

COPY



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**LEASE AGREEMENT
RADIO TOWER LEASE**

THE STATE OF TEXAS
COUNTY OF POLK

In consideration of the covenants herein contained between POLK COUNTY, TEXAS herein referred to as County, and SAM HOUSTON ELECTRIC COOPERATIVE, INC., herein referred to as Sam Houston Electric or SHECO, the parties mutually agree as follows:

- A. Sam Houston Electric hereby grants non-exclusive permission to County to install, repair, maintain and operate radio communications equipment described in table 1 below, and utilize the antenna support structure systems (known as "tower") owned and operated at the location by Sam Houston Electric in connection with Sam Houston Electric's existing radio equipment. Sam Houston Electric will make available to County the following:
 - (1) Space on a suitable tower for the mounting of listed antenna systems for County's Radio communications system and space for all necessary transmission lines.
 - (2) Access to the tower site and tower.
 - (3) Electric power supply is included in the monthly rate.
 - (4) Tower space requirements are shown in table 1.
- B. Rental space for a total of FOUR (4) antennas/dishes and associated hardware at SHECO's OLD TOWER tower sites. The monthly rate charged for this is \$140 per antenna for a total of \$560 per month.

Should the Lease be terminated as herein provided, other than by lapse of time, all obligations to pay rent under the terms of this Lease shall be made only to the date of such termination.

- C. Lease will be for a term of sixty (60) months, commencing on April 1, 2010 and expiring March 31, 2015. Either party shall have the right for any reason to cancel and terminate this Lease by giving written notice ninety (90) days prior to cancellation.
- D. It is further understood and agreed that County's equipment, its installation, maintenance, and operation will in no way damage the building or tower structure or interfere with the maintenance of Sam Houston Electric's facility, including the tower structure and tower lighting system. In such event, this Lease may, at Sam Houston Electric's option, terminate by giving County ten (10) days prior written notice thereof.
- E. County agrees to take any necessary precautions, by the installation of protective equipment or otherwise, to protect all persons and property against injury or damage that may result from County's use of the tower. If, in Sam Houston Electric's judgment, County has not taken such necessary precautions, Sam Houston Electric shall have the right by written notice to County to terminate the permission herein granted by giving County ten (10) days notice thereof. Sam Houston Electric shall not be in any way responsible for any person or entity for the adequacy or inadequacy of such precautions of County and in that regard, County agrees to indemnify and to save and hold Sam Houston Electric harmless for all costs, expenses and liabilities resulting from such inadequate precautions or the negligent operation of County's equipment and other property.
- F. County agrees to install radio equipment of a type and frequency which will not cause interference to the facility and does hereby agree to make no change in equipment of frequency without prior approval of Sam Houston Electric. In the event County's equipment causes interference, County will immediately take all steps necessary to correct and eliminate the interference. If said interference cannot be eliminated within a length of time, not to exceed thirty (30) days, County agrees to remove its equipment from Sam Houston Electric's property and this lease shall then terminate without further obligation on either part except as may be specifically enumerated herein.
- G. Sam Houston Electric shall not be liable to County for any interference or interruption to service of County, regardless of whether such interference or interruption is caused by the negligence of Sam Houston Electric or by any other cause including, but not limited to, any interference with or interruption to the signals, messages and other communications and transmissions, or for interference with the operation of the equipment of County, or for any damage or injury to such equipment.
- H. County shall exercise special precautions to avoid damage to facilities of Sam Houston Electric and County hereby assumes all responsibility and agrees to make payment for any and all such damage so caused by County, its contractors, or the employees of either, to property of Sam Houston Electric. County shall make an immediate report to Sam Houston Electric of the occurrence of any such

damage, and hereby agrees to reimburse Sam Houston Electric for the reasonable expense incurred in making necessary repairs or replacements.

- I. County agrees to, at all times, indemnify, provide defense for, reimburse and hold harmless Sam Houston Electric, its predecessors, successors, subsidiaries and affiliates, now existing or those existing in the future, and their respective directors, officers, employees, agents and representatives from and against all suits, actions, causes of action or claims of any character, type or description brought or made for or on account of, and all losses and damages arising, directly or indirectly, from (a) damage or injury to property of Sam Houston Electric, (b) personal or bodily injuries or deaths of any person, including, but not limited to employees of County, subcontractors (and their employees) of County, or (c) any other type of injury or damage sustained by any person, any or all of which arise out of or result, directly or indirectly, from the negligent operations of County, or its subcontractors, or the employees of either, or any other person or entity performing work of any kind on behalf of the County. The specific acts or consequences of acts of County falling within County's operation include, but are not limited to, installing, inspecting, and/or repairing County's equipment or the presence of County of Polk's subcontractors or employees of either, in the vicinity of Sam Houston Electric's facilities or equipment.

It is the intention of both parties to this agreement that the indemnification provided by County to Sam Houston Electric in this article shall apply to the proportionate extent of County's negligence, whether or not the losses, liability, claims, demands or suits covered hereunder arise in part from the concurring negligence of Sam Houston Electric, its predecessors, successors, subsidiaries and affiliates, now existing or those existing in the future, and their respective directors, officers, employees, agents or representatives. The provisions of this article are severable and invalidity or ineffectiveness, of such, of any word, phrase or sentence shall not impair the validity and effectiveness of all remaining words, phrases and sentences in this section.

- J. Sam Houston Electric will not grant a Lease to any other party for use of this property if such grant would in any way affect or interfere with County's use of the property.
- K. Sam Houston Electric agrees to maintain the its tower and equipment house in proper operating condition. Cost of lighting, painting and repair to Sam Houston Electric's property shall be borne by Sam Houston Electric. County agrees to provide and maintain its property and equipment in satisfactory condition as to appearance and safety, and to make any repairs to Sam Houston Electric's property that County has damaged.
- L. All installations and operation in connection with this tower, either by Sam Houston Electric or by County, shall meet with all applicable Rules and Regulations of the Federal Communications Commission, Federal Aviation

Authority, and Electrical codes of the city or county and state concerned. Under this Lease, Sam Houston Electric assumes no responsibility of the licensing, operation and/or maintenance of County's radio equipment. County has the responsibility of carrying out the terms of FCC License with respect to tower light observation and notification to FAA.

- M. Sam Houston Electric agrees that pre-approved County personnel/contractors shall have access to the tower for the purpose of installing the radio equipment and, during the continuation of this Lease, free ingress and egress to said tower is hereby granted to County for the purpose of maintenance and repair of its equipment. This ingress and egress shall be subject to the requirements of Sam Houston Electric as stated in the SITE ACCESS AGREEMENT. It is agreed, however, that only authorized engineers or employees of County, FCC inspectors, or person under direct supervision will be permitted to enter said property.
- N. Sam Houston Electric shall be responsible for the declaration and payment of any applicable taxes or assessments against the property owned by Sam Houston Electric.
- O. It is agreed by and between the parties that Sam Houston Electric is not an insurer, that the payments of rental by County herein provided are based solely on the value of the services and facilities provided in the Lease agreement. It is further agreed that Sam Houston Electric shall not be liable to County for damages to County's property caused by acts of God, or other acts beyond the control of Sam Houston Electric although Sam Houston Electric shall exercise due diligence to restore services and facilities regardless of the nature of such cause.
- P. All obligations, as well as all rights and privileges contained herein shall be binding upon and inure to the benefit of the parties hereto, their heirs, successors and assigns. However, County shall not, in any event, assign this Lease without prior written approval of Sam Houston Electric. Sam Houston Electric acknowledges that County's interest in this Lease is automatically assigned as collateral to County's lender, the Rural Utilities Service of the U.S. Department of Agriculture.
- Q. County is to make arrangements for installation of any control lines as may be required for operation of County's radio equipment.
- R. In the event of County's default in the payment of rentals or County's failure to comply with any other provision of this Lease, Sam Houston Electric may at its option terminate this Lease upon three (3) days written notice to County, and without affecting its right to sue or otherwise collect for all past due rentals and any other damages to which Sam Houston Electric may be lawfully entitled.

EXECUTED THIS THE _____ day of _____, 2010.

SAM HOUSTON ELECTRIC COOPERATIVE, INC.

By: _____
Kyle J. Kuntz, General Manager/CEO

By: *John P. Thompson*
John Thompson, Polk County Judge

By: *Byron Lyons*
Byron Lyons, Polk County Sheriff's Office Chief Deputy

Table 1 – Tower Antenna Space Requirements and Equipment List

Old Tower

- 1 Comprod 40 ft. antenna installed at 350' of tower (part # 878F-70-1/2)
- 400 ft. of Andrews 7/8" coax (part # LDF5-50A)
- 1 Laird Technology 3' microwave dish at 100 ft. (part # HDDA5W-32-DP)
- 1 Laird Technology 3' microwave dish at 150 ft. (part # HDDA5W-32-DP)
- 1 Laird Technology 3' microwave dish at 200 ft. (part # HDDA5W-32-DP)
- 3 Radwin 4.9 Ghz to 5.8 Ghz LP backhaul (part # 2000 ODU), each attached to the back of a microwave dish
- 450 ft. of CableGuy Shielded Cat-5 cable (part # C5E-1000-STP)
- 2 sets of DB-365 clamps
- 1 EF Johnson 7'19" open aluminum rack **in building** (part # 2600 RX and TX)

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 - (1) Space on a suitable tower for the mounting of listed antenna systems for County's Radio communications system and space for all necessary transmission lines.
 - (2) Access to the tower site and tower.
 - (3) Electric power supply is included in the monthly rate.
 - (4) Tower space requirements are shown in table 1.
- B. Rental space for a total of TWO (2) antennas/dishes and associated hardware at SHECO's ONALASKA tower site. The monthly rate charged for this is \$140 per antenna for a total of \$280 per month.

Should the Lease be terminated as herein provided, other than by lapse of time, all obligations to pay rent under the terms of this Lease shall be made only to the date of such termination.

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damage, and hereby agrees to reimburse Sam Houston Electric for the reasonable expense incurred in making necessary repairs or replacements.

- I. County agrees to, at all times, indemnify, provide defense for, reimburse and hold harmless Sam Houston Electric, its predecessors, successors, subsidiaries and affiliates, now existing or those existing in the future, and their respective directors, officers, employees, agents and representatives from and against all suits, actions, causes of action or claims of any character, type or description brought or made for or on account of, and all losses and damages arising, directly or indirectly, from (a) damage or injury to property of Sam Houston Electric, (b) personal or bodily injuries or deaths of any person, including, but not limited to employees of County, subcontractors (and their employees) of County, or (c) any other type of injury or damage sustained by any person, any or all of which arise out of or result, directly or indirectly, from the negligent operations of County, or its subcontractors, or the employees of either, or any other person or entity performing work of any kind on behalf of the County. The specific acts or consequences of acts of County falling within County's operation include, but are not limited to, installing, inspecting, and/or repairing County's equipment or the presence of County of Polk's subcontractors or employees of either, in the vicinity of Sam Houston Electric's facilities or equipment.

It is the intention of both parties to this agreement that the indemnification provided by County to Sam Houston Electric in this article shall apply to the proportionate extent of County's negligence, whether or not the losses, liability, claims, demands or suits covered hereunder arise in part from the concurring negligence of Sam Houston Electric, its predecessors, successors, subsidiaries and affiliates, now existing or those existing in the future, and their respective directors, officers, employees, agents or representatives. The provisions of this article are severable and invalidity or ineffectiveness, of such, of any word, phrase or sentence shall not impair the validity and effectiveness of all remaining words, phrases and sentences in this section.

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Authority, and Electrical codes of the city or county and state concerned. Under this Lease, Sam Houston Electric assumes no responsibility of the licensing, operation and/or maintenance of County's radio equipment. County has the responsibility of carrying out the terms of FCC License with respect to tower light observation and notification to FAA.

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EXECUTED THIS THE _____ day of _____, 2010.

SAM HOUSTON ELECTRIC COOPERATIVE, INC.

By: _____
Kyle J. Kuntz, General Manager/CEO

By: *John P. Thompson*
John Thompson, Polk County Judge

By: *Byron Lyons*
Byron Lyons, Polk County Sheriff's Office Chief Deputy

Table 1 – Tower Antenna Space Requirements and Equipment list

Onalaska Tower

- 1 Andrews 20 ft. RX only antenna side-mounted at 200 ft. (part # DB224A)
- 200 ft. of Andrews 7/8" coax (part # LDF5-50A)
- 1 Laird Technology 3' microwave dish at 200 ft. (part # HDDA5W-32-DP)
- 1 Radwin 4.9 Ghz to 5.8 Ghz LP backhaul (part # 2000 ODU), attached to the back of the microwave dish
- 200 ft. of CableGuy Shielded Cat-5 cable (part # C5E-1000-STP)
- 1 set of DB-365 clamps
- 1 EF Johnson 7'19" open aluminum rack in building (part # 2600 RX and TX)