



Texas Department of Public Safety Purchase Order

Purchase Order Number

405-16-P007758

SHOW THIS NUMBER ON ALL
PACKAGES, INVOICES AND
SHIPPING DOCUMENTS.

V E N D O R	Vendor Number: 00029952 JAMES G BERGMAN
	PO BOX 793 GOODRICH, TX 77335-0793

S H I P T O	Texas Department of Public Safety Law Enforcement Support 5805 North Lamar Blvd Austin, TX 78752-4431 US Email: eprocurementshipping@dps.texas.gov Phone: (512) 424-2000
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State Sales Tax Exemption Certificate: The undersigned claims an exemption from taxes under Chapter 20, Title 122A, Revised Civil Statutes of Texas, for purchase of tangible personal property described in this numbered order, purchased from contractor and/or shipper listed above, as this property is being secured for the exclusive use of the State of Texas.

B I L L T O	Texas Department of Public Safety Finance - Accounts Payable - MSC 0130 PO Box 4087 Austin, TX 78773-0130 US Email: apinvoices@dps.texas.gov Phone: (512) 424-2060
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Solicitation (Bid) No.:	Payment Terms:
	Shipping Terms:
	Delivery Calendar Day(s) A.R.O.: 0

Item # 2

This PO incorporates the Contract executed on June 14, 2016 between the TXDPS Deputy Director and the Lessor.

Contract Term: June 14, 2016 through August 31, 2021.

Renewals: One optional renewal - September 1, 2021 through August 31, 2022.

Annual payment during the term of this Agreement is \$3,600.00 per year (\$300.00 per month) to be paid in one annual payment at the beginning of each fiscal year. First payment for the period beginning June 14, 2016 and ending on August 31, 2016 shall be prorated from the date of execution. The first payment shall not exceed \$750.00.

Item # 1
 Class-Item 985-69

Lease of land and tower space for antenna and shelter space on a radio communications tower on the Center Tower site in Shelby County, Texas.

Period of Performance: June 14, 2016 through August 31, 2016.

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
1.00	\$ 750.00	YR	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 750.00

<u>LN/FY/Account Code</u> 1/16/16-56031-6459-1001- - -1100- - -	<u>Dollar Amount</u> \$ 750.00
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S H I P T O	Texas Department of Public Safety Midland District Office 2405 South Loop 250 West Midland, TX 79703-7410 US Email: eprocurementshipping@dps.texas.gov Phone: (512) 424-2000
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Item # 4
 Class-Item 985-69

Lease of land and tower space for antenna and shelter space on a radio communications tower on the Center Tower site in Shelby County, Texas.

Period of Performance: September 1, 2016 through August 31, 2017.

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
1.00	\$ 3,600.00	EA	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 3,600.00

<u>LN/FY/Account Code</u> 4/16/17-56031-6459-1001- - -1100- - -	<u>Dollar Amount</u> \$ 3,600.00
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Item # 3

Vendor Contact: James G. Bergman
 Phone: 936-365-2861
 Email: bergmantowers@yahoo.com

TXDPS Contact: Regina Sutton
 Phone: 512-424-7134
 Email: DPStechinical.assistance@dps.texas.gov

TXDPS Purchaser: Jennifer Feliciano
 Phone: 512-424-2096
 Email: jennifer.feliciano@dps.texas.gov

TAX:	\$ 0.00
FREIGHT:	\$ 0.00
TOTAL:	\$ 4,350.00

APPROVED

By: Jennifer Feliciano,CTCM, CTPM

Phone#: (512) 424-5255

BUYER

**COMMUNICATIONS SITE LEASE AGREEMENT
BETWEEN TEXAS DEPARTMENT OF PUBLIC SAFETY
AND JAMES G. BERGMAN**

This Communications Site Lease Agreement ("Agreement") is entered into by and between James G. Bergman ("Site Owner" or "Lessor") having an address at PO Box 793, Goodrich, Texas, 77335, and the Texas Department of Public Safety ("TXDPS" or "Lessee") having an address at 5805 North Lamar Boulevard, Austin, Texas 78752. The Lessor and the Lessee are collectively called "the Parties."

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

1. **TOWER:** This Agreement is for the lease of land and tower space for antenna and shelter space on a radio communications tower, including any wires, generators, and other equipment necessary to carry out the TXDPS operation of its equipment on a radio communications tower ("Tower Equipment"), as further described and incorporated herein as Exhibit A to this Agreement, on the Center Tower site located at 5681 SH 7 West in Center, Shelby County, Texas, 75935 Latitude: 31.41.27.6 N, Longitude: 94.15.27 W, ("Site") together with ingress and egress rights providing access to this Site. The Tower Equipment was installed by and at the expense of the Lessor and will continue to be maintained by and at the expense of the Lessee. This Site is further described as:

The metes and bounds are further described and incorporated herein as Exhibit B to this Agreement.

For this Agreement, Lessee does not intend to make any permanent improvements to this Site and as a result, Lessee intends to remove all Tower Equipment as specifically provided in this Agreement.

2. **INTENDED USE:** The Lessor represents and warrants that the Lessee's intended use of this Site for its Tower Equipment ("Intended Use"), is not prohibited by any covenants, restrictions, reciprocal easements, servitudes, subdivision rules, or regulations. The Lessor further represents and warrants that there are no easements, licenses, rights of use, or other encumbrances on this Site which will interfere with or constructively prohibit the Lessee's Intended Use of this Site.

The Lessor warrants and represents that: (a) it has full right, power, and authority to execute this Agreement; (b) it has full and marketable fee simple title to this Site and any easements free and clear of any liens and encumbrances; and (c) this Site may be leased without the need for any subdivision or platting approval. The Lessor covenants that the Lessee shall have the quiet enjoyment of this Site during the term of this Agreement regarding the actions of the Lessor. The Lessor shall indemnify the Lessee from and against any loss, cost, expense, or damage, including attorneys' fees associated with a breach of the foregoing covenant of quiet enjoyment.

3. **TERMS:** The term of this Agreement will begin upon the date of the last Party to sign this Agreement and terminates on August 31, 2021.
4. **OPTION TO RENEW:** This Agreement may be renewed up to one (1) time for the period up to one (1) year under these same terms and conditions through a written amendment to this Agreement which is executed by the Parties.
5. **CONSIDERATION:** The Lessee shall pay to the Lessor an annual payment during the term of this Agreement in the amount of \$3,600.00 per year (consisting of \$ 300.00 per month) to be paid in one annual payment at the beginning of each fiscal year, which runs from September 1 – August 31, for this Agreement. The Lessee's first payment to the Lessor will be prorated from the date of execution of this Agreement until August 31, 2016.

6. **TITLE:** The Lessee will have no right, title, or interest in this Site except the non-exclusive use thereof as expressly set forth in this Agreement. The Lessee shall retain ownership of and title to all equipment and structures installed by the Lessee on this Site, even though such equipment and structures may be permanently affixed to the property.
7. **ELECTRICITY:** The Lessor shall provide electricity at this Site for the benefit of the Lessee. The Lessee shall have the right to use the existing emergency stand-by generator(s) at this Site if available; however, the Lessor makes no representations or warranties as to the fitness of such generator(s) for the Lessee's requirements.
8. **PERMITS, LICENSES, AND REGULATIONS:** The Lessee shall abide by all federal, state, and local rules and regulations pertaining to the operation of the Lessee's Tower Equipment, including without limitations those pertaining to the installation, maintenance, height, location, use, operation, and removal of its Tower Equipment, antenna systems, and other alterations or improvements authorized herein. The Lessee hereby represents that the Lessee has obtained the necessary licenses and permits required to use this Site, or that the Lessee shall obtain said licenses or permits, at the Lessee's own expense, prior to any such use. The Lessor shall provide the Lessee a copy of the Antenna Structure Registration, if any, as provided to the Lessor by the Federal Communications Commission ("FCC").
9. **USE:** While using this Site, the Lessee shall be responsible for proper operation and compliance with FCC rules. The Lessee represents that it has independently ascertained that this Site is adequate and proper for the Lessee's intended use and has entered into this Agreement based solely upon said independent investigation, and not by any representation by the Lessor.

The Lessee hereby consents to the execution of agreements between the Lessor and other parties eligible to share this Site, whereby such parties may utilize and share said Site with the Lessee. The Lessee will not increase the size of its Tower Equipment or alter the wind load or structural impact of its equipment upon the tower, without the prior written consent of the Lessor.

10. **ACCESS:** The Lessor shall provide the Lessee unlimited ingress and egress to this Site and the Tower Equipment for the purposes of constructing, reconstructing, operating, maintaining, inspecting, using, replacing, repairing, moving, removing, etc., the Tower Equipment (including any radio tower, footings, supporting foundations, guy wires, equipment, shelters, and any and all necessary appurtenances thereto) and for complying with any reasonable request for inspection by representatives of the FCC. The Lessee shall have access only to its own Tower Equipment.
11. **COVERAGE AND INTERFERENCE:** The Lessor makes no representations concerning the distance at which useable radio signals may be transmitted and received from this Site or location thereof. The Lessee is hereby notified that this Site is subject to degradation of performance from, but not limited to, natural and man-made phenomena such as so-called "skip" interference, power line, and ignition noise, intermodulation, co-channel interference, and interference from users of the same or other radio frequencies.

The Lessee shall be responsible for taking such reasonable steps as may be necessary to prevent any spurious radiation or objectionable interference with the broadcasting or transmission facilities of the Lessor or other users on this Site, if any, caused by the Lessee. The determination of what is reasonable will be within the sole discretion of the Lessee. If the Lessee has not taken corrective measures within three (3) business days after the Lessee has been notified that its equipment is causing objectionable interference, then the Lessor may, after notifying the Lessee:

- A. Disconnect power to the Lessee's Tower Equipment; and/or
- B. Require the Lessee to take reasonable corrective action necessary to eliminate such interference and/or spurious radiation.

If such objectionable interference or spurious radiation cannot be reduced to levels reasonably acceptable to the Lessor, the Lessor may elect to terminate this Agreement by giving the Lessee written notice. For purposes of this Agreement, objectionable interference will be deemed to exist if:

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

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

If appropriate to maintain the safe or efficient operation of this Site, the Lessee shall participate in any transmitter and receiver combining and multicoupling systems operating from one or more antennas installed by the Lessor.

- 12. LESSEE MAINTENANCE AND REMOVAL OF EQUIPMENT AND COAXIAL CABLES:** The Lessee shall install only the Tower Equipment (including antenna and transmission line) which has been approved by the Lessor. Installation will be done in a neat, professional manner and in compliance with all applicable laws and regulations. All costs (including repair of damages caused thereby to the Lessee's Tower Equipment) will be the responsibility of the Lessee. If the Lessee wants to add any additional Tower Equipment, other than the Lessee's Tower Equipment referenced herein, the Lessee will not install such additional Tower Equipment until the Parties execute an amendment to this Agreement authorizing the additional equipment.

The Lessee shall properly ground all antenna equipment at the uppermost location of its Tower Equipment on the tower and properly ground its coaxial cable at the base of the tower or at locations identified by the Lessor.

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

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

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

15. TERMINATION OF THE LESSOR'S RIGHTS TO THIS SITE: In the event that any state, local, or federal government agency causes this Site and/or its location to become unavailable, or the Lessor's ground lease is terminated for any reason, the Lessor shall have the right to either (1) terminate this Agreement without liability to the Lessee or (2) subject to the Lessee's approval, make another similar site and/or location available under the same terms, in which event the change of site and/or location will not affect the obligation of the Lessee.

The Lessor shall notify the Lessee within ten (10) calendar days of listing for sale the real property on which this Site is located. The Lessor shall ensure the property listing discloses that the Lessee is leasing a part of the real property listed for sale. The Lessor's contract of sale with the buyer of the real property will state the sale is subject to this Agreement. In addition, the Lessor shall assign this Agreement to the buyer of the real property upon prior written approval of the Lessee and provide the Lessee with an executed copy of the assignment contract within ten (10) calendar days of the sale.

The Lessor shall also notify the following, as applicable, within ten (10) calendar days of the sale, termination, or loss that the Lessee is leasing a part of the real property on which this Site is located: (1) the buyer of the real property on which this Site is located; (2) the owner of the ground lease if the Lessor's ground lease is terminated; and (3) the owner of the real property, if the Lessor otherwise loses its authority to lease the real property on which this Site is located.

The Lessor shall further notify the Lessee within ten (10) calendar days of the occurrence of either of the following: (1) the sale of the real property on which this Site is located; or (2) the termination of the Lessor's ground lease or other authority to lease the real property on which this Site is located.

Within fifteen (15) calendar days of the occurrence of either of the following, the Lessor shall refund the Lessee on a pro rata basis any advance payments made by the Lessee to the Lessor for the lease covering the period of time after the applicable sale or loss: (1) the sale of the real property on which this Site is located; or (2) the termination of the Lessor's ground lease or other authority to lease the real property on which this Site is located.

If the Lessor fails to refund the Lessee within fifteen (15) calendar days on a pro rata basis for such advance payments, the Lessor shall be liable to the real property owner or the owner of the ground lease, whichever is applicable, for the pro rata amount of any advance payment made by the Lessee covering the period of time after the sale of the real property or the loss of the Lessor's authority to lease the real property on which this Site is located. This paragraph is for the benefit of the real property owner or the owner of the ground lease, whichever is applicable, and such owner is entitled to enforce this paragraph of this Agreement against the Lessor.

Within ten (10) calendar days of the sale of the real property on which this Site is located or the loss of the Lessor's authority to lease this Site (whichever is applicable), the Lessor shall provide the Lessee with the address and phone number for the real property owner or the owner of the ground lease, whichever is applicable. The Lessor shall also provide the Lessee with the Lessor's updated address, phone number, and forwarding address, if any, within ten (10) calendar days of the occurrence of either

of the following: (1) the sale of the real property on which this Site is located; or (2) the termination of the Lessor's ground lease or other authority to lease the real property on which this Site is located.

This section will survive the termination or expiration of this Agreement.

16. **INSURANCE:** The Lessor shall obtain and maintain at all times during the term of this Agreement commercial general liability insurance coverage in a minimum amount of one million dollars (\$1,000,000.00), which policy will insure against bodily injury, death, and property damage. The liability insurance policy will name the Lessee as an additional insured. The Lessor represents and warrants that the insurance coverages are with companies licensed in the State of Texas, with an "A" rating from Best, and are authorized to provide the corresponding coverages in the State of Texas. The Lessor also represents and warrants that all policies contain endorsements prohibiting cancellation except upon at least thirty (30) calendar days prior written notice to the Lessee. The Lessor represents and warrants that it shall maintain all of the above insurance coverages during the term of this Agreement and shall provide the Lessee with an executed copy of the policies no later than two (2) calendar days after receipt of the Lessee's request for the same.
17. **INDEMNIFICATION:** THE LESSOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS, ITS OFFICERS AND EMPLOYEES, AND THE LESSEE, ITS OFFICERS AND EMPLOYEES AND AGENTS, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND COURT COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF THE LESSOR OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF THE LESSOR IN THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT. THE LESSOR SHALL COORDINATE ITS DEFENSE WITH THE TEXAS ATTORNEY GENERAL AS REQUESTED BY THE LESSEE. THIS SECTION IS NOT INTENDED TO AND WILL NOT BE CONSTRUED TO REQUIRE THE LESSOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OF TEXAS OR THE LESSEE FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF THE LESSEE OR ITS EMPLOYEES.
18. **GOVERNING LAW:** This Agreement will be governed by the substantive and procedural laws of the State of Texas. The conflicts of law principles and rules of any other jurisdiction will not apply.
19. **VENUE:** Except as provided by Chapter 2260 of the Texas Government Code and the State Office of Administrative Hearings' administrative rules, venue for any contract claims or litigation will be in the State Office of Administrative Hearings or a court of competent jurisdiction in Travis County, Texas.
20. **DISPUTE RESOLUTION:** The Lessor shall use the dispute resolution process provided for in Chapter 2260 of the Texas Government Code and the Lessee's applicable administrative rules to attempt to resolve all disputes or contract claims arising under this Agreement.
21. **AUDIT CLAUSE:** The State Auditor or the Lessee may conduct an audit or investigation of any entity receiving funds from the State directly under this Agreement or indirectly through a subcontract under this Agreement. Acceptance of funds directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the State Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the State Auditor shall provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.

The Lessor shall keep all records and documents regarding this Agreement for the term of this Agreement and for four (4) years after the termination of this Agreement.

In the event such an audit by the Lessee reveals any errors by the Lessee or the Lessor, the Lessor shall refund the Lessee the full amount of such overpayments within thirty (30) calendar days of such

audit findings, or the Lessee at its option reserves the right to deduct such amounts owing the Lessee from any payments due the Lessor.

22. **FORCE MAJEURE:** Except as otherwise provided, neither the Lessor nor the Lessee will be liable to the other for any delay in performance of, or failure to perform, any obligation contained herein caused by force majeure, provided the Party seeking to be excused has prudently and promptly acted to take any and all reasonable corrective measures that are within such Party's control. The existence of such causes of delay or failure will extend the period of performance until after the causes of delay or failure have been corrected.

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

23. **NO LIABILITY FOR EMPLOYEES AND OFFICERS:** The Parties to this Agreement will have no liability whatsoever for the actions or omissions of an individual employed by another Party, regardless of where the individual's actions or omissions occurred. Each Party is solely responsible for the actions and/or omissions of its employees, officers, and agents; however, such responsibility is only to the extent required by Texas law. Where injury or property damage result from the joint or concurring negligence of the Parties, liability, if any, will be shared by each Party in accordance with the applicable laws of the State of Texas, subject to all defenses including governmental immunity. These provisions are solely for the benefit of the Parties hereto and not for the benefit of any person or entity not a party hereto; nor will any provision hereof be deemed a waiver of any defenses available by law.

24. **NO JOINT ENTERPRISE:** The Lessee is associated with the Lessor only for the purposes and to the extent set forth herein, and with respect to the provision of this Agreement, the Lessor is an independent contractor and shall have the sole right to supervise, manage, operate, control, and direct the performance of the details incident to its duties hereunder. Nothing contained herein will be deemed or construed to create a partnership or joint venture, to create the relationships of an employer-employee or principal-agent, or to otherwise create any liability for the Lessee whatsoever with respect to the indebtedness, liabilities, and obligations of the Lessor or any other party.

25. **INDEPENDENT CONTRACTOR:** The Lessor is an independent contractor in relationship to the Lessee. The Lessee will not be responsible for withholding taxes from payments made under this Agreement. The Lessor will have no claim against the Lessee for vacation pay, sick leave, retirement benefits, social security, workers' compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.

26. **NO APPARENT AGENCY:** The Lessor will have no authority for or on behalf of the Lessee except as provided in this Agreement. No other authority, power, partnership, or rights are granted or implied.

27. **LEGISLATIVE ACTION:** The Lessee is a state agency whose authority and appropriations is subject to the actions of the Texas Legislature and the United States Congress. If the Lessee and/or the subject matter of this Agreement become subject to a legislative or regulatory change, the revocation of statutory or regulatory authority, or a lack of appropriated funds which would render the deliverables or performance to be provided under this Agreement impossible, unnecessary, void, or substantially amended or that would terminate the appropriations for this Agreement, the Lessee may immediately terminate this Agreement without penalty to, or any liability whatsoever on the part of the Lessee, the State of Texas, and the United States. This Agreement does not grant the Lessor a franchise or any other vested property right.

Termination under this section is immediate, so the Lessee is not required to provide thirty (30) calendar days notice under this section. If any of the following occur, the Lessee may, upon thirty (30) calendar days written notice to the Lessor, reduce the price under this Agreement in accordance with the reduction of any deliverables in such manner and for such periods of time as the Lessee may elect: (1)

funding for this Agreement is reduced by law; (2) the statutory amount of compensation authorized for the Lessor is reduced; or (3) the Legislative Budget Board requests the Lessee to reduce the Lessee budget by a certain percentage.

28. **TERMINATION BY DEFAULT:** In the event that the Lessor fails to carry out or comply with any of the requirements of this Agreement with the Lessee, the Lessee may notify the Lessor of such failure or default in writing and demand that the failure or default be remedied within ten (10) calendar days. In the event that the Lessor fails to remedy such failure or default within the ten (10) calendar day period, the Lessee shall have the right to terminate this Agreement upon ten (10) calendar days written notice.

The termination of this Agreement, under any circumstances whatsoever, will not affect or relieve the Lessor from any obligation or liability that may have been incurred pursuant to this Agreement, and such termination by the Lessee will not limit any other right or remedy available to the Lessee at law or in equity.

In the event this Agreement is terminated by the Lessee for default by the Lessor, the Lessor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work are significantly changed. The period of suspension will be determined by the Lessee based upon the seriousness of the default.

29. **TERMINATION FOR CAUSE OR CONVENIENCE:** This Agreement may be terminated as follows:

- A. For Convenience: This Agreement may be terminated, without penalty, by the Lessee without cause by giving thirty (30) calendar days written notice of such termination to the Lessor.
- B. For Cause: This Agreement may be terminated by the Lessee if the Lessor fails to perform as agreed or is otherwise in default, without the necessity of complying with the requirements in the section herein entitled "Termination by Default." The Lessee shall provide the Lessor with written notice to terminate this Agreement, which termination will become effective immediately upon the Lessor's receipt of the notice.
- C. For Listing on the Federal Excluded Party List, the Terrorism List (Executive Order 13224), or on the State of Texas Debarred Vendor List: The Lessee shall have the absolute right to terminate this Agreement without recourse as follows: (1) if the Lessor becomes listed on the prohibited vendors list authorized by Executive Order #13224 "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism," published by the United States Department of Treasury, Office of Foreign Assets Control; (2) if the Lessor becomes suspended or debarred from doing business with the federal government as listed in the Excluded Parties List (EPLS) maintained by the General Services Administration; or (3) if the Lessor becomes listed on the State of Texas Debarred Vendor List. The Lessee shall provide the Lessor with written notice to terminate this Lease, which termination will become effective immediately upon the Lessor's receipt of the notice.

30. **TERMINATION LIABILITY (FOR TERMINATION FOR CONVENIENCE):** In no event will termination for convenience by the Lessee give rise to any liability whatsoever on the part of the Lessee whether such claims of the Lessor are for compensation, for anticipated profits, unabsorbed overhead, interest on borrowing, or for any other reason. The Lessee's sole obligation hereunder is to pay the Lessor the pro rata amount of compensation owed for the number of days on which the Lessee used this Site during the term at issue. The phrase "used this Site" includes any days on which the Lessee kept any equipment on this Site

31. **REMOVAL OF EQUIPMENT UPON TERMINATION:** The Lessee shall remove its Tower Equipment at the Lessee's sole risk and expense within a reasonable amount of time, not to exceed 120 calendar days, after the termination of this Agreement. The Lessee shall remove any debris associated with the removal of its Tower Equipment. The Lessee may, in its sole discretion, authorize a contractor or third

party selected by Lessee to accomplish any or all of removal and the Lessor may not impose additional requirements or restrictions on Lessee's contractor or any other third party accomplishing such removal.

32. **NON-WAIVER**: Any failure of the Lessee, at any time, to enforce or require the strict keeping and performance of any provision of this Agreement will not constitute a waiver of such provision, and will not affect or impair same or the right of the Lessee at any time to avail itself of same.
33. **SEVERABILITY**: If one or more provisions of this Agreement, or the application of any provision to any party or circumstance, is held invalid, unenforceable, or illegal in any respect by a final order/judgment of the State Office of Administrative Hearings or a court of competent jurisdiction, the remainder of this Agreement and the application of the provision to other parties or circumstances will remain valid and in full force and effect.
34. **SURVIVAL**: Any provisions of this Agreement that impose continuing obligations on the Parties including, but not limited to the following, will survive the expiration or termination of this Agreement for any reason:
- A. The indemnity obligations;
 - B. Recordkeeping requirements and audit rights;
 - C. Confidentiality obligations;
 - D. Restrictions on news releases, advertisements and publicity;
 - E. And any other provisions of this Agreement that impose continuing obligations on either of the Parties or that govern the rights and limitations of either of the Parties after the expiration or termination of this Agreement.
35. **SUBSTITUTIONS**: No substitute or cancellations are permitted without prior written approval of the Lessee.
36. **ASSIGNMENT BY THE LESSOR**: Except as authorized herein, the Lessor will not assign or transfer any interest in this Agreement without the express, prior written consent of the Lessee.
37. **SUCCESSORS**: This Agreement will be binding upon and will inure to the benefit of the Parties hereto and their respective successors, heirs, administrators, personal representatives, legal representatives, and permitted assigns.
38. **NEWS RELEASES, ADVERTISEMENTS, AND PUBLICITY**: The Lessor will not make any news releases, public announcements, or public disclosures, nor will it have any conversations with representatives of the news media, pertaining to this Agreement, without the express, prior written approval of the Lessee, and then only in accordance with explicit written instructions from the Lessee.

The Lessor will not use the name of the State of Texas or TXDPS in any advertisement, promotion, or otherwise for any purpose regarding this Agreement without the express prior written consent of the Lessee. The Lessee is not authorized to provide endorsements.

39. **TEXAS PUBLIC INFORMATION ACT**: Notwithstanding any provisions of this Agreement to the contrary, the Lessor understands that the Lessee shall comply with the Texas Public Information Act (Chapter 552, Texas Government Code) as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. Information, documentation, and other material in connection with this Agreement may be subject to public disclosure pursuant to the Texas Public Information Act. Within three (3) calendar days of receipt, the Lessor shall refer to the Lessee any third party requests received directly by the Lessor for information to which the Lessor has access as a result of this Agreement. Any part of this Agreement that is of a confidential or proprietary nature must be clearly and prominently marked as such by the Lessor. The Lessor is required to make any information created or exchanged with the state pursuant to this Agreement and not otherwise excepted from disclosure under the Texas Public Information Act available in a format that is accessible by the public at no additional charge to the state.

40. **CRIMINAL HISTORY BACKGROUND CHECK:** The Lessor or any of its employees, agents, or representatives having access to the Tower Equipment shall undergo a TXDPS fingerprint-based criminal history background investigation at the Lessee's expense, if required by the Lessee.
41. **CONFIDENTIALITY:** Certain information provided by the Lessee to the Lessor, including but not limited to the location of the Tower Equipment and the purpose for the Lessee's use of this Site, is confidential and will not be used by the Lessor or disclosed to any person or entity, unless such use or disclosure is required for the Lessor to perform work under this Agreement.

The obligations of this section do not apply to information that is required to be disclosed by law or final order of a court of competent jurisdiction or regulatory authority, provided that the Lessor shall furnish prompt written notice of such required disclosure and shall reasonably cooperate with the Lessee, at the Lessee's cost and expense, in any effort made by the Lessee to seek a protection order or other appropriate protection of its confidential information.

The Lessor shall notify the Lessee of any unauthorized release of confidential information within two (2) calendar days of when the Lessor knows or should have known of such unauthorized release.

The Lessor shall maintain all confidential information in confidence during the term of this Agreement and after the expiration or earlier termination of this Agreement.

If the Lessor has any questions or doubts as to whether particular material or information is confidential information, the Lessor shall obtain the prior written approval of the Lessee prior to using, disclosing, or releasing such information.

The Lessor acknowledges that the Lessee's confidential information is unique and valuable, and that the Lessee will have no adequate remedy at law if the Lessor does not comply with its confidentiality obligations under this Agreement. Therefore, the Lessee shall have the right, in addition to any other rights it may have, to obtain in any Travis County court of competent jurisdiction temporary, preliminary, and permanent injunctive relief to restrain any breach, threatened breach, or otherwise to specifically enforce any confidentiality obligations of the Lessor if the Lessor fails to perform any of its confidentiality obligations under this Agreement.

The Lessor shall immediately return to the Lessee all confidential information when this Agreement terminates or at such earlier time as when the confidential information is no longer required for the performance of this Agreement or when the Lessee requests that such confidential information be returned.

Information, documentation, and other material in connection with this Agreement may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code.

42. **COMPLIANCE WITH LAWS:** The Lessor shall comply with all applicable state, federal, and local laws, including permitting and purchasing laws, in providing deliverables under this Agreement.
43. **CONTRACT AMENDMENTS:** No modification or amendment to this Agreement will become valid unless in writing and signed by both Parties. All correspondence regarding modifications or amendments to this Agreement will be forwarded to the Lessee for prior review and approval. Only the Executive Director of the Texas Department of Public Safety or his/her designee shall be authorized to sign changes or amendments.
44. **NOTICES:** Any notice required or permitted under this Agreement will be directed to the respective Parties at the addresses shown below and will be deemed received: (1) when delivered in hand and a receipt granted; (2) three days after it is deposited in the United States mail by certified mail, return receipt requested; or (3) when received if sent by confirmed facsimile or confirmed email:

If to the Lessee:

Texas Department of Public Safety
5805 North Lamar Boulevard, Building A
Austin, Texas 78752
ATTN: Lynni Ward, Procurement & Contract Services
Telephone: 512-424-5541
Email: Lynni.ward@dps.texas.gov

With a copy to:

Texas Department of Public Safety
5805 North Lamar Boulevard, Building G
Austin, Texas 78752
MSC-0259
ATTN: Technical Assistance Unit – Public Safety Communications Service
Telephone: (512) 424-7134
Email: DPSTEchnical.assistance@dps.texas.gov
Contract Monitor: Regina Sutton

If to the Lessor:

James G. Bergman
PO Box 793
Goodrich, Texas 77335
Telephone: 936-365-2861
Email: bergmantowers@yahoo.com

Either of the Parties may change its address or designated individual(s) to receive notices by giving the other Party written notice as provided above, specifying the new address and/or individual and the date upon which it will become effective.

45. **COMPLAINTS:** The Lessor may direct its written complaints, as well as any contract claims to the following office:

Texas Department of Public Safety
5805 North Lamar Boulevard, Building A
Austin, Texas 78752
ATTN: Amanda Arriaga, Assistant Director, Administrative Operations
Telephone: 512-424-7772
Email: amanda.arriaga@dps.texas.gov

46. **INTERPRETATION AGAINST THE DRAFTER:** Regardless of which party drafted this Agreement or the language at issue, any ambiguities in this Agreement or the language at issue will not be interpreted against the drafting party.
47. **NON-INCORPORATION CLAUSE:** This Agreement embodies the entire agreement between the Parties as described herein, and there have been and are no oral or written covenants, agreements, understandings, representations, warranties, or restrictions between the Parties regarding this Agreement other than those specifically set forth herein.
48. **MULTIPLE CONTRACTS:** This Agreement may be executed in a number of identical counterparts, each of which will be deemed an original for all purposes. In making proof of this Agreement, it will not be necessary to produce or account for more than one such counterpart.

49. **HEADINGS:** The headings, captions, and arrangements used in this Agreement are, unless specified otherwise, for convenience only and will not be deemed to limit, amplify, or modify the terms of this Agreement, nor to affect the meaning thereof.

50. **AFFIRMATION CLAUSES:** The Lessor certifies and affirms to the following:

- A. All statements and information prepared and submitted in this Agreement are current, complete, and accurate.
- B. The Lessor has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan gratuity, special discount, trip, favor, or service to a public servant in connection with this Agreement.
- C. Signing this Agreement with a false statement will void this Agreement.
- D. Neither the Lessor nor firm, corporation, partnership, or institution represented by the Lessor or anyone acting for such firm, corporation, or institution has (1) violated the antitrust laws of the State of Texas under Texas Business and Commerce Code, Chapter 15, or the federal antitrust laws; or (2) communicated the contents of this Agreement either directly or indirectly to any competitor or any other person engaged in the same line of business during the procurement process for this Agreement.
- E. The Lessor certifies that if a Texas address is shown as the address of the Lessor, the Lessor qualifies as a Texas Bidder as defined in 34 T.A.C. §20.32(68).
- F. Under Section 2155.004 of the Texas Government Code, the Lessor certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified contract and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.
- G. Under Section 231.006 of the Texas Family Code (relating to child support), the individual or business entity named in this Agreement is eligible to receive the specified payment and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.
- H. The Lessor has provided the names and Social Security Numbers of each person with a minimum of twenty-five percent (25%) ownership of the business signing this Agreement. Lessors that have pre-registered this information on the CPA Centralized Master Bidders List have satisfied this requirement. If not pre-registered, the Lessor shall provide the names and Social Security Numbers to the Lessee.
- I. The Lessor is in compliance with Section 669.003 of the Texas Government Code, relating to contracting with an executive of a state agency. If Section 669.003 applies, the Lessor shall provide the following information as an attachment to this Agreement: name of former executive; name of state agency; date of separation from state agency; position with the Lessor; and date of employment with the Lessor.
- J. The Lessor certifies that it has not been an employee of the Lessee within the last twelve (12) months.
- K. The Lessor agrees that any payments due under this Agreement will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas.
- L. The Lessor represents and warrants that the individual signing this Agreement is authorized to sign this Agreement on behalf of the Lessor and to bind the Lessor under any contract.
- M. The Lessor certifies that it and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity and that the Lessor is in compliance with the State of Texas statutes and rules relating to procurement and that the Lessor is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <https://www.sam.gov/portal/public/SAM/>.
- N. Under Section 2155.006 of the Texas Government Code, the Lessor certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified lease and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.
- O. Under Section 2261.053 of the Texas Government Code, the Lessor certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified lease and

acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

P. Payment to the Lessor and the Lessor's receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or 556.008 of the Texas Government Code, relating to the prohibition of using state funds for lobbying activities.

Q. The Lessor has no actual or potential conflicts of interest in providing the deliverables to the Lessee under this Agreement, if any, and that the Lessor's provision of the deliverables under this Agreement, if any, would not reasonably create an appearance of impropriety.

51. **CONFLICT OF INTEREST:** Under Section 2155.003 of the Texas Government Code, an employee of the Lessee may not have an interest in, or in any manner be connected with a contract or a bid for a purchase or goods or services by an agency of the State; or in any manner, including by rebate or gift, accept or receive from a person to whom a contract may be awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation. Any individual who interacts with public purchasers in any capacity is required to adhere to the guidelines established in Section 1.2 of the State of Texas Procurement Manual, which outlines the ethical standards required of public purchasers, employees, and contractors who interact with public purchasers in the conduct of state business, and with any opinions of or rules adopted by the Texas Ethics Commission. Contractors who are interested in seeking business opportunities with the State must be mindful of these restrictions when interacting with public purchasers of the Lessee or purchasers of other state agencies.
52. **DRUG FREE WORKPLACE POLICY:** The Lessor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. §701 *et seq.*) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 C.F.R. Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988, and is incorporated by reference and the Lessor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.
53. **SMOKING POLICY:** The Lessee has a policy of being a smoke-free agency. This policy reflects the Lessee's commitment to providing a healthy environment for all its employees and visitors. This policy prohibits smoking within any state building or on the grounds.
54. **ANTITRUST:** The Lessor hereby assigns to the Lessee any and all claims for overcharges associated with this Agreement arising under the antitrust laws of the United States, 15 U.S.C.A. Section 1, *et seq.* (1973), and the antitrust laws of the State of Texas, Texas Business and Commerce Code, Section 15.01, *et seq.* (1967).
55. **BUY TEXAS:** Pursuant to Section 2155.4441 of the Texas Government Code, the Lessor shall buy Texas products and materials for use in providing the deliverables authorized in this Agreement, if any, when such products and materials are available at a comparable price and in a comparable period of time when compared to non-Texas products and materials.
56. **FAMILY LAW CODE:** Under Section 231.006 of the Texas Family Code, the Lessor certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified payment and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.
57. **DEBT TO THE STATE:** Pursuant to Sections 403.055, 403.0551, and 2252.903 of the Texas Government Code, any payments due the Lessor under this Agreement will be applied towards any debt, including but not limited to delinquent taxes and child support, which is owed to the State of Texas.

58. **SALES AND USE TAX:** The Lessee, as an agency of the State of Texas, qualifies for exemption from state and local sales and use taxes pursuant to the provisions of the Texas Limited Sales, Excise, and Use Tax Act.

59. **IMMIGRATION AND U.S. DEPARTMENT OF HOMELAND SECURITY'S E-VERIFY SYSTEM:** The Lessor shall comply with all requirements related to federal immigration laws and regulations, to include but not be limited to, the Immigration and Reform Act of 1986, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), and the Immigration Act of 1990 (8 U.S.C. §1101 et seq.) regarding employment verification and retention of verification forms for any individual(s) who will perform any labor or services under this Agreement.

By entering into this Agreement, the Lessor certifies and ensures that it utilizes and shall continue to utilize, for the term of this Agreement, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

1. All persons employed to perform duties within Texas during the term of this Agreement; and
2. All persons (including subcontractors) assigned by the Lessor to perform work pursuant to this Agreement within the United States of America.

The Lessor shall provide, upon request of the Lessee, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by the Lessor and the Lessor's subcontractors as proof that this provision is being followed.

If this certification is falsely made, this Agreement may be immediately terminated, at the discretion of the State and at no fault to the State, with no prior notification. The Lessor shall also be responsible for the costs of any re-solicitation that the State must undertake to replace this terminated Agreement.

60. **NOTICE UNDER GOVERNMENT CODE §2261.252:** Pursuant to Government Code §2261.252, the Lessee may not enter into a contract for the purchase of goods or services with a private vendor if members of the Public Safety Commission or certain positions within the agency of Lessee, including the Executive Director, the General Counsel, or the Procurement Director or their covered family members have a financial interest in the vendor. Any contract found to violate Government Code §2251.252 is void.

61. **DISCLOSURE OF RESTRICTED EMPLOYMENT:** Site Owner certifies that it has not employed and will not employ a former TXDPS or state officer who participated in a procurement or contract negotiation for TXDPS involving Site Owner within two years after the state officer or employee left state agency employment or service. This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015. Any contract found to violate Government Code 572.069 is void.

62. **NOTICE UNDER GOVERNMENT CODE 2252.908:** Pursuant to Government Code 2252.908 TXDPS may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to TXDPS at the time the business entity submits the signed contract to TXDPS. The Texas Ethics Commission has adopted rules and procedures under these provisions: https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm. Any contract found to violate Government Code 2252.908 is void.

63. **GENERAL PROVISIONS:** The undersigned Parties certify that it has read and understands all of the terms and conditions of this Agreement, and each Party acknowledges receipt of a true copy hereof at the time of execution.

64. **AUTHORITY:** Each individual signing this Agreement hereby represents and warrants that it has full authority to do so.

THEREFORE, this Agreement will be binding upon the Parties and is executed as of the date of the last Party to sign.

LESSOR: JAMES G. BERGMAN

James G. Bergman
Signature

JAMES G. BERGMAN (OWNER)
Name & Title

JUNE-9-2016
Date

LESSEE: TEXAS DEPARTMENT OF PUBLIC SAFETY

Robert J. Bodisch
Signature

Robert J. Bodisch, Sr., Deputy Director, Homeland Security and Services
Name & Title

6.14.16
Date



EXHIBIT B

TRACT ONE: Being 14.80 acres, more or less, a part of the N.T. JANUARY SURVEY A-1082, Shelby County, Texas, and being the land described as First Tract in the Deed from W.R. Rudd et ux, Elsie Tec Rudd to Temple Industries, Inc., dated August 8, 1969, and recorded in Vol. 464, Pg. 531, Deed Records of Shelby County, Texas; being more particularly described as follows:

Being 14.8 acres of land, more or less, a part of the NT JANUARY SURVEY, Abst. No. 1082, Shelby County, Texas, described as follows:

Beginning at the SE Corner of said survey, inside of field, stake no bearings but NE corner of GH Brown Survey, Abst No 73;

Thence N 85 W with said Brown N.B. L. 830 yrs. to its N W corner of Rusk County School Land Block No. 3, stake, 2 bay trees near together near spring S. 47 W 3. yrs. Both very old, X;

Thence N 7 E with said school block 120 yrs to a stake;

Thence in an easterly direction 830 yrs. to a point on E B line of said N T January Survey, 82 yrs from its S E Corner;

Thence S 6-1/2 W with said line to the place of beginning, containing 14.8 acres of land, more or less.