only that signals be transmitted from the Tower Facility, then notwithstanding the foregoing sentence, Licensee's use of Tower Facility under this Agreement shall be limited to the transmission of wireless voice and data communications signals. Licensee's permitted use with respect to the Licensed Space shall be limited solely to that enumerated in this section, and, except pursuant to separate agreement with Licensors, no person or entity other than Licensee shall have the right to

install, maintain or operate its equipment or transmit or receive communications at, or otherwise use, the Licensed Space.

5. LICENSE FEES; TAXES; ASSESSMENTS.

- (a) **Monthly License Fee.** On or about the first day of each calendar month, beginning on or about April 25, 2018, Licensor shall submit to Licensee an invoice for the fee for that month. Licensee shall pay this invoice in accordance with the Texas Prompt Payment Act, Chapter 2251 of the Texas Government Code. If the Commencement Date is not the first day of a calendar month, the Monthly License Fee for any partial month shall be prorated on a daily basis.
- (b) **Utilities.** All utility services installed on the Tower Facility for the use or benefit of Licensee shall be made at the sole cost and expense of Licensee and shall be separately metered from Licensor's utilities. Licensee shall be solely responsible for extending utilities to the Tower Facility as necessary for the operation of the Approved Equipment and for the payment of utility charges including connection charges and security deposits incurred by Licensee. Licensee shall obtain and pay the cost of telephone connections, the installation of which shall be in compliance with the procedures for installation and maintenance of Approved Equipment set forth herein.
- (c) **Taxes.** To the extent that Licensee is not exempt by law, Licensee shall be responsible for the payment of any applicable taxes, fees or governmental assessments against any equipment, personal property and/or improvements owned, leased or operated by Licensee or directly associated with Licensee's use of the Licensed Space. Except as provided immediately hereinafter, If applicable, and to the extent that Licensee is not exempt by law, Licensor shall pay all real property taxes Licensor is obligated to pay. Licensee shall reimburse Licensor for any increases in real property taxes which are assessed as a direct result of Licensee's improvements to or Approved Equipment located on the Tower Facility within 30 days of Licensor's request for such reimbursement. Upon Licensee's request, Licensor shall provide to Licensee copies of the documentation from the taxing authority, reasonably acceptable to Licensee, indicating the increase is due to Licensee's improvements or Approved Equipment.
- (d) **Payment Address.** All payments due under this Agreement shall be made to Licensor at Licensor's Remittance Address as more particularly shown on page 1 of this Agreement or such other address as Licensor may notify Licensee of in writing.

6. TERM.

- (a) **Initial Term.** The Initial Term of this Agreement shall be as specified in Section IV.
- (b) **Renewal Term.** The term of this Agreement may be extended for each of the Renewal Terms as specified on page 1 of this Agreement, provided that at the time of each such renewal, (1) Licensee is not in default hereunder and no condition exists which if left uncured would with the passage of time or the giving of notice result in a default by Licensee hereunder and (2) the original Licensee identified in Section IV of this Agreement has not assigned, sublicensed, subleased or otherwise transferred any of its rights hereunder except to, if at all, a Permitted Affiliate (as defined in section 19 herein). Provided that the foregoing conditions are satisfied, this Agreement shall automatically renew for each successive Renewal Term unless either Party notifies the other in writing of it's intention not to renew this Agreement at least 180 days prior to the end of the then existing Term.

(c) **Holdover Term.** If Licensee fails to remove the Approved Equipment at the expiration of the Term without a written agreement, such failure shall be deemed to extend the terms of this Agreement on a month-to-month basis under the same terms and conditions herein, and upon 30 days' prior written notice from either Licensor or Licensee to the other; provided, however, nothing contained herein shall grant Licensee the unilateral right to extend the Term of this Agreement after the expiration of the Term. In addition to the Monthly License Fee payable to Licensor in the event of an extension under this subsection 6(c), Licensee agrees to the fullest extent allowed by law indemnify and hold Licensor harmless from any Damages arising out of or in connection with the extension, the operation of the Approved Equipment at the Tower Facility and Licensee's failure to perform all of its obligations under this Agreement at the termination or earlier expiration of this Agreement.

7. LIMITED COMMON EXPENSES. Licensee and Licensor acknowledge that a portion of the License Fee is attributable to the following costs, as applicable: (1) all common expenses incurred for the operation, maintenance, repair and replacement of common facilities at the Tower Facility including, without limitation, fences, gates, access roads, and the Tower; (2) all expenses incurred for the operation, maintenance, repair and replacement associated with any building or shelter in which Licensee licenses space from Licensor, including, without limitation, the physical structure of the building, HVAC system, and common utility expenses; and (iii) all expenses incurred for the operation, maintenance, repair and replacement associated with any generator, or other backup power source owned by the Licensor to which Licensee is connected, including, without limitation, fuel expenses but excluding any return of capital costs (collectively, the "**Maintenance Expenses**"). Licensor may review the Maintenance Expenses annually, and, if, as the result of such review, Licensor determines, in its sole discretion, the aggregate Maintenance Expenses incurred at the Tower Facility by Licensor have increased by more than 10% over such Maintenance Expenses as of the License Commencement Date or as of the date of the last License Fee increase resulting from increased Maintenance Expenses, Licensor may, but is not required to, impose an additional fee for Licensee's share of such an increase in the Maintenance Expenses in an amount equal to Licensee's pro rata share at the Tower Facility. Licensee's pro rata share shall be determined by dividing "1" by the number of users on the Tower Facility as of the date each such additional fee is assessed. If such a fee is imposed, Licensor shall adjust the License Fee to include such fee and shall provide Licensee at least 30 days written notice of such increase in the License Fee with sufficient detail supporting the increase in Maintenance Expenses. Any such change in the License Fee resulting from an increase in the Maintenance Expenses will take effect with the next payment of the License Fee coming due after Licensee's receipt of such notice and subject to the approval and certification of such funds by Montgomery County, Texas. Licensor's election not to conduct such a Maintenance Expenses review in any given year during the term of a Schedule shall not operate as a waiver of Licensor's right to conduct such a review and adjust the License Fee accordingly in any other such year. In addition to the foregoing, in the event that Licensee licenses space in a building or equipment shelter owned by Licensor, Licensee shall reimburse Licensor for its proportionate share of any common expenses, repairs or maintenance of such building or shelter (based upon the number of licensees utilizing such building or shelter during the subject period) that the Licensor bears with respect to the applicable building, including, without limitation, air conditioning, common utilities, and repair of the building structure and roof. All such payments shall be made by Licensee in addition to the payment of the License Fee and paid within 30 days after receipt of a statement setting forth the amount payable for third party costs incurred, which statement shall be accompanied by reasonably sufficient backup information, if applicable, so as to enable Licensee to verify the information contained in such statement.

8. SITE INSPECTION. Before the date of any modifications to or installation of additional Approved Equipment, Licensee shall pay Licensor the Site Inspection Fee as defined on page 1 of this

Agreement. In the event that Licensor installs such modified or additional Approved Equipment, Licensor shall waive the Site Inspection Fee with respect to such installation. Licensee acknowledges that any Site Inspection performed by Licensor of Licensee's installation is for the sole purpose and benefit of the Licensor and its affiliates, and Licensee shall not infer from or rely on any inspection by Licensor as assuring Licensee's installation complies with any applicable federal, state or local laws, ordinances, rules and regulations, that the installation was performed in a good, workmanlike manner or that such installation will not cause impermissible or unlawful interference.

9. **LABELING.** Licensee shall identify the Approved Equipment (unless such cabinet is located in a building owned by Licensee) with labels permanently affixed thereto, indicating Licensee's name, contact phone number, and installation date. Licensee's coaxial cables shall be labeled at both the top and bottom of the Tower. If Licensee fails to so identify the Approved Equipment, after providing at least 30 days written notice to Licensee by Licensor, Licensor may, in its sole discretion, declare Licensee to be in default of its obligations under this Agreement, terminate electric power to the Approved Equipment and remove the Approved Equipment from the Tower, or Licensor may label the Approved Equipment and assess against Licensee a fee based upon the hourly cost of labeling the equipment ("**Labeling Fee**"). The Labeling Fee shall become immediately due and payable upon receipt of invoice from the Licensor. Licensee's right to cure under section 21 of this Agreement shall not be applicable to Licensee's failure to properly label its Approved Equipment. If Licensor is unable to identify the Equipment as belonging to Licensee as a result of Licensee's failure to label the Approved Equipment, Licensor shall not be responsible to Licensee for any Damages incurred by Licensee arising from the interruption of Licensee's service caused by Licensor.

10. **IMPROVEMENTS BY LICENSEE.**

- (a) **Installation and Approved Vendors.** Prior to the commencement of any construction or installation work (the "**Work**") on the Tower Facility, Licensee shall submit to Licensor for review and approval, which approval shall not be unreasonably withheld, detailed plans and specifications accurately describing all aspects of the proposed Work. Licensee shall provide notice to Licensor no less than 5 days prior to the date upon which Licensee intends to commence any construction or installation at the Tower Facility, together with a construction schedule, so Licensor has the opportunity to be present during any such installation or construction. Licensee shall not commence Work on the Tower Facility until Licensor issues to Licensee a Notice to Proceed (NTP). Licensor shall issue a NTP only upon request from the Licensee and receipt of the following complete and accurate documentation: (1) evidence that any contingencies set forth in the approval of Licensee's Application have been satisfied; (2) evidence that Licensee has obtained all required governmental approvals including, but not limited to, zoning approvals, building permits, and any applicable environmental approvals including copies of the same; (3) a copy of the plans and specifications that have been approved by Licensor for the proposed equipment installation; (4) evidence that any contractors other than Licensor that will be performing work on the Tower Facility are on Licensor's approved vendor list, with valid and current worker's compensation and general liability insurance certificates on file with Licensor naming Licensor as an additional insured and which otherwise satisfy the insurance coverage requirements set forth in section 15(d) of this Agreement; and (5) a construction schedule. Notwithstanding anything to the contrary in this Agreement, Licensor reserves the right, in its sole discretion, to refuse to permit any person or company to climb the Tower.
- (b) **Structural Analysis/Interference Analysis.** Prior to the commencement of any Work on the Tower Facility by or for the benefit of the Licensee, Licensor may, in its reasonable discretion, perform or cause to be performed a structural analysis or require a professional engineer's

certified letter to determine the availability of capacity at the Tower Facility for the modification of any Approved Equipment and/or additional equipment at the Licensed Space by Licensee. Subject to the approval and certification of such funds by Montgomery County, Texas, Licensee agrees to remit payment to Licensor for all reasonable costs and expenses incurred by Licensor for such structural analysis or professional engineer's certified letter ("**Structural Analysis Fee**") within 30 days following receipt of an invoice from Licensor. The foregoing payment shall be at Licensor's prevailing rates for the performance of same or the amount Licensor's vendor is then charging Licensor, as applicable. Prior to the commencement of any construction or installation on the Tower Facility by or for the benefit of the Licensee and/or the modification of the Licensee's Permitted Frequencies propagated from the Licensed Space, Licensor may elect to perform a shared site interference study ("**SSIS**"). In the event Licensor elects to perform a SSIS, Licensor and Licensee shall meet and confer regarding the SSIS and any fees or costs to be assessed against Licensee. Upon receipt of written invoice from Licensor, and subject to the approval and certification of such funds by Montgomery County, Texas, Licensee shall pay Licensor a fee based upon the cost of the study ("**SSIS Fee**"). This fee shall be payable at the time of Licensee's Application or immediately upon a determination by Licensor that a SSIS is required. In the event a SSIS is performed after the execution of this Agreement by Licensor but prior to the installation of Licensee's Approved Equipment, and such SSIS indicates that the proposed installation of Licensee's Approved Equipment on the Tower is acceptable, such an indication in no way relieves the Licensee of its obligations under section 11 herein.

- (c) **Equipment; Relocation, Modification, Removal.** Licensor hereby grants Licensee reasonable access to the Licensed Space for the purpose of installing, maintaining, repairing, and operating the Approved Equipment and its appurtenances. Except as otherwise provided, Licensee shall be responsible for all site Work to be done on the Licensed Space pursuant to this Agreement. Licensee shall provide all materials and shall pay for all labor for the construction, installation, operation, maintenance and repair of the Approved Equipment. Licensee shall not construct, install or operate any equipment or improvements on the Tower Facility other than those which are described on Exhibit A, alter the Permitted Frequencies, or alter the operation of the Approved Equipment. Licensee shall submit an Application, utilizing Licensor's then current form, to request the right to replace or modify its Approved Equipment, alter the Permitted Frequencies or increase the Ground Space, which Application shall be accompanied by a Relocation Application Fee. Licensor shall evaluate for approval the feasibility of Licensee's request, which approval shall be in Licensor's sole discretion. Licensee acknowledges that any such relocation or modification of the Approved Equipment may result in an increase in the Monthly License Fee. An amendment to this Agreement shall be prepared to reflect each addition or modification to Licensee's equipment to which Licensor has given its written consent and the resulting increase in the Monthly License Fee, if any. Licensee shall have the right to remove all Equipment at Licensee's sole expense on or before the expiration or earlier termination of the License provided Licensee repairs any damage to the Tower Facility or the Tower caused by such removal. Within 30 days of the expiration or termination of this Agreement for any reason, Licensee shall: (1) remove the Approved Equipment and any other property at the Tower Facility of Licensee from the Licensed Space at Licensee's sole risk, cost, and expense; (2) deliver the Licensed Space in substantially the same and in as good a condition as received (ordinary wear and tear excepted); and (3) repair any damage caused by Licensee's removal of the Approved Equipment within a reasonable amount time of the occurrence of such damage.

11. RF INTERFERENCE/ USER PRIORITY.

- (a) **Definitions.** For purposes of this section 11, the following capitalized terms shall have the meanings set forth herein:
- (i) **Interference** includes any performance degradation, misinterpretation, or loss of information to a radio communications system caused by unwanted energy emissions, radiations, or inductions, but shall not include permissible interference as defined by the FCC, and in addition, with regard to Unlicensed Frequencies, congestion.
 - (ii) **Licensed Frequencies** are those certain channels or frequencies of the radio frequency spectrum that are licensed by the FCC in the geographic area where the Tower Facility is located.
 - (iii) A **Licensed User** is any user of the Tower Facility, including Licensee, which transmits and/or receives Licensed Frequencies at the Tower Facility, but only with respect to such Licensed Frequencies.
 - (iv) A **Priority User** is any Licensed User of the Tower Facility that holds a priority position in relationship to Licensee for protection from Interference, as determined in this section 11, which status is subject to change as set forth herein.
 - (v) A **Subsequent User** is any user of the Tower Facility that holds a subordinate position in relationship to Licensee for protection from Interference, as determined in this section 11, which status is subject to change as set forth herein.
 - (vi) **Unlicensed Frequencies** are those certain channels or frequencies of the radio frequency spectrum that are not licensed by the FCC and are available for use by the general public in the geographic area where the Tower Facility is located.
 - (vii) An **Unlicensed User** is any user of the Tower Facility, including Licensee, which transmits and/or receives Unlicensed Frequencies at the Tower Facility, but only with respect to such Unlicensed Frequencies.
- (b) **Information.** Licensee shall cooperate with Licensors and with other lessees, licensees or occupants of the Tower Facility for purposes of avoiding Interference and/or investigating claims of Interference. Upon request, Licensee, within 10 business days of Licensors' request, shall provide Licensors with a list of Licensee's transmit and receive frequencies and Approved Equipment specifications necessary to resolve or investigate claims of Interference.
- (c) **Unlicensed Frequencies.** Notwithstanding any other provision contained herein, as among Licensors, Licensee and other users of the Tower or Tower Facility, (1) an Unlicensed User shall have no priority with respect to any other FCC Unlicensed Users with respect to Interference; and (2) an Unlicensed User's rights and obligations with respect to such Interference shall be determined and governed by FCC Rules and Regulations and any other Applicable Law. Licensors expressly disclaims any and all warranties and accepts no responsibility for management, mediation, mitigation or resolution of Interference among FCC Unlicensed Users operating at the Tower Facility and shall have no liability therefor.
- (d) **Licensed Frequencies.** Subject to FCC Rules and Regulations and other Applicable Law, the Parties acknowledge and agree that the accepted industry standard for priority protection from Interference between multiple Licensed Users has been based on the priority of

occupancy of each user to another user of the Tower or Tower Facility, which priority within Licensor has been based on submittal of its collocation Application by any user, including Licensee. Should Application of FCC Rules and Regulations and other Applicable Law not resolve any claims of Interference consistent with subsections 11(e), 11(f) and 11(g) below, as among Licensor, Licensee and other users of the Tower Facility, (i) each Licensed User's priority shall be maintained so long as the Licensed User does not change the equipment and/or frequency that it is entitled to use at the Tower Facility at the time of its initial occupancy (Licensee's occupancy for the purpose of this subsection 11(d) expressly extends back to the date Licensee first used or occupied this Tower Facility which date precedes the Effective Date hereof); and (ii) Licensee acknowledges and agrees that if Licensee replaces its Approved Equipment or alters the radio frequency of the Approved Equipment to a frequency range other than as described on page 1 of this Agreement, Licensee will lose its priority position for protection from Interference with regard to Approved Equipment operating at the new frequency in its relationship to other Licensed Users which are in place as of the date Licensee replaces its Approved Equipment or alters its radio frequency, consistent with this section 11.

(e) Correction.

(i) Licensee. Licensee agrees not to cause Interference with the operations of any other user of the Tower or Tower Facility and to comply with all other terms and provisions of this section 11 imposed upon Licensee. If Licensor determines, in its reasonable discretion based on standard and accepted engineering practices, that Licensee's Approved Equipment is causing Interference to the installations of Licensor or a Priority User, Licensor shall give Licensee written notice of the Interference pursuant to the terms of section 11(e)(iii) below. Licensee shall commence such actions as are necessary to mitigate or eliminate the Interference pursuant to the terms of section 11(e)(iii) below. If Licensee is unable to resolve or eliminate, to the satisfaction of Licensor, such Interference within 30 days from Licensee's initial notification thereof, Licensee will immediately remove or cease operations of the interfering Approved Equipment and Licensee shall have the right terminate this License Agreement immediately without penalty or damages.

(ii) Licensor. Licensor hereby covenants to take commercially reasonable efforts to prohibit a Subsequent User from causing Interference with the operations of Licensee to the extent Licensee is a Priority User pursuant this section 11. If Licensor determines, in its reasonable discretion based on standard and accepted engineering practices, that a Subsequent User's equipment is causing Interference to the installations of Licensee, upon Licensee's request, Licensor shall, within 48 hours of request, commence such actions as are necessary to eliminate the Interference, with the exception of ceasing Subsequent User's operations. In the event that such interference as described in this paragraph can not be corrected to the satisfaction of Licensee, Licensee shall have the right terminate this License Agreement immediately without penalty or damages.

(iii) Government Users. Notwithstanding the foregoing, if another user of the Tower or Tower Facility is a governmental entity, Licensor shall give such governmental entity written notice of the Interference within 5 Business Days of Licensor's determination that such action is reasonably necessary. Licensor shall have the right to give the governmental entity 5 Business Days, or more as specified in the governmental site or occupancy agreement or as required by Applicable Law, from the receipt of such notice prior to Licensor being required to take any actions required by this subsection 11 (e) to cure such Interference.

(f) FCC Requirements Regarding Interference. Nothing herein shall prejudice, limit or impair Licensee's rights under Applicable Law, including, but not limited to, FCC Rules and

Regulations to redress any Interference independently of the terms of this section 11. Notwithstanding anything herein to the contrary, the provisions set forth in this section 11 shall be interpreted in a manner so as not to be inconsistent with Applicable Law, including, but not limited to, FCC Rules and Regulations and nothing herein relieves Licensee from complying with all Applicable Laws governing the propagation of radio frequencies and/or radio frequency interference. The Parties acknowledge that currently FCC Rules and Regulations govern the obligations of wireless telecommunication service providers with respect to the operation of equipment and use of frequencies. Consequently, the provisions set forth in this section 11 are expressly subject to CFR, Title 47, including but not limited to Part 15, et seq, governing Radio Frequency Devices; Part 20, et seq, governing commercial mobile radio services; Part 24, et seq, governing personal communications services; and Part 90, et seq, governing private land mobile radio services. In addition, in accordance with good engineering practice and standard industry protocols, licensees employ a wide range of techniques and practices, including those involving the use of proper types of equipment as well those related to the adjustment of operating parameters, in a mutually cooperative effort to identify and mitigate sources of Interference. The obligation of licensees, including, but not limited to, private paging, specialized mobile radio services, cellular radiotelephone service and personal communications services, to avoid Interference is set forth in 47 CFR Part 90, Subpart N – Operating Requirements, §90.403(e). Claims of Interference are ultimately cognizable before the FCC's Enforcement Bureau, Spectrum Enforcement Division. Licensee shall observe good engineering practice and standard industry protocols, applying such commercially reasonable techniques as constitute best practices among licensees, in the deployment of their frequencies and the operation of the Approved Equipment. If Licensee deploys its frequencies or operates the Approved Equipment in a manner which prevents any other user of the Tower or Tower Facility from decoding signal imbedded in their licensed frequencies such that the Spectrum Enforcement Division makes a determination that the Licensee is the cause of the Interference and Licensee fails or refuses to mitigate or eliminate the Interference within the time and manner proscribed by the Spectrum Enforcement Division, Licensee shall be in default of this Agreement and the remedies set forth in section 22 shall apply.

- (g) **Public Safety Interference.** As of the Commencement Date, Licensors and Licensee are aware of the publication of FCC Final Rule, Private Land Mobile Services; 800 MHz Public Safety Interference Proceeding, FC 04-168, *Federal Register*: November 22, 2004 (Volume 69, Number 224), Rules and Regulations, Page 67823-67853 ("**Final Rule**"). Claims of Interference made by or against users which are public safety entities shall be in compliance with the Final Rule as and when effective, or otherwise in accordance with FCC Rules and Regulations.
- (h) **AM Detuning.** The parties acknowledge that the FCC Rules and Regulations govern the obligations of Licensee with respect to the operation of the Approved Equipment. Consequently, the provisions set forth in this Agreement are expressly subject to the FCC Rules and Regulations, including, but not limited to 47 C.F.R. §§ 27.63, 22.371 and 73.1692. Licensee agrees, at Licensee's sole cost, to comply with the foregoing as well as any and all other FCC rules, regulations and public guidance relating to AM detuning as such provisions currently exist or are hereafter modified. Licensee shall be fully responsible for any pre and/or post installation testing for AM interference at the Tower Facility and for the installation of any new detuning apparatus or the adjustment of any existing detuning apparatus that may be necessary to prevent adverse effects on the radiation pattern of any AM station caused by the modification of or additions to the Approved Equipment. Licensee shall provide Licensors with written proof of such compliance. In the event that Licensee determines that pre or post-installation testing for AM interference is not required at the Tower Facility, such a determination shall be at Licensee's sole risk. If Licensee or Licensors receive a complaint of interference from an AM broadcast station after a Tower is modified to accommodate

Licensee, Licensee shall eliminate such interference within 30 calendar days of the receipt of such complaint. Licensee's failure to eliminate such interference within such 30 day period shall constitute a default under this Agreement and Licensors shall have the right to eliminate such interference at Licensee's expense. Licensee further agrees to indemnify Licensors, to the extent permitted by law and to the extent appropriations have been set aside by Montgomery County, Texas therefore, in the event that Licensee's failure to comply with the FCC Rules and Regulations prior to installation/modification of the Approved Equipment results in any administrative investigation, proceeding or adjudication with respect to Licensors. In the event that Licensee is unable to eliminate the interference described in this paragraph without obstructing Licensee's own operations and use of this tower, Licensee shall have the right to terminate this License Agreement immediately without penalty or damages.

12. SITE RULES AND REGULATIONS. Licensee agrees to comply with the reasonable rules and regulations established from time to time at the Tower Facility by Licensors, which may be modified by Licensors from time to time upon receipt by Licensee of such revised rules and regulations. Such rules and regulations will not unreasonably interfere with Licensee's use of the Licensed Space under this Agreement.

13. CASUALTY; CONDEMNATION.

(a) **Casualty.** In the event the Tower or other portions of the Tower Facility are destroyed or so damaged so as to materially interfere with Licensee's use and occupancy thereof, Licensors or Licensee shall be entitled to elect to cancel and terminate this Agreement on the date of destruction of that portion of the Tower Facility and any unearned Monthly License Fee paid in advance of such date shall be refunded by Licensors to Licensee within thirty (30) days of the termination date of this Agreement. Notwithstanding the foregoing, Licensors may elect to restore the Tower Facility, in which case Licensee may remain bound hereby pending restoration, but Licensee shall be entitled to an abatement of the Monthly License Fee during the loss of use period. The restoration of the Tower Facility must be sufficiently completed to allow Licensee to utilize the Tower Facility for its designated purposes within 90 days. If the Tower Facility is not so restored within such 90 day time period, then Licensee's sole remedy shall be to terminate this Agreement upon written notice to Licensors.

(b) **Condemnation.** If the whole or a substantial part of the Tower Facility shall be taken by any public authority under the power of eminent domain or in deed or conveyance in lieu of condemnation so as to materially interfere with Licensee's use thereof and benefits therefrom, then Licensors or Licensee shall have the right to terminate this Agreement. Any unearned Monthly License Fee paid in advance of such termination shall be refunded by Licensors to Licensee within 30 days following the termination of this Agreement. Licensee agrees not to make a claim to the condemning authority for any condemnation award to the extent such claim shall diminish or affect the award made to Licensors with regard to such condemnation.

14. COMPLIANCE WITH LAWS. Licensors shall be responsible for compliance with any marking and lighting requirements of the FAA and the FCC applicable to the Tower Facility, provided that if the requirement for compliance results from the presence of the Approved Equipment on the Tower, Licensee shall pay the costs and expenses therefor (including any lighting automated alarm system so required). Licensee has the responsibility of carrying out the terms of Licensee's FCC license with respect to tower light observation and notification to the FAA if those requirements imposed on Licensee are in excess of those required of Licensors. Notwithstanding anything to the contrary in this Agreement, Licensee shall at all times comply with all Applicable Laws and ordinances and all rules and regulations of municipal, state and federal governmental authorities relating to the installation, maintenance, location, use, operation, and removal of the Approved

Equipment and other alterations or improvements authorized pursuant to the provisions of this Agreement.

15. INDEMNIFICATION; INSURANCE.

- (a) **Mutual Indemnity.** To the extent permitted by law and subject to the mutual waiver of subrogation set forth in section 27, Licensee and Licensor each indemnifies the other against and holds the other harmless from any and all costs, demands, Damages, suits, expenses, or causes of action (including reasonable attorneys fees and court costs) which arise out of the use and/or occupancy of the Licensed Space by the indemnifying party. This indemnity does not apply to any Claims arising from the negligence, gross negligence, or intentional misconduct of the Indemnified Party. The indemnities contained herein expressly extend back to the date Licensee first used or occupied this Tower Facility which date precedes the Effective Date hereof.
- (b) **Limits on Indemnification.** To the extent permitted by law, neither party shall be responsible or liable to any of the foregoing Indemnified Parties for any Damages arising from any claim to the extent attributable to any acts or omissions of other licensees or users occupying the Tower Facility or for any structural or power failures or destruction or damage to the Tower Facility except to the extent caused by the sole, joint, or concurrent negligence, gross negligence, or willful misconduct of such party. The limitations on indemnification contained herein expressly extend back to the date Licensee first used or occupied this Tower Facility which date precedes the Effective Date hereof.
- (c) **Survival.** The provisions of this section 15 shall survive the expiration or earlier termination of this Agreement with respect to any events occurring on or before expiration or termination of same whether or not Claims relating thereto are asserted before or after such expiration or termination.
- (d) **Insurance.** Licensor and Licensee shall keep in full force and effect, during the Term of this Agreement, insurance coverage in accordance with Appendix II attached hereto.

16. LIMITATION OF PARTIES' LIABILITY. Nothing in this Agreement is construed as creating any personal liability on the part of any officer, director, employee, or agent of any public body that may be a Party to the License Agreement, and the Parties expressly agree that the execution of the License Agreement does not create any personal liability on the part of any officer, director, employee, or agent of Licensee/ Montgomery County, Texas.

Neither the execution of this Agreement nor any other conduct of either Party relating to this License Agreement shall be considered a waiver by the Licensee/ Montgomery County of any right, defense, or immunity under the Texas Constitution or the laws of the State of Texas.

NEITHER LICENSOR NOR LICENSEE SHALL BE RESPONSIBLE FOR, AND HEREBY WAIVES ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES INCURRED RESULTING FROM (1) LICENSEE'S USE OR LICENSEE'S INABILITY TO USE THE TOWER FACILITY, OR (2) DAMAGE TO THE OTHER'S EQUIPMENT.

17. DISCLAIMER OF WARRANTY. LICENSOR HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ASSOCIATED WITH THE TOWER FACILITY OR THE TOWER. LICENSEE HEREBY ACCEPTS THE TOWER FACILITY "AS IS, WHERE IS, WITH ALL FAULTS."

18. NOTICES. All notices, demands, approvals, requests and other communications shall be in writing to such party at the address listed in the introductory paragraph of this Agreement (and in each case, in the event of notice to Licensor, with a copy of such notice to City of Conroe,

attention: Finance and Administration, 300 W. Davis, Conroe, Texas 77301, or at such other address as such party shall designate by notice to the other party hereto in accordance with this section 18 (the "**Notice Address**") and may be personally delivered; mailed, via United States certified mail, return receipt requested; or transmitted by overnight courier for next Business Day delivery, and, if not delivered personally, shall be deemed to be duly given or made 2 Business Days after deposit with the applicable carrier or courier. Notices will be deemed to have been given upon either receipt or rejection.

19. ASSIGNMENT; SUBLEASING. Licensee may not assign this Agreement as a whole, or any portion of Licensee's rights, title, and interests hereunder without Licensors prior written consent.

20. RESERVED.

21. DEFAULT. The occurrence of any of the following instances shall be considered to be a default or a breach of this Agreement by Licensee: (1) any failure of Licensee to pay the Monthly License Fee, or any other charge for which Licensee has the responsibility of payment under this Agreement, within 10 days of the date following written notice to Licensee from Licensors, or its designee, of such delinquency, (2) any failure of Licensee to perform or observe any term, covenant, provision or condition of this Agreement which failure is not corrected or cured by Licensee within 30 days of receipt by Licensee of written notice from Licensors, or its designee, of the existence of such a default; except such 30 day cure period shall be extended as reasonably necessary to permit Licensee to complete a cure so long as Licensee commences the cure within such 30 day cure period and thereafter continuously and diligently pursues and completes such cure; (3) failure of Licensee to abide by the interference provisions as set forth in section 11; (4) Licensee shall become bankrupt, insolvent or file a voluntary petition in bankruptcy, have an involuntary petition in bankruptcy filed against Licensee which cannot be or is not dismissed by Licensee within 60 days of the date of the filing of the involuntary petition, file for reorganization or arrange for the appointment of a receiver or trustee in bankruptcy or reorganization of all or a substantial portion of Licensee's assets, or Licensee makes an assignment for such purposes for the benefit of creditors; (5) this Agreement or Licensee's interest herein or Licensee's interest in the Tower Facility are executed upon or attached by any legal proceeding; (6) the imposition of any lien on the Approved Equipment except as may be expressly authorized by this License, or an attempt by Licensee or anyone claiming through Licensee to encumber Licensors interest in the Tower Facility, and the same shall not be dismissed or otherwise removed within 10 Business Days of written notice from Licensors to Licensee.

22. REMEDIES. In the event of a default or a breach of this Agreement by Licensee and after the Licensee's failure to cure the same within the time allowed Licensee to cure such default, if applicable, then Licensors may, in addition to all other rights or remedies Licensors may have hereunder at law or in equity, terminate this Agreement by giving written notice to the Licensee, stating the date upon which such termination shall be effective, accelerating and declaring to be immediately due and payable the then present value of all Monthly License Fees and other charges or fees which would have otherwise been due Licensors absent a breach of the Agreement by Licensee, discounted by an annual percentage rate equal to 3%. Upon the effective date of termination of this Agreement under this paragraph, Licensee shall remove the Approved Equipment within 30 days. If Licensee fails to remove the Approved Equipment within 30 days of the effective date of termination of this Agreement, then Licensors may terminate electrical power to the Approved Equipment, and/or remove the Approved Equipment without being deemed liable for trespass or conversion and store the same at Licensee's sole cost and expense. Licensors shall not be responsible for any damage to Licensee's equipment resulting from removal. To the extent permitted by law, Licensee shall pay all reasonable attorney's fees, court costs, removal and storage fees, and other items of cost reasonably incurred by Licensors in recovering the Monthly License Fee or other fee or charge. To the extent permitted by law, Licensee shall not be

permitted to claim the Approved Equipment until Licensors has been reimbursed for removal, storage fees, and any other fees due and owing under the terms of this Agreement. No endorsement or statement on any check or letter accompanying a check for payment of any monies due and payable under the terms of this Agreement shall be deemed an accord and satisfaction, and Licensors may accept such check or payment without prejudice to its right to recover the balance of such monies or to pursue any other remedy provided by law or in this Agreement. Licensors shall accept any such partial payment for the account of Licensee. Past due amounts under this Agreement will bear interest from the date upon which the past due amount was due until the date paid at the maximum rate allowed by law.

23. GOVERNMENTAL APPROVALS; PERMITS. In the event that any governmental permit, approval or authorization required for Licensors use of, operation of, or right to license space to Licensee at the Tower Facility is terminated or withdrawn by any governmental authority or third party as part of any governmental, regulatory, or legal proceeding, Licensors may terminate this Agreement. Licensee hereby agrees that in the event of a governmental or legal order requiring the removal of the Approved Equipment from the Tower, the modification of the Tower, or the removal of the Tower, Licensee shall remove the Approved Equipment promptly, but in no event later than the date required by such order, at Licensee's sole cost and expense. Licensors shall cooperate with Licensee in Licensee's efforts to obtain any permits or other approvals that may be necessary for Licensee's installation and operation of the Approved Equipment, provided that Licensors shall not be required to expend any funds or undertake any liability or obligation in connection with such cooperation. Licensors may elect to obtain such required approvals or permits on Licensee's behalf, at Licensee's sole cost and expense. In no event may Licensee encourage, suggest, participate in or permit the imposition of any restrictions or additional obligations whatsoever on the Tower Facility or Licensors current or future use or ability to license space at the Tower Facility as part of or in exchange for obtaining any such approval or permit. In the event that Licensee's shelter or cabinets are installed above a third-party or Licensors-owned shelter or building, Licensee shall be solely responsible for obtaining any required approvals, or permits in connection with such shelter or cabinet installation, excepting the consent of other users at the Tower Facility.

24. REPLACEMENT OF TOWER/RELOCATION OF APPROVED EQUIPMENT.

(a) **Replacement of Tower.** Licensors may, at its election, replace or rebuild the Tower or a portion thereof. Such replacement will (1) be at Licensors sole cost and (2) not result in an interruption of Licensee's communications services beyond that which is necessary to replace the new Tower. Licensee may establish a temporary facility on the Tower Facility to provide such services as Licensee deems necessary during any such construction by Licensors so long as adequate space is then available. The location of such temporary facilities shall be subject to Licensors approval. At the request of either Party, Licensors and Licensee shall enter into an amendment to this Agreement to clarify the rights of Licensors and Licensee to the new Tower Facility.

25. EMISSIONS. If antenna power output ("**RF Emissions**") is presently or hereafter becomes subject to any restrictions imposed by the FCC or other governmental agency for RF Emissions standards on Maximum Permissible Exposure ("**MPE**") limits, or if the Tower Facility otherwise becomes subject to federal, state or local rules, regulations, restrictions or ordinances, Licensee shall comply with Licensors reasonable requests for modifications to the Approved Equipment which are reasonably necessary for Licensors to comply with such limits, rules, regulations, restrictions or ordinances and Licensors shall use commercially reasonable efforts to cause all other licensees of the Tower Facility to promptly comply. If Licensors and licensees on the tower cannot reach mutual agreement and it is determined that a engineering evaluation or other power density study is necessary, then all reasonable costs of such an evaluation or study shall be paid

proportionately by Licensee and all other licensees of the Tower within 30 days of Licensor's request therefor. If said study or a study sponsored by any governmental agency indicates that RF Emissions at the Tower Facility do not comply with MPE limits, then Licensee and Licensor, each for itself, shall immediately take any and all steps necessary to ensure that it is individually in compliance with such limits, up to and including cessation of operation, until a maintenance program or other mitigating measures can be implemented to comply with MPE and in addition, Licensor shall use commercially reasonable efforts to cause all other licensees of the Tower to take similar steps necessary to ensure that they are individually in compliance with such limits.

26. **ENVIRONMENTAL.** Licensee covenants that it will not use, store, dispose, or release any Hazardous Substances on the Property in violation of Applicable Law. Licensee agrees to indemnify and save harmless Licensor, to the extent permitted by law and to the extent appropriations have been set aside by Montgomery County, Texas therefore, against any and all Claims, liabilities, causes of action, Damages, orders, judgments, and clean-up costs arising from Licensee's breach of any the covenants contained in this section 26. The obligations of Licensee to indemnify Licensor pursuant to this section 26 shall survive the termination or expiration of this Agreement. The indemnities contained herein expressly extend back to the date Licensee first used or occupied this Tower Facility which date precedes the Effective Date hereof.

27. **SUBROGATION.**

(a) **Waiver.** Licensor and Licensee waive all rights against each other and any of their respective consultants and contractors, agents and employees, for Damages caused by perils to the extent covered by the proceeds of the insurance provided herein, except such rights as they may have to the insurance proceeds. All insurance policies required under this Agreement shall contain a waiver of subrogation provision under the terms of which the insurance carrier of a Party waives all of such carrier's rights to proceed against the other Party. Licensee's insurance policies shall provide such waivers of subrogation by endorsement. The Licensee shall require by appropriate agreements, written where legally required for validity, similar waivers from its contractors and subcontractors. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

(b) **Mutual Release.** Notwithstanding anything in this Agreement to the contrary, Licensor and Licensee each release the other and its respective affiliates, employees and representatives from any Claims by them or any one claiming through or under them by way of subrogation or otherwise for damage to any person or to the Tower Facility and to the fixtures, personal property, improvements and alterations in or on the Tower Facility that are caused by or result from risks insured against under any insurance policy carried by each and required by this Agreement, provided that such releases shall be effective only if and to the extent that the same do not diminish or adversely affect the coverage under such insurance policies and only to the extent of the proceeds received from such policy.

28. **GOVERNING LAW, VENUE, SEVERABILITY.** This Agreement shall be governed by the laws of the State of Texas. Any litigation in any way relating to this Agreement shall be brought in State Court in a District Court in Montgomery County, Texas. If any provision of this Agreement is found invalid or unenforceable under judicial decree or decision, the remaining provisions of this Agreement shall remain in full force and effect. Any approval, consent, decision, or election to be made or given by a Party may be made or given in such Party's sole judgment and discretion, unless a different standard (such as reasonableness or good faith) is provided for explicitly.

29. **FINANCING AGREEMENT.** Licensee may, upon written notice to Licensors, mortgage or grant a security interest in the Approved Equipment to any such mortgagees or holders of security interests including their successors and assigns. No such security interest shall extend to, affect or encumber in any way the interests or property of Licensors.

30. **FUNDING OUT PROVISION**

Notwithstanding any other provision herein, Licensors acknowledge and agrees that funds for payment have been provided through the Montgomery County budget approved by the Montgomery County Commissioners' Court for this fiscal year only. Texas law prohibits the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. The parties expressly understand and agree that anticipated obligations that may arise past the end of the current Montgomery County fiscal year, including payments due herein, shall be subject to and contingent upon budget approval.

31. **MISCELLANEOUS.** Upon Licensors' written request, Licensee shall promptly furnish Licensors with complete and accurate information in response to any reasonable request by Licensors for information about any of the Approved Equipment or utilities utilized by Licensee at the Tower Facility or any of the channels and frequencies utilized by Licensee thereon. Either Licensors or Licensee may be referred to herein as a "**Party**" and both Licensors and Licensee together may be referred to herein as the "**Parties**". Upon the termination or expiration of this Agreement, Licensee shall immediately upon the request of Licensors deliver a release of any instruments of record evidencing such Agreement. Notwithstanding the expiration or earlier termination of the Agreement, sections 15, 16, 17, and 26 shall survive the expiration or earlier termination of the Agreement. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision herein (whether or not similar), nor shall such waiver constitute a continuing waiver unless expressly agreed to in writing by the affected Party. This Agreement constitutes the entire agreement of the Parties hereto concerning the subject matter herein and shall supersede all prior offers, negotiations and agreements, whether written or oral. No revision of the Agreement shall be valid unless made in writing and signed by authorized representatives of both Parties. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute but one instrument. The Parties agree that a scanned or electronically reproduced copy or image of this Agreement shall be deemed an original and may be introduced or submitted in any action or proceeding as a competent evidence of the execution, terms and existence of this Agreement notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Agreement and without the requirement that the unavailability of such original, executed counterpart of this first be proven. Licensors hereby certifies that Licensors is not in default or breach of any of its obligations under any existing license, lease or other written or oral agreements between Licensee (including any predecessor in interest to Licensee) and Licensors (including any predecessor in interest to Licensors) entered into for this Tower Facility, and that as of the Effective Date Licensee has no claims against Licensors under any such agreements. Licensors further represents and warrants that it has the legal right to grant ingress and egress rights over the land to the tower and the legal right to grant this License to Licensee.

32. **CONFIDENTIALITY.** Neither Party shall use the other's name, service mark or trademark in any public announcement or advertisement without the prior written consent of the other Party, which may be withheld in such Party's sole and absolute discretion.

The offer of license expressed in this Agreement shall automatically expire and become void if two unaltered counterparts of this Agreement, executed by Licensee, are not delivered to Licensors within 30 days of the Effective Date.

Magnolia Communication Tower
14583 FM 1488
Magnolia, TX 77354
Site #1282225

ATTACHED EXHIBITS:

Exhibit A: List of Approved Equipment and location of the Licensed Space

Exhibit B: Site Drawing indicating the location of Ground Space for Licensee's equipment shelter or space in Licensor's building (as applicable)

Appendix I: Definitions

Appendix II: Insurance

Exhibit A

List of Approved Equipment and location of Licensed Space, including Permitted Frequencies

- (3) Sinclair SC479-HF1LDF Omni Directional 700/800 MHz Antennas
- (1) RFS PAD6-59AC 6' Microwave Dish
- (1) Andrew PAR6-59 6' Microwave Dish
- (1) Andrew PAR8-59 8' Microwave Dish
- (1) TX/RX Tower Top Amplifier (TTA)
- (3) Runs of EW60 Elliptical Waveguide to the Microwave Dishes
- (2) Runs of 1 ¼" Helix cable to two of the three afore listed Sinclair Antennas
- (1) Run of 7/8" Helix cable to the afore listed TTA
- (1) Run of ½" Helix cable to the afore mentioned TTA
- (1) ½" Helix 6' cable jumper between the 3rd afore listed Sinclair Antenna
- (1) 12' X 26' Prefab Communications Shelter

Initials: YD / _____

Magnolia Communication Tower
14583 FM 1488
Magnolia, TX 77354
Site #1282225

Exhibit B
Site Drawing indicating the location of Ground Space for Licensee's equipment shelter or space in Licensor's building (as applicable)

Licensor to provide Licensee with Site Drawing indicating location of Ground Space.

Initials: YD /

Appendix I Defined Terms

Affiliate(s): Any corporation, partnership, limited liability company or other entity that (1) is controlled directly or indirectly (through one or more subsidiaries) by Licensee, or (2) is the successor or surviving entity by a merger or consolidation of Licensee pursuant to Applicable Law, (3) purchases all or substantially all of the assets of Licensee. For purposes of this definition, "**control**" means the possession of the right through the ownership of 50% or more of the shares with voting rights to effectively direct the business decisions of the subject entity.

Agreement: defined in the introductory paragraph.

Annual Escalator: defined in section IV on page 1.

Applicable Law: All applicable statutes, ordinances, laws, regulations and directives of any federal, state or local governmental unit, authority or agency having jurisdiction over a Licensed Space or affecting the rights and obligations of Licensor or Licensee under this Agreement, including without limitation, the Communications Act of 1934, as amended from time to time, FCC Rules and Regulations, and the rules, regulations and written policies and decisions of the FAA.

Application: defined in section IV on page 1.

Application Fee: defined in section IV on page 1.

Approved Equipment: the communications system, including antennas, radio equipment, cabling and conduits, shelter and/or cabinets and other personal property owned or operated by Licensee at the Licensed Space, as defined in the Exhibit A or B to this Agreement.

Business Day: a day other than a Saturday, Sunday or legal holiday for commercial banks under the laws of the United States or the State of Texas.

Claims: demands, claims, suits, actions, proceedings or investigations brought against a Person by an unrelated or unaffiliated Person.

Commencement Date: defined in section IV on page 1.

Connection Fee: defined in section IV on page 1.

Construction Drawings: defined in section 3.

CPI: The Consumer Price Index as published by the United States Department of Labor, Bureau of Labor Statistics. If such index is discontinued or revised, such other government index or computation with which it is replaced shall be used in lieu thereof.

Damages: debts, liabilities, obligations, losses, damages, excluding consequential or punitive damages, costs and expenses, interest (including, without limitation, prejudgment interest), penalties, reasonable legal fees, court costs, disbursements and costs of investigations, deficiencies, levies, duties and imposts.

Easement: defined in section 2.

Effective Date: defined in the introductory paragraph.

FAA: the United States Federal Aviation Administration or any successor federal agency established for the same or similar purpose.

FCC: the United States Federal Communications Commission or any successor federal agency established for the same or similar purpose.

FCC Rules and Regulations: All of the rules, regulations, public guidance, written policies and decisions governing telecommunications generally and wireless telecommunications specifically as promulgated and administered by the FCC, which on the Effective Date includes, but is not limited to, those administered by the Wireless Telecommunications Bureau of the FCC and more specifically referenced as the Code of Federal Regulations, title 47, parts 0 through 101, as amended.

Final Rule: defined in subsection 11(g).

Ground Space: The portion of the Tower Facility licensed for use by Licensee to locate a portion of the Approved Equipment thereon, in the square footage amount depicted on Exhibit B of each Agreement. In no event shall the Ground Space include the air space or rights above the Approved Equipment located in the Ground Space.

Hazardous Substances: Any hazardous material or substance which is or becomes defined as a hazardous substance, pollutant or contaminant subject to reporting, investigation or remediation pursuant to Applicable Law; any substance which is or becomes regulated by any federal, state or local governmental authority; and any oil, petroleum products and their by-products.

Holdover Fee: defined in subsection 6(c).

Indemnified Party: any Person entitled to Indemnification under section 15 hereof.

Index: defined in section 1.

Initial Term: defined in subsection 6(a).

Interference: defined in subsection 11(a)(i).

Labeling Fee: defined in Section 9.

Licensed Frequencies: defined in subsection 11(a)(ii).

Licensed Space: Location of the Approved Equipment on the Tower and at the Ground Space as more specifically described in Exhibits A and B attached hereto.

Licensed User: defined in subsection 11(a)(iii).

Licensee: defined in the introductory paragraph.

Licensor: defined in the introductory paragraph.

Maintenance Expenses: defined in section 7.

Monthly License Fee: defined in subsection 5(a).

MPE: defined in section 25.

Notice Address: defined in section 18.

NTP (Notice to Proceed): Written notice from Licensor to Licensee acknowledging that all required documentation for the construction and installation of the Approved Equipment has been received and approved by Licensor and Licensee is authorized to commence its installation of the Approved Equipment at the Licensed Space, as more particularly set forth in section 10(a) of this Agreement.

Party(ies): defined in section 30.

Permitted Affiliate: defined in section 19.

Permitted Frequencies: defined in section III on page 1.

Priority User: defined in subsection 11(a)(iv).

Relocation Application Fee: defined in section IV on page 1.

Remittance Address: defined in section II of page 1.

Renewal Term(s): defined in subsection 6(b).

RF Emissions: defined in section 25.

Site Inspection Fee: defined in section IV on page 1.

SSIS: defined in subsection 10(b).

SSIS Fee: defined in subsection 10(b).

Structural Analysis Fee: defined in subsection 10(b).

Subsequent User: defined in subsection 11 (a)(v).

Term: Initial Term and each Renewal Term which is effected pursuant to section 6 of this Agreement.

Tower: A communications or broadcast tower owned and operated by Licensor and located at the Tower Facility.

Tower Facility: Certain real property owned, leased, subleased, licensed or managed by Licensor shown on page 1 of this Agreement, on which a Tower owned, leased, licensed or managed by Licensor is located.

Unlicensed Frequencies: defined in subsection 11(a)(vi).

Unlicensed User: defined in subsection 11(a)(vii).

Utility Fee: defined in section IV on page 1.

Work: defined in subsection 10(a).

Appendix II Insurance

- A. LICENSOR shall maintain in full force during the term of this Agreement the following insurance:
1. Worker's Compensation Insurance with statutory limits in accordance with all applicable state and federal laws, and Employers' Liability Insurance with minimum limits of \$500,000.00 per accident/occurrence, or in accordance with all applicable state and federal.
 2. Commercial General Liability Insurance (Bodily Injury and Tower Facility Damage), the limits of liability of which shall not be less than \$1,000,000.00 per occurrence.
- B. LICENSEE shall maintain in full force during the term of this Agreement and shall cause all contractors or subcontractors performing Work on any Licensed Site prior to the commencement of any such Work on behalf of Licensee to maintain the following insurance:
1. Worker's Compensation Insurance with statutory limits in accordance with all applicable state and federal laws, and Employers' Liability Insurance with minimum limits of \$500,000.00 per accident/occurrence, or in accordance with all applicable state and federal laws.
 2. Commercial General Liability Insurance (Bodily Injury and Tower Facility Damage), the limits of liability of which shall not be less than \$1,000,000.00 per occurrence.

The above insurance maintained by Licensee shall provide that LICENSOR will receive not less than 30 days written notice prior to any cancellation of, or material change in coverage. The insurance specified in this Item B shall contain a waiver of subrogation against LICENSOR and shall name LICENSOR as additional insured, and shall be primary over any insurance coverage in favor of LICENSOR but only with respect to and to the extent of the insured liabilities assumed by LICENSEE under this Agreement and shall contain a standard cross-liability endorsement.

- C. Notwithstanding the foregoing insurance requirements, (a) the insolvency, bankruptcy, or failure of any insurance company carrying insurance for either Party, or failure of any such insurance company to pay Claims accruing, shall not be held to waive any of the provisions of this Agreement or relieve either Party from any obligations under this Agreement, and (b) the Licensor reserves the right, from time to time, to increase the required liability limits described above in Items A and/or B in accordance with then-current customary insurance requirements in the tower industry nationally.

**FIRST AMENDMENT TO TOWER LICENSE AGREEMENT FOR THE
MAGNOLIA COMMUNICATIONS TOWER**

MAY 22 2018

This First Amendment to the Tower License Agreement is made by and between the Montgomery County Hospital District, a political subdivision of the state of Texas, the City of Conroe, Texas, a political subdivision of the state of Texas, (both of which are jointly referred to as ("Licensor")), and Montgomery County, Texas, a political subdivision of the state of Texas ("Licensee").

WHEREAS, the Montgomery County Commissioners Court approved the Tower License Agreement between Montgomery County, the Montgomery County Hospital District, and the City of Conroe on April 24, 2018 (the "Agreement"); and

WHEREAS, the purpose of the Agreement is for the installation and operation of certain described communications equipment for the Montgomery County Sheriff's Office; and

WHEREAS, the Licensee and Licensor now wish to amend certain language in the Agreement to provide for an annual payment of the License Fee by Licensee instead of a monthly payment of the License Fee.

NOW, THEREFORE, IN CONSIDERATION of the covenants and benefits herein contained, the parties herby agree to amend the Agreement as follows:

- 1) Section IV of the Agreement shall be deleted in its entirety and the following language substituted therefore:

IV. FEES & TERM:

Annual License Fee: 3 microwave dishes \$35,640.00 and 3 antennas \$36,000.00 = (\$71,640.00 annually), adjusted on the anniversary of the Commencement Date of this Agreement and on each anniversary thereafter during the Initial Term and during any Renewal Terms by the "Annual Escalator." The Annual Escalator shall be three percent (3%) per year. Payment of the Annual License Fee shall be made and subject to the Texas Prompt Payment Act, Chapter 2251 of the Texas Government Code.

Site Inspection Fee: 0

Electricity will be provided by Licensee. If electricity for operation of Approved Equipment is to be provided by Licensor, with the cost of such electricity to be paid by Licensee at cost subject to adjustment pursuant to Section 5(b). If electricity for operation of Approved Equipment is to be provided by Licensee, all cost of such electricity and installation costs are the sole responsibility of Licensee.

Initial Term: A period of five (5) years beginning on the Commencement Date. The "Commencement Date" shall be May 24, 2018, 2018 (date).

Renewal Terms Additional periods of five (5) years each.

- 2) Subsection (a) of Section 5 entitled "LICENSE FEES, TAXES, ASSESSMENTS" under the "Terms and Conditions" section of the Agreement shall be deleted in its entirety and the following language substituted therefore:

(a) Annual License Fee. Upon receipt of invoice from Licensor, Licensee agrees to pay Licensor the total sum of \$71,640.00 on or about June 1, 2018 for the first year of the Initial Term, or as soon thereafter as payment can be processed by Montgomery County for the first year of the Initial Term. On or about the first day of May of each subsequent year during the Initial Term or any extended/renewal term of this Agreement, Licensor will submit to Licensee an invoice or request for payment for such year. Licensee will make such annual payment in accordance with the Texas Prompt Payment Act, Chapter 2251 of the Texas Government Code.

- 3) Subsection (c) of Section 6 entitled "TERM" under the "Terms and Conditions" section of the Agreement shall be deleted in its entirety and the following language substituted therefore:

(c) Holdover Term. If Licensee fails to remove the Approved Equipment at the expiration of the term without a written agreement, such failure shall be deemed to extend the terms of this Agreement on a month-to-month basis under the same terms and conditions herein. The Annual License Fee shall be reduced to a Monthly License Fee. The month to month extension shall be terminable upon 30 days prior written notice from either Licensor or Licensee to the other; provided, however, nothing contained herein shall grant Licensee the unilateral right to extend the Term of this Agreement after the expiration of the Term. In addition to the Monthly License Fee payable to Licensor in the event of an extension under this subsection 6(c), Licensee agrees, to the fullest extent allowed by law, to indemnify and hold Licensor harmless from any Damages arising out of or in connection with the extension, the operation of the Approved Equipment at the Tower Facility, and Licensee's failure to perform all of its obligations under this Agreement at the termination or earlier expiration of this Agreement.

- 4) Section 7 entitled "TERM" under the "Terms and Conditions" section of the Agreement shall be deleted in its entirety and the following language substituted therefore:

7. LIMITED COMMON EXPENSES. Licensee and Licensor acknowledge that a portion of the License Fee is attributable to the following costs, as applicable: (1) all common expenses incurred for the operation, maintenance, repair and replacement of common facilities at the Tower Facility including, without limitation, fences, gates, access roads, and the Tower; (2) all expenses incurred for the operation, maintenance, repair and replacement associated with any building or shelter in which Licensee licenses space from Licensor, including, without limitation, the physical structure of

the building, HVAC system, and common utility expenses; and (iii) all expenses incurred for the operation, maintenance, repair and replacement associated with any generator, or other backup power source owned by the Licensor to which Licensee is connected, including, without limitation, fuel expenses but excluding any return of capital costs (collectively, the "***Maintenance Expenses***"). Licensor may review the Maintenance Expenses annually, and, if, as the result of such review, Licensor determines, in its sole discretion, the aggregate Maintenance Expenses incurred at the Tower Facility by Licensor have increased by more than 10% over such Maintenance Expenses as of the License Commencement Date or as of the date of the last License Fee increase resulting from increased Maintenance Expenses, Licensor may, but is not required to, impose an additional fee for Licensee's share of such an increase in the Maintenance Expenses in an amount equal to Licensee's pro rata share at the Tower Facility. Licensee's pro rata share shall be determined by dividing "1" by the number of users on the Tower Facility as of the date each such additional fee is assessed. If such a fee is imposed, Licensor shall adjust the License Fee to include such fee and shall provide Licensee at least 30 days written notice of such increase in the License Fee with sufficient detail supporting the increase in Maintenance Expenses. Any such change in the License Fee resulting from an increase in the Maintenance Expenses will take effect 30 days after Licensee's receipt of such notice and payment of such increase of the License Fee shall be subject to the approval and certification of such funds by Montgomery County, Texas. Licensor's election not to conduct such a Maintenance Expenses review in any given year during the term of a Schedule shall not operate as a waiver of Licensor's right to conduct such a review and adjust the License Fee accordingly in any other such year. In addition to the foregoing, in the event that Licensee licenses space in a building or equipment shelter owned by Licensor, Licensee shall reimburse Licensor for its proportionate share of any common expenses, repairs or maintenance of such building or shelter (based upon the number of licensees utilizing such building or shelter during the subject period) that the Licensor bears with respect to the applicable building, including, without limitation, air conditioning, common utilities, and repair of the building structure and roof. All such payments shall be made by Licensee in addition to the payment of the License Fee and paid within 30 days after receipt of a statement setting forth the amount payable for third party costs incurred, which statement shall be accompanied by reasonably sufficient backup information, if applicable, so as to enable Licensee to verify the information contained in such statement.

- 5) Section 13 entitled "CASUALTY; CONDEMNATION" under the "Terms and Conditions" section of the Agreement shall be deleted in its entirety and the following language shall be substituted therefore:

13. CASUALTY; CONDEMNATION.

- (a) **Casualty.** In the event the Tower or other portions of the Tower Facility are destroyed or so damaged so as to materially interfere with Licensee's use and occupancy thereof, Licensor or Licensee shall be entitled to elect to cancel and terminate this Agreement on the date of destruction of that portion of the Tower Facility and any unearned portion of the Annual License Fee paid in advance of such

date shall be refunded by Licensor to Licensee within thirty (30) days of the termination date of this Agreement. Notwithstanding the foregoing, Licensor may elect to restore the Tower Facility, in which case Licensee may remain bound hereby pending restoration. In the event Licensor elects to restore the Tower Facility, Licensee shall be refunded any portion of the Annual License Fee that was unearned during the loss of use period. The restoration of the Tower Facility must be sufficiently complete to allow Licensee to utilize the Tower Facility for its designated purposes within 90 days. If the Tower Facility is not so restored within such 90 day time period, then Licensee's sole remedy shall be to terminate this Agreement upon written notice to Licensor.

- (b) **Condemnation.** If the whole or a substantial part of the Tower Facility shall be taken by any public authority under the power of eminent domain or in deed or conveyance in lieu of condemnation so as to materially interfere with Licensee's use thereof and benefits therefrom, then Licensor or Licensee shall have the right to terminate this Agreement. Any unearned portion of the Annual License Fee paid in advance of such termination shall be refunded by Licensor to Licensee within 30 days following the termination of this Agreement. Licensee agrees not to make a claim to the condemning authority for any condemnation award to the extent such claim shall diminish or affect the award made to Licensor with regard to such condemnation.
- 6) Provisions of the Agreement not specifically changed herein shall remain in full force and effect in all other respects and shall continue to be binding on all parties. To the extent this Amendment and the Agreement are inconsistent, this Amendment controls.

IN WITNESS WHEREOF, the parties have duly executed this Amendment to be effective as of the date written above.

MONTGOMERY COUNTY, TEXAS



CRAIG DOYAL,
COUNTY JUDGE

MONTGOMERY COUNTY HOSPITAL DISTRICT

By: 

Name: Randy E. Johnson

Title: C.E.O.

CITY OF CONROE

By: 

Name: Toby Powell

Title: Mayor

STATE OF TEXAS

§

§

COUNTY OF MONTGOMERY

§

EMERGENCY MEDICAL SERVICE HOUSING AGREEMENT

This Emergency Medical Service Housing Agreement ("Agreement") is made and entered into as of June 1, 2018 by and between City of Shenandoah, Texas ("Landlord") and Montgomery County Hospital District ("Tenant").

Recitals:

Tenant provides Emergency Medical Service ("EMS") in Montgomery County, Texas. Landlord desires to assist Tenant in the provision of such services by allowing the use of its premises and facilities as set forth in this Agreement, and Tenant desires to make use of such premises and facilities.

Agreement:

For and in consideration of the mutual promises and benefits contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. EMS Station: Landlord agrees to lease to Tenant sufficient housing facilities at its premises located at 29915 I-45, Shenandoah, Texas (hereinafter the "Premises") to reasonably accommodate one of Tenant's EMS Ambulance(s) and house related EMS crew personnel (collectively, the "EMS Station"). The Premises shall include exclusive access to the 3 north most bedrooms, one office area with shared, non-exclusive use of living area (including an area to store medical supplies), kitchen, 2 restroom facilities, locker room, utility service, 1 bay closest to the living quarters for parking up to 2 EMS Ambulances and uncovered parking for up to 8 vehicles of EMS crew personnel as is reasonably necessary for the proper maintenance and operation of the EMS Station.
2. Term and Rent:
 - a. This Agreement shall be for a term of twelve (12) months, commencing June 1, 2018 and terminating May 31, 2019 ("Initial Term") at the rental of one thousand dollars (\$1,000.00) per month (or proportionate part thereof), payable in advance on the first day of each month for that month's rental for the term of this Agreement including all renewal terms. Provided that Tenant is not in default in the performance of this Agreement, this Agreement shall automatically renew and be extended for successive 12-month terms unless one of the parties provides written notice of termination at least 90 days before the expiration of the then current term.
 - b. Nonappropriation: If the Tenant's Board of Directors fails to appropriate sufficient funds for rental payments due in any fiscal year, or if the Tenant's Board of Directors fails to appropriate funds sufficient to operate and maintain the Premises as required by this Agreement, an Event of Nonappropriation shall be deemed to have occurred and Tenant shall give written notice of same to Landlord within thirty (30) days. Either party shall have the right to terminate this Agreement at any time after such notice has been given.

EMERGENCY MEDICAL SERVICE HOUSING AGREEMENT

- c. Annual rent during the Initial Term shall not be subject to adjustment.
 - d. In the event Tenant fails to pay rent when due, or if Tenant breaches any of the provisions, conditions or covenants of this Agreement, Landlord, in addition to the other rights or remedies it may have, may terminate this Agreement upon written notice to Tenant, or in the alternative, Landlord may, but shall have no obligation to, re-enter and take possession of the Premises and remove all persons and property therefrom without being liable for damages nor guilty in any manner of trespass, and re-let the Premises or any part thereof, for all or any part of the remainder of said term to a party satisfactory to Landlord, and at such monthly or annual rates as Landlord may be able to secure; provided Tenant shall have thirty (30) days after notice of such termination or thirty (30) days prior to such re-entry by Landlord within which to pay all rent due and unpaid or cure any breach of any of the provisions, conditions or covenants of this Agreement. Re-entry only, without notice of termination will not terminate the Agreement, but any time after re-entry, Landlord may terminate the Agreement by written notice to Tenant. Tenant shall be liable to Landlord, in addition to its other liability for breach of this Agreement, for all expenses of the re-entry and the difference between the rent received by Landlord under the reletting if any, and the rent installments that are due for the same period under this Agreement.
 - e. It is agreed that Landlord, its employees or agents, shall have a right to enter the Premises at reasonable times and upon reasonable advance notice to Tenant for the purposes of inspection; determining whether Tenant is complying with this Agreement; maintaining, repairing, or altering the Premises; or showing the Premises to prospective tenants, purchasers, mortgagees, or beneficiaries under trust deeds.
 - f. Subject to the remaining provisions hereof, Landlord hereby agrees that, on paying the rent herein provided and on performing the agreements and covenants on its part to be kept and performed, Tenant shall quietly and peaceably hold and enjoy the Premises so long as this Agreement may exist.
 - g. Surrender: Tenant covenants that it will quit, surrender and deliver the Premises to Landlord peacefully and quietly upon termination of this Agreement. However, if Tenant is not in default in its rental payments or the other terms of this Agreement at the termination thereof, Tenant shall have for a reasonable period of time thereafter, but not to exceed thirty (30) calendar days, the right to remove property located on the Premises pursuant to Section 5 hereof. Tenant shall pay prorated rent for the additional days used to remove all of its property.
3. Use: Tenant shall use and occupy the EMS Station as an EMS crew station and quarters and for no other purpose. Landlord represents that the Premises may lawfully be used for such purpose. Landlord shall provide a paved driveway and walkway on the Premises and shall maintain the lawn thereon. Under no circumstances shall tenant operate its sirens while on the Landlord's property.
4. Ownership of Buildings, Improvements, and Fixtures: Except as provided in section 5. below, any structures, facilities, buildings, improvements, additions, alterations, and fixtures

EMERGENCY MEDICAL SERVICE HOUSING AGREEMENT

(except furniture and trade fixtures) constructed, placed, or maintained on any part of the Premises during the term of this Agreement are considered part of the real property of the Premises and must remain on the Premises and become Landlord's property when the Agreement terminates. This provision does not apply to a temporary building, modular building, or mobile manufactured type building proposed to be used and placed upon the premises by Tenant.

5. Right to Remove Improvements: Tenant may, at any time while it occupies the Premises, or within a reasonable time thereafter but not to exceed thirty (30) days, remove any temporary type building, modular building, manufactured housing unit, furniture, machinery, equipment, or other trade fixtures owned or placed by Tenant, in, under, or on the Premises, or acquired by Tenant, whether before or during the term of this Agreement, including any renewal terms. Before the Agreement terminates, Tenant must repair any damage to any buildings or improvements on the Premises resulting from the removal. Any such items not removed by the termination date will become Landlord's property on that date.
6. Restoration of Premises to Prior Condition: It is agreed and understood that, notwithstanding paragraph 5 above, Landlord may require Tenant to remove any or all structures, facilities, buildings, improvements, additions, alterations, and fixtures owned or placed by Tenant, its subtenants or licensees, in, under, or on the Premises upon termination of the Agreement. If and to the extent so required, the removal or restoration work shall be completed by Tenant within thirty (30) days of the termination of the Agreement.
7. Encumbrances of Leasehold Estate: Tenant may not encumber the leasehold interest created under this Agreement, or the Premises, by deed of trust, mortgage, or other security instrument, without obtaining Landlord's prior consent. Tenant may not at any time encumber on Landlord's fee title.
8. Liability Insurance: At all times during the Agreement term, Tenant will provide and keep in force liability insurance covering Landlord and Tenant for liability for property damage and personal injury arising from Tenant's use of the Premises. This insurance is to be carried by one or more insurance companies duly authorized or admitted to transact business in Texas, selected by Tenant, and will be paid for by Tenant. Such liability insurance must be in the amount of not less than \$100,000.00 for property damage and not less than \$1,000,000.00 per accident. Such insurance will protect Landlord and Tenant against liability to any employees or servants of Tenant and to any other person or persons whose property damage or personal injury arises out of or in connection with Tenant's occupation, use, or condition of the Premises.
9. Compliance with Applicable Rules and Regulations: Tenant shall observe and comply with the rules and regulations that federal, state or local governments may prescribe or promulgate from time to time for the safety, care, and cleanliness of the Premises and the surrounding area. Tenant further agrees that any discharge from any facility, structure or other improvement on the Premises or any facility on the property adjacent thereto which is caused or which is controlled, in whole or in part, by the Tenant which is in violation of, any valid applicable law, rule, ordinance or other regulatory requirement shall constitute grounds for termination of this Agreement; provided, however, that Tenant shall have no liability to Landlord with respect to such discharges and violations caused solely by any acts of third parties, including Landlord, to which Tenant has not given its consent, nor shall any such discharge or violations constitute a breach of this Agreement, if and for so long as Tenant is diligently enforcing the provisions of any subleases with users of Tenant's facilities to endeavor to prevent or cause the clean-up of any such discharges or violations and, following

EMERGENCY MEDICAL SERVICE HOUSING AGREEMENT

written notice of such violation from Landlord or other governmental authority, Tenant is diligently pursuing the required action to clean-up or otherwise remediate such discharge or violation in accordance with all applicable environmental laws and rules and regulations of the applicable governing authorities.

10. Mutual Indemnities; Insurance; Repairs and Maintenance:

- a. To the extent allowed by law, Tenant shall and does hereby indemnify and hold harmless Landlord for, from and against all liabilities, obligations, damages, penalties, claims, costs, charges and expenses, including reasonable attorney's fees, which may be imposed upon or incurred by or asserted against Landlord by reason of any accident, injury or damage to any person or property arising out of Tenant's use, occupancy or maintenance of the Premises, unless caused by the negligent or intentional act of Landlord. In case any action or proceeding is brought against Landlord by reason of any such claim, Tenant, upon written notice from Landlord shall, at Tenant's sole cost and expense, defend such proceeding by counsel approved by Tenant in writing.
- b. To the extent allowed by law, Landlord shall and does hereby indemnify and hold harmless Tenant for, from and against all liabilities, obligations, damages, penalties, claims, costs, charges and expenses, including reasonable attorney's fees, which may be imposed upon or incurred by or asserted against Tenant by reason of any accident, injury or damage to any person or property occurring in, on or about the Premises caused by the negligent or intentional act of Landlord. In case any action or proceeding is brought against Tenant by reason of any such claim, Landlord, upon written notice from Tenant shall, at Landlord's sole cost and expense, defend such proceeding by counsel approved by Landlord in writing.
- c. At all times during the term of this Agreement including any renewal terms, and except as otherwise provided herein, Landlord, at its sole expense shall provide for the maintenance and upkeep of the Premises, including but not limited to HVAC systems, electrical/lighting, plumbing, roof-siding, slab and parking area.

In the event of damage or injury done to the Premises, not caused by the actions of Tenant, which damages affect the building's structural components or mechanical, electrical or plumbing systems, or make the building otherwise unusable by Tenant for EMS operations, Tenant shall have the option of terminating this Agreement.

11. Benefit Assignment: This Agreement shall be for the sole and exclusive benefit of the parties hereto, and shall not be construed to confer any benefit or right upon any other person. Neither party shall assign this Agreement without the express written consent of the other party thereto.
12. Provisions of General Application: 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 Montgomery County, Texas. Any notice which either party may or is required to give, shall be given by mailing the same, postage prepaid, to the party at its principal business address or such other address as designated from time to time. This Agreement constitutes the entire agreement between the parties and may be modified only by a writing signed by both parties.

EMERGENCY MEDICAL SERVICE HOUSING AGREEMENT

13. Applicable Law and Venue. Texas law shall be used in interpreting this Agreement and in determining rights of the parties hereunder. Venue of any action involving or in any way relating to this Agreement or the Premises shall only be in Montgomery County, Texas. Landlord and Tenant expressly consent to venue of any dispute in Montgomery County, Texas and further expressly waives any other venue, even if otherwise permissible under the law.

Executed to be effective as of the first day of the Initial Term specified in section 2(a) above.

TENANT:

Montgomery County Hospital District

By: 

Name: Randy Johnson

Title: Chief Executive Officer

LANDLORD:

City of Shenandoah, Texas

By: 

Name: Joseph Peart

Title: Interim City Administrator



Pricing Proposal

Quotation #:	15353096
Description:	Microsoft Exchange - Select Plus - NEW
Created On:	May-16-2018
Valid Until:	May-31-2018

MONTGOMERY COUNTY HOSPITAL DISTRICT

Calvin Hon
1400 S Loop 336 W
CONROE, TX 77304
UNITED STATES
Phone: (936) 523-1120
Fax:
Email: chon@mchd-tx.org

Inside Account Manager

Jonathan Gaudet
1301 S. MoPac Expressway, Suite 375
Austin, TX 78746
Phone: (800) 870-6079 Option 2
Fax: 512-732-0232
Email: Jonathan_Gaudet@shi.com

[Click here to order this quote](#)

All Prices are in US Dollar(USD)

Product	Qty	Retail	Your Price	Total
1 Microsoft Exchange Server 2016 Enterprise - License - 1 server - Select Plus - Win - Single Language Microsoft - Part#: 395-04563 Contract Name: Microsoft Software Volume Licensing Contract #: DIR-TSO-4092	4	\$3,180.00	\$2,602.49	\$10,409.96
2 Microsoft Exchange Server 2016 Standard CAL - License - 1 user CAL - Select Plus - Win - Single Language Microsoft - Part#: 381-04439 Contract Name: Microsoft Software Volume Licensing Contract #: DIR-TSO-4092	500	\$69.00	\$56.48	\$28,240.00
			Total	\$38,649.96

Additional Comments

Service Level Agreements:

1. Quotes: Quote requests will be acknowledged within 4 business hours of each request. Under normal circumstances, quotes will be provided within 24-48 hours of the initial request. If quotes will take longer than this timeframe, status updates will be provided at reasonable intervals.

2. Orders: All valid orders will be processed within 24 hours.

3. Contract Documents: All submissions will be reviewed and responded to within 24 business hours. Actual processing time will vary based on quality and complexity of the submission.

The Products offered under this proposal are subject to the SHI Return Policy, unless there is an existing agreement between SHI and the Customer.

MCHD Surplus/Salvage
May 2018

Qty	Serial Number	MCHD Tag	Product Description	S/S	Reason
1	1863	2119	nitronox unit	salvage	Unit is damaged. Cannot be repaired.
1	59724	8335	ez-io driver	salvage	Device is damaged. Cannot be repaired.
1	1567739	7724	M7100 VHF	SALVAGE	NOT IN USE ANYMORE
1	9815778	N/A	M7100 UHF	SALVAGE	NOT IN USE ANYMORE
1	9010472F	9395	M7100 VHF	SALVAGE	NOT IN USE ANYMORE
1	9816957	N/A	M7100 UHF	SALVAGE	NOT IN USE ANYMORE
1	RW04529	8389	M7100 CONTROL HEAD	SALVAGE	NOT IN USE ANYMORE
1	RA71296	N/A	M7100 CONTROL HEAD	SALVAGE	NOT IN USE ANYMORE
1	RA51005	N/A	M7100 CONTROL HEAD	SALVAGE	NOT IN USE ANYMORE
1	RP77822	8246	M7100 CONTROL HEAD	SALVAGE	NOT IN USE ANYMORE
1	1FDWF36R29EB28929		2009 SAFD Ambulance	Surplus	Will trade to Frazer for shop 50