



## **Agenda Commentary**

**Item Title/ Subject:** Consider Tower Space Agreement

**Staff Source:** Gene McCullough, IT Director

**Date:** 12/16/16

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**History/Background Information:** James Corbridge of Corbridge Technology, a local IT support company, approached myself about leasing space on the existing tower mounted on the roof of the old fire station building.

**Subject Summary:** The agreement has been reviewed by city attorney for appropriateness and myself and Mr. Corbridge have performed a site survey and found it satisfactory.

**Recommendation:** Approve the agreement as written.

**Price/Cost:** No cost to the City moving forward, lease fee TBD.

**CITY OF CLINTON  
OLD FIRE STATION TOWER SITE AGREEMENT**

Lessor leases to Lessee, the site described below:

- ✓ Building exterior space for attachment of antennas
- ✓ Building exterior space for placement of base station equipment
- ✓ Tower antenna Space - see Exhibit "C" for specifications and wind loading
- ✓ Space required for cable runs to connect Facility equipment and antennas

In the location(s) ("Site") shown on Exhibit A, together with a non-exclusive easement for reasonable access thereto and to the appropriate, source of electric and telephone facilities. The Site will be used by Lessee for the purpose of installing, removing, replacing, modifying, maintaining and operating, at its expense, communications service system facility, including, without limitation, antenna equipment, cable wiring, back-up power sources related fixtures and, if applicable to the Site, an antenna structure. Lessee will use the Site in a manner which will not unreasonably disturb the occupancy of Lessor's other tenants. Lessee will have unrestricted access to the Site 24 hours per day, 7 days per week.

1. **Term.** The term of this Agreement (the "Initial Term") is one (1) year, commencing on date both Lessee and Lessor have executed this Agreement. This Agreement will automatically renew, unless terminated under the terms of Paragraph 13 below.
2. **Rent.** Rent (as hereinafter defined) will commence upon the Construction start date and/or installation of Lessee's Antenna Facilities, (the "Rent Commencement Date"). Thereafter, the annual rent of \$900.00 will be paid in equal monthly installments in advance. Rent for each Renewal Term will be the annual rent in effect for the final year of the Initial Term or prior renewals Term, as the case may be as increased by the CPI for communities of a similar size in the South Region. Rent payments will be sent to the address beneath Lessor's signature or via electronic transfer to the Lessor's bank account as directed by the Lessor. All of Lessee's monetary obligations set forth in this Agreement are conditioned upon Lessee's receipt of an accurate and executed W-9 Form from Lessor.

3. **Title and Quiet Possession.** Lessor represents and agrees (a) that it is the Lessor of the Site; (b) that it has the right to enter into this Agreement; (c) that the person signing this Agreement has the authority to sign; (d) that Lessee is entitled to access to the Site at all times and to the quiet possession of the Site throughout the Initial Term and each Renewal Term so long as Lessee is not in default beyond the expiration of any cure period; and (e) that Lessor will upon sale or transfer of the underlying property, provide an assignment letter to Lessee that instructs Lessee to make future rent payments to the transferee. Lessee understands that their quiet possession is subject to Paragraph 11 and existing tenants on the site.
4. **Assignment/Subletting.** Lessee shall not have the right to sublease and/or assign its rights under this Agreement without notice to and consent of Lessor.
5. **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 recognized overnight carrier to the addresses specified below. Notices, requests, demands and other communications may also be given by facsimile transmission, provided that notice is concurrently given by one of the above methods. Communication by electronic or computerized mail shall not be accepted as effective notice under this Agreement. Notices to Lessee must be sent to the address shown underneath Lessee's signature. Notices to Lessor must be sent to the address shown underneath Lessor's signature.
6. **Improvements.** Upon termination or expiration of this Agreement, Lessee shall remove its equipment and improvements and will restore the Site to substantially the condition existing on the Commencement Date, except for ordinary wear and tear and casualty loss.
7. **Compliance with Laws.** Lessee will substantially comply with all applicable laws relating to its possession and use of the Site.
8. **Standard of Work.** All work shall conform the methods and procedures described in the Motorola document Standards and Guidelines for Communications Sites (Motorola Part Number 68-81089E50). Electrical work shall meet requirements of the most current edition of NFPA 70, the National Electrical code.
9. **Proof of engineering competency.** The Lessor shall be sole arbiter of situations arising from disputes as to the competency of engineering of proposed additions such as antennas, batteries, cabling, electrical equipment, generators, penetrations, racks, support structures, and transfer switches. This list is not intended to be all-inclusive.

10. **Interference.** Lessee will resolve technical interference problems with other equipment located at the site on the commencement date or any equipment that becomes attached to the site at any future date when Lessee desires to add additional equipment to the site. Subsequent users: Lessor will not permit or suffer the installation of any future equipment, which (a) results in technical interference problems with Lessee's then existing equipment, (b) encroaches onto the site, or (c) shall not permit the use of any portion of Lessor's property by any subsequent users following installation of Lessee's facilities in a way which materially interferes with the rights of Lessee hereunder.
11. **Emergent termination of interference.** As this site supports multiple public safety communalizations systems, the Lessor reserves the right to remove power (both normal and emergency) from any Lessee installed equipment in order to prevent interference to a public safety communications system. Lessee shall clearly mark disconnecting means for both normal and emergency power in order to minimize damage to Lessee equipment.
12. **Utilities.** The parties agree that there is a 20A outlet available to Lessee, which Lessee has inspected and approved is sufficient for its purposes. The cost of utilities will be included in the base rent.
13. **Termination.** Lessee may terminate this Agreement at any time by 60 day notice to Lessor without further liability if Lessor does not obtain all permits or other approvals (collectively, "approval") required from any governmental authority, quasi governmental authority or any easements required from any third party to operate the installed equipment, or if any such approval is canceled, expires or is withdrawn or terminated, or if Lessor fails to have proper Lessorship of the Site or authority to enter into this Agreement, or if Lessee, for any other reason including technical, regulatory and business reasons, in its sole discretion, determines to terminate this Agreement. Upon termination, all prepaid rent will be retained by Lessor unless such termination is due to Lessor's failure of proper Lessorship or authority, or such termination is a result of Lessor's default. Lessor may terminate this agreement upon 90 days written notice.
14. **Default.** If either party is in default under this Agreement for a period of (a) 15 days following receipt of notice from the non-defaulting party with respect to a default which may be cured solely by the payment of money, or (b) 30 days following receipt of notice from the non-defaulting party with respect to a default which may not be cured solely by the payment of money, then, in either event, the non-defaulting party may pursue any remedies available to it against the defaulting party under applicable law, including, but not limited to, the right to terminate this Agreement. If the non-monetary default may not reasonably be cured within a 30-day period, this Agreement may not be terminated if the defaulting party commences action to cure the default within such 30-day period and proceeds with due diligence to fully cure the default, unless the default relates to a safety concern, in which case, Lessor may immediately terminate the agreement and unilaterally begin remedy of the safety issue.
15. **Indemnity.** Lessee indemnifies the Lessor against and holds the Lessor harmless from any and all costs (including reasonable attorneys' fees) and claims of liability or loss which arise out of this lease, use and/or occupancy of the Site by the Lessee. The indemnity obligations under this Paragraph will survive termination of this Agreement.

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16. **Hazardous Substances.** Lessor represents that it has no knowledge of any substance, chemical or waste (collectively, "substance") on the Site that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Lessee will not introduce or use any such substance on the Site in violation of any applicable law.
17. **Subordination and Non-Disturbance.** This Agreement is subordinate to any mortgage or deed of trust now of record against the Site. However, promptly after the Agreement is fully executed, Lessor will use diligent efforts to obtain a non-disturbance agreement reasonably acceptable to Lessee from the holder of any such mortgage or deed of trust.
18. **Taxes.** Lessee will be responsible for payment of all personal property taxes assessed directly upon and arising solely from its use of the communications facility on the Site. Lessee will pay to Lessor any increase in real property taxes attributable solely to any improvements to the Site made by Lessee within 60 days after receipt of satisfactory documentation indicating calculation of Lessee's share of such real estate taxes and payment of the real estate taxes by Lessor. Lessor will pay when due all other real estate taxes and assessments attributable to the property of Lessor of which the Site is a part and will provide Lessee with proof of such payments.
19. **Insurance.** Lessee will procure and maintain commercial general liability insurance, with limits of not less than One Million Dollars combined single limit per occurrence for bodily injury and property damage liability, with a certificate of insurance to be furnished to Lessor within 30 days of written request. Such policy will provide that cancellation will not occur without at least 15 days prior written notice to Lessor. Lessee shall identify Lessor as additional insured on the policy.
20. **Maintenance.** Lessee will be responsible for repairing and maintaining the tower site and facility and any other improvements installed by Lessee at the Site in a proper operating and reasonably safe condition; provided, however if any such repair or maintenance is required due to the acts of Lessor, its agents or employees, Lessor shall reimburse Lessee for the reasonable costs incurred by Lessee to restore the damaged areas to the condition which existed immediately prior thereto. Lessor will maintain and repair all other portions of the property of which the Site is a part in a proper operating and reasonably safe condition.
21. **Miscellaneous.** (a) This Agreement applies to and binds the heirs, successors, executors, administrators and assigns of the parties to this Agreement, including any successor by merger or sale of assets; (b) this Agreement is governed by the laws of the state in which the Site is located; (c) If requested by Lessee, Lessor agrees promptly to execute and deliver to Lessee a recordable Memorandum of this Agreement in the form of Exhibit B; (d) this Agreement (including the Exhibits) constitutes the entire agreement between the parties and supersedes all prior written and verbal agreements, representations, promises or understandings between the parties. Any amendments to this Agreement must be in writing and executed by both parties; (e) if any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, will not be affected and each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law; and (f) the prevailing party in any action or proceeding in court or mutually agreed upon arbitration proceeding to enforce the terms of this Agreement is entitled to receive its reasonable attorneys' fees and other reasonable enforcement costs and expenses from the non-prevailing party.

16. **Hazardous Substances.** Lessor represents that it has no knowledge of any substance, chemical or waste (collectively, "substance") on the Site that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Lessee will not introduce or use any such substance on the Site in violation of any applicable law.
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22. **Non-Binding Until Fully Executed.** This Agreement is for discussion purposes only and does not constitute a formal offer by either party. This Agreement is not and shall not be binding on either party until and unless it is fully executed by both parties.

23. **Authority.** Each party hereby represents and warrants to the other that the undersigned person is duly authorized to execute this Lease Agreement by and on behalf of such party.

The following Exhibits are attached to and made a part of this Agreement: Exhibits A (Site Description), B (Memorandum of Site Agreement) and The City of Clinton.

**LESSOR:** The City of Clinton

**LESSEE:** Corbridge Technology

**EXHIBIT A:** Site Description

Old Fire Station

Site situated in the City of Clinton, County of Custer, State of Oklahoma

The use of an area approx. 10 foot x 6 foot on the roof of the old fire station (located at the intersection of Gary Blvd. and 6<sup>th</sup> Street.), as well as the use of the antenna mounted directly above this space.



Note: Lessor and Lessee may, at Lessee's option, replace this Exhibit with an exhibit setting forth the legal description of the property on which the Site is located and/or an as-built drawing depicting the Site. \*[Use this Exhibit A for Tower Site Agreement, Memorandum of Tower Site Agreement, Option Agreement and Memorandum of Option Agreement.

**EXHIBIT B:** Memorandum of Site Agreement

This memorandum evidences that a lease was made and entered into by a written Tower Site Agreement dated \_\_\_\_\_ between the City of Clinton and Corbridge Technology.

Such Agreement provides in part that Lessor leases to Lessee a certain site ("Site") located at 519 Gary Blvd., City of Clinton, County of Custer, State of Oklahoma, within the property of Lessor which is described in Exhibit A attached hereto, with grant of easement for unrestricted rights of access thereto and to electric and telephone facilities for a term of one year commencing on January 1, 2017.

