

## RADIO TOWER LEASE AGREEMENT

THIS RADIO TOWER LEASE AGREEMENT (the "Lease") is entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_ ("Execution Date") between the CITY OF LEWISVILLE, a home-rule municipality ("Lewisville"), and UPPER TRINITY REGIONAL WATER DISTRICT, a conservation and reclamation district ("UTRWD").

Lewisville owns, operates and maintains a self-supporting radio communications tower (the "Tower") at 325 East Valley Ridge Boulevard in Lewisville, Texas (the "Property"). Subject to the following terms and conditions, Lewisville agrees to lease to UTRWD certain space on the Tower and certain ground space for UTRWD's equipment along with an area of access on the Property as described in Section 1 herein ("the Premises"):

1. Premises.

a. Premises. The Tower Space and Leased Ground Space, as defined in this section, as well as the access area described in subsection e., below, shall be referred to collectively as the "Premises."

b. Tower Space. UTRWD's space on the Tower is described and depicted on the attached Exhibit A ("Tower Space") and shall include at least two (2) 6' antenna, at least one (1) 3' antenna and at least one (1) 2' antenna mounted at a height of at least 200', and up to an additional two (2) 6' antenna in the future. Additional antenna may be added at no increase in the rental fee to support UTRWD's communication needs if space is available. Prior to the Commencement Date, UTRWD, at its own expense, shall provide Lewisville with a completed engineering load study of the Tower and the contemplated UTRWD Antenna Facilities, as defined in Section 7 herein, conducted by Malouf Engineering International, Inc., which is located at 17950 Preston Road, Suite 720, Dallas, Texas 75252 or other engineer as selected by Lewisville and mutually agreeable to UTRWD.

c. Leased Ground Space. UTRWD shall have the use of real property located within the fenced area and in Lewisville's equipment building located on the Property (the "Leased Ground Space"), as more particularly described in Exhibit "B". Upon mutual agreement of the parties hereto, UTRWD's use of the Leased Ground Space may be adjusted in the future and may include UTRWD's installation of its own building should Lewisville's building be unavailable for UTRWD's use. UTRWD shall also have the right to place appurtenant underground communications and electrical feeds on the Property, as outlined in Subsection 7.b., below.

d. Use of Lewisville Generator. During the term of this Lease, UTRWD has the right to connect to and use Lewisville's generator ("Generator") located on the Property. Schematics showing the connection of the UTRWD radio equipment to the Generator will be approved by Lewisville prior to the installation. Should Lewisville remove the Generator, Lewisville agrees to cooperate with UTRWD to place UTRWD's generator on-site within the Premises.

e. Access. UTRWD shall have rights to access the Premises as outlined in Section 7

of this Lease, including the non-exclusive use of the adjacent driveway/parking area immediately east of the Tower.

2. Term. The initial term of this Lease shall be ten (10) years, commencing on the earlier of twelve (12) months from full execution of this Lease or UTRWD's commencement of construction of the UTRWD Antenna Facilities (hereinafter defined as the "Commencement Date"), and terminating at midnight on the last day of the 120<sup>th</sup> full month following the Commencement Date (herein "Term").

3. Renewals. UTRWD shall have the option to renew this Lease for two (2) additional, ten (10) year periods ("Renewal Terms"). Each Renewal Term shall be on the same terms and conditions as set forth herein unless otherwise mutually agreed to in writing by both parties prior to the end of the Term or subsequent Renewal Term. Rent, as hereinafter defined, shall be increased for each Renewal Term by ten percent (10%) over the preceding Rent amount. Each Renewal Term shall be automatic and no action is required by either party, provided, however, either party may give written notice not to exercise a renewal option to the other party not less than one-hundred eighty (180) days prior to the expiration of the initial Term or Renewal Term.

If UTRWD continues to use the Premises, as allowed by this Lease, at the expiration of the Term or any Renewal Term without a written agreement between the parties, such use shall be deemed a month-to-month tenancy under the same terms and conditions of this Lease but shall not create a renewal of this Lease.

4. Permitted Use. The Premises may be used by UTRWD only for permitted uses, which are (i) the transmission and reception of communications signals, (ii) the construction, alteration, maintenance, repair, replacement and relocation of related facilities, towers, antennas, and equipment, and (iii) activities related to any of the foregoing.

UTRWD shall comply with all requirements set forth in Exhibit D throughout the Term and any subsequent Renewal Term.

UTRWD shall obtain (prior to the Commencement Date), at UTRWD's expense, all licenses and permits or authorizations required for UTRWD's use of the Premises from all applicable government and/or regulatory entities (the "Governmental Approvals"). Lewisville agrees to reasonably cooperate with UTRWD (at no cost to Lewisville), where required, to perform such procedures or obtain Governmental Approvals.

5. Rent. Upon the Commencement Date, UTRWD shall pay Lewisville, as rent, **Five Hundred Dollars (\$500.00)** per month ("Rent"). Rent shall be payable on the first day of the month, in advance, to Lewisville, at Lewisville's address as specified in paragraph 13. UTRWD may, at its sole option, pay said Rent in advance on a quarterly or annual basis.

If the Commencement Date should be other than the first day of a calendar month, rent shall be prorated to the end of that calendar month. If this Lease is terminated at a time other than on the last day of a month, Rent shall be prorated as of the date of termination for any reason other than a default by UTRWD, and all prepaid Rents shall be refunded to UTRWD.

UTRWD shall make rent payments under this Lease from its current revenues.

6. Interference. UTRWD shall not interfere with the operation of any radio equipment of Lewisville presently situated on the Tower or the Property. UTRWD shall coordinate with Lewisville to insure that UTRWD's frequencies and antenna locations will be compatible with those of Lewisville.

In addition, in the event Lewisville desires to install new or additional radio communications equipment at the Tower site in the future, UTRWD agrees to cooperate with Lewisville in the remedying of any radio interference with said radio equipment, however, in no event shall UTRWD be required to cease its activities or move its antennas or equipment on the Tower site unless such interference is sufficient to disrupt Lewisville's police, fire, public works, or other Lewisville emergency communications ("Emergency Interference"), which shall be determined by Lewisville in its sole discretion.

In the event there is Emergency Interference to Lewisville's electronic equipment, UTRWD will immediately suspend operations (transmissions) at the Tower site and promptly take all steps necessary to identify the problem, and, if caused by UTRWD's equipment, to take all such steps as are necessary to eliminate said Emergency Interference. If said Emergency Interference cannot be eliminated, then UTRWD shall, without penalty or further liability, terminate this Lease upon notice to Lewisville and remove its equipment, including, but not limited to, the UTRWD Antenna Facilities, from the Premises.

During the Term and any Renewal Terms, Lewisville may, from time to time, lease additional space on the Tower site and on the Premises and Lewisville may grant to such tenants non-exclusive rights of access and rights to install equipment Lewisville will not agree to a lease that interferes with UTRWD's Antenna Facilities in a manner which makes the Antenna Facilities unusable by UTRWD. Lewisville agrees to allow UTRWD to review and comment on such installations prior to installation. UTRWD shall have thirty (30) calendar days to review or comment on any proposed third-party installations on the Tower, starting on the date of UTRWD's receipt of the proposed installation documentation from the City.

7. Improvements; Utilities; Access

a. UTRWD Antenna Facilities. UTRWD shall have the right, at its expense, to erect and maintain on the Premises improvements, personal property and facilities, including radio transmitting and receiving antennas (collectively, the "UTRWD Antenna Facilities"). The location and equipment of such improvements must be approved by Lewisville prior to installation. UTRWD shall submit the construction plans and specifications complying with Exhibit D for the UTRWD Antenna Facilities to Lewisville for Lewisville's approval, which approval shall not be unreasonably withheld or delayed. UTRWD shall have the right to replace or upgrade the UTRWD Antenna Facilities at any time during the Term, or any Renewal Term, after a revised site plan is approved by Lewisville, which approval shall not be unreasonably withheld or delayed. UTRWD shall cause all construction to occur lien-free and in compliance with all applicable laws and ordinances. If UTRWD has to temporarily relocate any city-owned property for the installation of UTRWD's facilities, UTRWD shall ask permission of Lewisville before moving it and shall return

the property to its original location after installation of facilities. Any and all construction plans, specifications and site plans prepared for the UTRWD Antenna Facilities and held by Lewisville shall not be subject to disclosure to any party except by written permission of UTRWD or as required by the Texas Public Information Act or court order. Prior to providing any UTRWD document to a third party, Lewisville shall provide UTRWD written notice so that UTRWD can exercise its rights to object to such disclosure.

The UTRWD Antenna Facilities shall remain the exclusive property of UTRWD. UTRWD shall have the right to remove the UTRWD Antenna Facilities at any time on or before the expiration or termination of this Lease.

b. Communications and Electrical Feeds. During the term of this Lease, UTRWD shall have the right to erect, install, replace, reconstruct, maintain, and operate appurtenant communications and electrical feeds for the UTRWD Antenna Facilities on the Property within an area and in a manner approved in writing by the City Manager or designee.

c. Maintenance. UTRWD shall, at UTRWD's expense, keep and maintain the UTRWD Antenna Facilities in commercially reasonable condition and repair during the Term and any Renewal Terms in accordance with all City codes and ordinances. Upon termination of this Lease, the Premises (as it relates to UTRWD's Antenna Facilities) shall be returned to Lewisville in good, usable condition in accordance with all city codes and ordinances, ordinary wear and tear and damage by casualty excluded. All costs associated with the maintenance and repair of the Tower will be paid by Lewisville unless damage to the Tower is caused by UTRWD, in which case UTRWD shall repair such damage or, at Lewisville's option, reimburse Lewisville for the reasonable costs and expenses incurred by Lewisville to repair the damage.

d. Utilities. The cost of utilities are included as a part of the monthly rental fee and there are no additional charges for utilities. If UTRWD installs a separate meter, then UTRWD shall pay any additional utility charges due to UTRWD's use. UTRWD shall have the right to install utilities, at UTRWD's expense, and to improve the present utilities on the Premises (including, but not limited to, the installation of emergency power generators).

e. Access. As partial consideration for Rent paid under this Lease, Lewisville hereby grants UTRWD, UTRWD's employees, contractors, subcontractors, or agents rights to access the Property and Premises to service its UTRWD Antenna Facilities on the Property at all times during the Term or any Renewal Term. Said Access shall be provided from the existing driveway from Valley Ridge Boulevard located immediately east of the Tower Facility and as may be relocated from time to time by Lewisville with UTRWD's consent.

Subject to the provisions below, UTRWD may have 24 hours a day, 7 days a week access to Lewisville's electronic equipment building during the Term and any Renewal Term, upon telephonic notice to the Lewisville Police Department Communications Center at (972) 219-3640.

Access for any work or maintenance on the Premises shall be scheduled no sooner than one (1) calendar week in advance, except in the case of an emergency. For all after-hours emergency situations, UTRWD shall request access from the Lewisville Police Department (972) 219-3640

For purposes of this section, emergency means a condition that (1) Lewisville determines may pose a danger to life or health or of a significant loss of property; or (2) requires immediate repair or replacement of facilities by UTRWD in order to restore service.

Failure of UTRWD, UTRWD's employees, contractors, subcontractors, or agents failure to adhere to the notice and supervision requirements of this section may void UTRWD's permission to access the Premises. Such persons will be considered trespassers, and shall be subject to criminal charges and/or arrest for such violation.

f. **Lewisville Employee Required Presence.** A Lewisville employee or agent is required to be on the Property at all times during UTRWD's access to the radio building or when UTRWD is in a phase of construction or excavation on the Property. For clarification, UTRWD may access the fenced area and the tower without the presence of a Lewisville Employee. UTRWD, UTRWD's contractors or subcontractors shall present photographic identification at all times during access to the Property. UTRWD shall provide to Lewisville a list of authorized personnel to perform routine maintenance. Such list shall be updated periodically by UTRWD and provided to Lewisville. Lewisville may deny Premises access to anyone who is either not on the authorized personnel for maintenance list or who cannot provide adequate identification as required above.

g. **Premises Access Limited.** Only qualified and adequately insured agents, contractors or persons under UTRWD's direct supervision will be permitted to climb the Tower or to install or remove UTRWD's antennas and/or transmission lines from the Tower. Lewisville retains the right to permit its own employees and agents of current and subsequent tenants of the Tower to climb the Tower for the purpose of repair and maintenance. Lewisville shall notify UTRWD at least one (1) calendar week in advance of performing any scheduled maintenance on the Tower and inform UTRWD if said maintenance will interfere with UTRWD's operations. UTRWD shall be permitted, with Lewisville's approval and at no cost to UTRWD, to erect a temporary tower on the property in a location satisfactory to both UTRWD and Lewisville for the duration of said maintenance and shall promptly remove the temporary tower upon Lewisville's completion of said maintenance. Lewisville shall not be required to notify UTRWD before performing any emergency maintenance required on the Tower, but shall provide notice as soon as reasonably possible if said emergency maintenance will interfere with UTRWD operations. UTRWD shall notify Lewisville of any repairs on the UTRWD Antenna Equipment.

8. **Limitation on Additional Towers.** UTRWD agrees that, for the Term and any Renewal Terms, it will not erect the proposed 250 foot Radio Communications tower on any portion of its property located at 802 N. Kealy Avenue, Lewisville, Texas. Furthermore, UTRWD agrees to limit the height of any Radio communications tower found to be required on its property at 900 N. Kealy Avenue, Lewisville Texas to a (not to exceed) height of 100 feet without reviewing the plan with the City of Lewisville and seeking the City's concurrence.

9. **Default.** Any of the following occurrences, conditions, or acts shall be deemed a default ("Default") under this Lease:

a. if UTRWD fails to pay amounts due under this Lease within thirty (30) days of its receipt of written notice that such payments are overdue;

b. if either party fails to observe or perform its obligations under this Lease and does not cure such failure within thirty (30) days from its receipt of written notice of breach; or such longer period as may be required to diligently complete a cure commenced within the thirty (30) day period.

10. Termination. Except as otherwise provided herein, this Lease may be terminated, without any penalty or further liability as follows:

- a. upon ten (10) days written notice in the event of a Default (as defined above).
- b. upon ninety (90) days written notice by Lewisville or UTRWD if UTRWD is unable to obtain, maintain, or otherwise forfeits or conceals any license, permit or Governmental Approval necessary to the construction and/or operation of the UTRWD Antenna Facilities or UTRWD's business.
- c. upon ninety (90) days written notice by UTRWD if the Premises are or become unacceptable under UTRWD's design or engineering specifications for its UTRWD Antenna Facilities or the communications system to which the UTRWD Antenna Facilities belong.
- d. immediately upon written notice by Lewisville or UTRWD if the Premises, the UTRWD Antenna Facilities or the Tower are destroyed or damaged so as in UTRWD's reasonable judgment to substantially and adversely affect the effective use of the UTRWD Antenna Facilities. In such event, all rights and obligations of the parties shall cease as of the date of the damage or destruction, and UTRWD shall be entitled to the reimbursement of any Rent prepaid by UTRWD the month the damage or destruction occurred. In the event of a casualty to the Tower, and Lewisville elects to rebuild the Tower and neither Lewisville or UTRWD elect to terminate this Lease, UTRWD shall have the right to rebuild or repair the UTRWD Antenna Facilities upon restoration of the Tower. If UTRWD elects to continue this Lease, then all Rent shall abate until the Premises and/or UTRWD Antenna Facilities are restored to the condition existing immediately prior to such damage or destruction.
- e. after the completion of the initial ten-year term, either party may give the other party twelve (12) months written notice of termination of this Lease.

11. Insurance and Subrogation.

- a. UTRWD shall, for the Term of this Lease, maintain insurance in compliance with the requirements outlined in **Exhibit C**.
- b. Lewisville and UTRWD hereby mutually release each other (and their successors or assigns) from liability and waive all right of recovery against the other for any loss or damage covered by their respective first party property insurance policies for all perils insured thereunder for the purposes of this Lease. In the event of such insured loss, neither party's insurance company shall have a subrogation claim against the other.

12. Liability and Hold Harmless. Lewisville and UTRWD acknowledge and agree that neither party waives any sovereign or governmental immunity available to it under Texas law and does not waive any available defenses under Texas law. Nothing in this paragraph shall be construed to

create or grant any rights, contractual or otherwise, in or to any third persons or entities.

This Lease is not intended to extend the liability of the parties beyond that provided by law. Neither party waives any immunity or defense that would otherwise be available to it against claims by third parties.

Each Party hereby holds all other Parties to this Lease harmless, to the extent authorized by law, from and against any and all claims and for all liability arising out of, resulting from, or occurring the performance of this Lease by its officers, agents, or employees.

13. Force Majeure. Lewisville's and UTRWD's obligations under this Lease are subject to force majeure, and neither party will be in default of this Lease if any failure, delay, or damage in performance is caused by any of the following: strike or other labor problems, accidents, Acts of God, fire, flood, adverse weather conditions, material or facilities shortages or unavailability, lack of transportation, governmental ordinances, laws, rules, regulations, and restrictions, war or civil disorder, in each case beyond either party's reasonable control, as long as the affected party gives written notice to the other party as early as practicable of the nature and probable duration of the force majeure event and exercises due diligence to avoid and shorten the force majeure event.

13. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by overnight carrier to the following addresses:

If to Lewisville, to:

City of Lewisville  
Office of the City Manager  
P. O. Box 299002  
Lewisville, Texas 75029-9002

If to UTRWD, to:

Upper Trinity Regional Water District  
Executive Director  
P.O. Box 305  
Lewisville, Texas 75067

14. Successors and Assigns. This Lease shall run with the property, and shall be binding upon and insure to the benefit of the parties, their respective successors, personal representatives and assigns.

15. Miscellaneous.

a. This Lease constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind that are not set forth herein. Any amendments to this Lease must be in writing and executed by both parties, except that alterations to Exhibits A and B may be made with the approval of the City Manager or City Manager's designee in writing.

b. If any term of this Lease is found void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect.

c. The Lease may be executed in any number of counterparts and all such counterparts

shall be deemed to constitute a single lease and the execution of one counterpart by any Lewisville shall have the same force and effect as he had signed all the other counterparts.

IN WITNESS WHEREOF, said parties have caused this Lease to be duly executed as of the date first above written.

LEWISVILLE:

City of Lewisville,  
a municipality

\_\_\_\_\_  
By: Donna Barron  
Its: City Manager

UTRWD:

Upper Trinity Regional Water District,  
a conservation and reclamation district

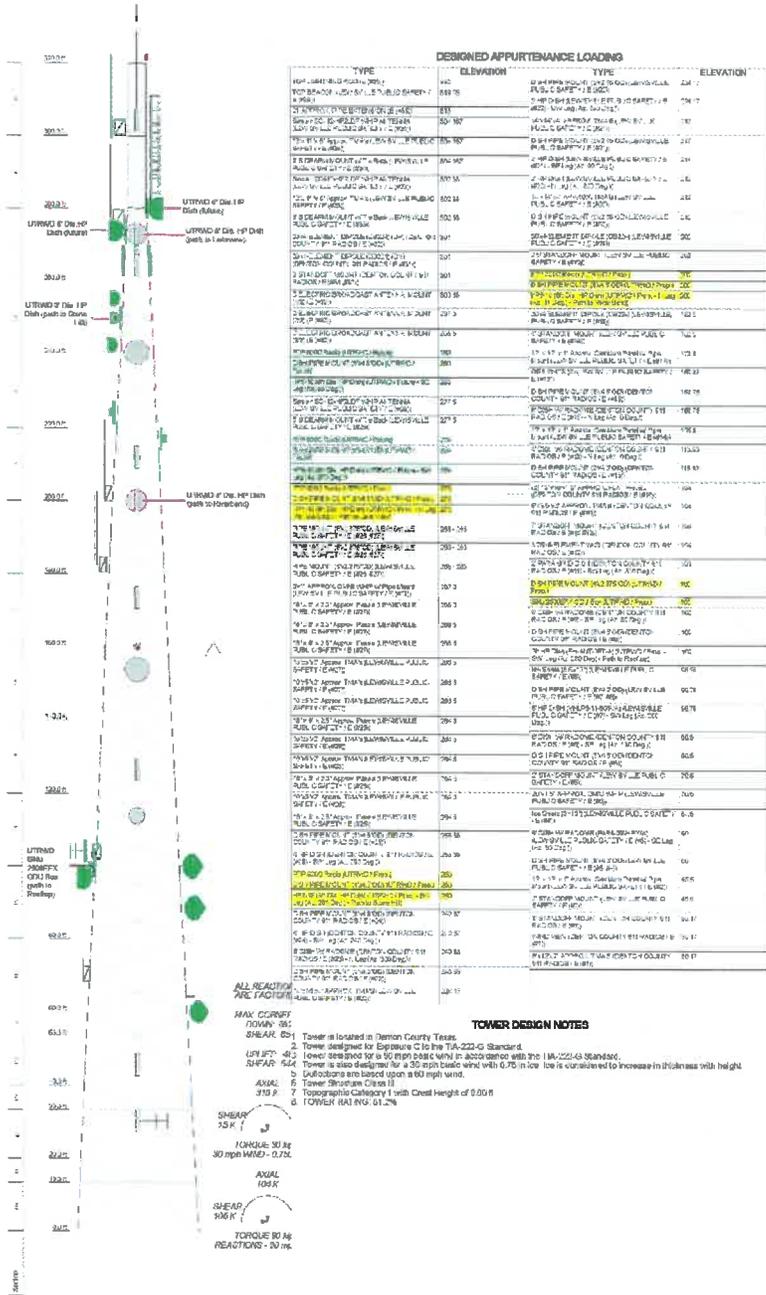
  
\_\_\_\_\_  
By: Larry N. Patterson  
Its: Executive Director

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Lizbeth Plaster  
City Attorney

# EXHIBIT A

## Chart Depicting Antenna Placement on Tower Space



	Akki Engineering Int'l, Inc. 47950 Preston Road, Suite #720 Dallas, TX 75252 Phone: (972) 783-2678 FAX: (972) 783-2688	320 FT 991, KEALY RADIO TOWER SITE 17092978-001-R1 Date: 11/24/16 Drawn: L. Nguyen Checked: J. S. J. / J. W. R. Scale: 1/8" = 1'-0"
	11/24/16	11/24/16

**EXHIBIT "B"**  
**Leased Ground Space**



**Exhibit “C”**  
**LIABILITY INSURANCE**

(a) UTRWD shall, at its sole cost and expense, obtain, maintain, or cause to be maintained, and provide, throughout the term of the Lease granted herein, insurance in the amounts, types and coverages set forth below, and in compliance with Lewisville City Code Section 13-52, as it exists or may be amended. Such insurance may be in the form of self-insurance to the extent not precluded by applicable law or by obtaining insurance, as follows:

- (1) Commercial general or excess liability on an occurrence form with minimum limits of not less than one million dollars (\$1,000,000) per occurrence and not less than two million dollars (\$2,000,000) aggregate. This coverage shall include the following:
  - (A) Products/completed operations to be maintained for the warranty period specified in Lewisville City Code Section 13-49, as it exists or may be amended, provided however that no bond shall be required.
  - (B) Personal and advertising injury.
  - (C) Contractual liability.
  - (D) Explosion, collapse, or underground (XCU) hazards.
- (2) Automobile liability coverage with a minimum policy limit of not less than one million dollars (\$1,000,000) combined single limit each accident. This coverage shall include all owned, hired and non-owned automobiles.
- (3) Statutory workers’ compensation benefits in accordance with the statutes and regulations of the State of Texas. UTRWD must provide the City with a waiver of subrogation for workers compensation claims.
- (4) UTRWD must name the City, which includes all authorities, commissions, divisions, and departments, as well as elected and appointed officials, agents, and volunteers, as additional insureds

under the coverage required herein, except workers' compensation coverage. The certificate of insurance must state that the City is an additional insured and provide for an endorsement that the "other insurance" clause shall not apply to the City where the City is an additional insured shown on the policy.

(b) UTRWD will require its contractors and subcontractors performing work within the Premises to maintain, at their sole cost and expense, commercial general or excess liability on an occurrence form with minimum limits of not less than one million dollars (\$1,000,000) per occurrence and not less than two million dollars (\$2,000,000) aggregate. Such insurance shall be required under the same conditions as specified herein for UTRWD. UTRWD will maintain at all times, and will provide to City upon request, proof of its contractors' and subcontractors' compliance with this requirement.

(c) UTRWD will provide proof of insurance in accordance with this Lease Agreement within thirty (30) days of the effective date hereof and annually thereafter. UTRWD will not be required to furnish separate proof when applying for permits.

(d) All policies shall be endorsed to read: "THIS POLICY WILL NOT BE CANCELLED OR NON-RENEWED WITHOUT THIRTY (30) DAYS ADVANCE WRITTEN NOTICE TO THE CITY EXCEPT WHEN THIS POLICY IS BEING CANCELLED FOR NONPAYMENT OF PREMIUM, IN WHICH CASE TEN (10) DAYS ADVANCE WRITTEN NOTICE IS REQUIRED."

(e) Within ten (10) calendar days of a suspension, cancellation, or non-renewal of coverage, the UTRWD shall provide a replacement Certificate of Insurance and applicable endorsements to the City. The City shall have the option to suspend the UTRWD's performance should there be a lapse in coverage at any time during this Lease Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Lease Agreement.

(f) In addition to any other remedies the City may have upon the UTRWD's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order the UTRWD to stop work hereunder.

(g) Nothing herein contained shall be construed as limiting in any way the

extent to which the UTRWD may be held responsible for payments of damages to persons or property resulting from the UTRWD's or its subcontractors' performance of the work covered under this Lease Agreement.

(h) It is agreed that the UTRWD's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City for liability arising out of operations under this Lease Agreement. The insurance required is in addition to and separate from any other obligation contained in this Lease Agreement.

(i) The UTRWD and any subcontractors are responsible for all damage to their own equipment and/or property.

## **Exhibit D**

### **Mounted Antenna Requirements for the Kealy Radio Tower Site at 325 East Valley Ridge Boulevard, Lewisville, Texas**

#### **Site Requirements:**

- Nothing listed in these requirements shall contradict any city ordinance.
- All zoning regulations must be followed.
- All electrical wires and telecommunications cables must be placed in an acceptable location to Lewisville and in a similar manner as other cables and wires.
- Any structural and electrical engineering analysis that may be required must be sealed by a professional engineer. An initial tower load study at UTRWD's expense is required from Malouf Engineering International, Inc., which is located at 17950 Preston Road, Suite 720, Dallas, Texas 75252, 972-783-2578 or other engineer as mutually selected by UTRWD and Lewisville.
- Any excavation at the Tower site will be conducted at the direction of Lewisville.
- UTRWD shall be allowed to connect to the generator inside Lewisville's equipment building and may use existing conduit to connect to their antennas on the Tower.