



Issue: RESOLUTION #2022-027 CC911 TOWER USE AGREEMENT

Date: February 10, 2022

Submitted By: Doug Colvin
Assistant City Administrator – Director, Nixa Utilities and Public Works

Background

Christian County 911 has been working to improve radio communications for among others, the Nixa Police Department. Improvements are necessary for our Police Department to have full and reliable communications across the entire service area. CC911 would like to have low-cost use of water tower #7 near Summit and High Point schools to install a radio repeater, antenna, and associated equipment.

Analysis

As with recent action taken for the amateur radio operators (HAM Radio), staff has worked with CC911 representatives to develop the attached Tower Use Agreement to allow them a low cost way to improve radio communications for our PD.

This agreement, which is nearly identical to the HAM Radio agreement except for the tenant name and location, allows their use of the tower for a five-year period at the reduced price of \$1 per month. Staff has predetermined all equipment (also like that for HAM) is acceptable as an attachment to our facilities without concern of failure or damage.

Resolution #2022-027 authorizes the City Administrator to execute the agreement.

Recommendation

Staff recommendation is for City Council to pass Resolution #2022-027

RESOLUTION NO. 2022-027

A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A TOWER ATTACHMENT AGREEMENT WITH CHRISTIAN COUNTY EMERGENCY SERVICES.

WHEREAS Christian County Emergency Services and the Nixa Police Department desire to improve radio communications for the Police Department; and

WHEREAS by authorizing the attachment of certain Christian County Emergency Services equipment on the City's water tower located at 1355 North Street it is believed that such equipment will improve the Police Department's radio service.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NIXA, AS FOLLOWS, THAT:

SECTION 1: The City Administrator, or designee, is hereby authorized to execute the "Tower Attachment Agreement" ("Contract") attached hereto, and incorporated herein by this reference, as "Resolution Exhibit A," with Christian County Emergency Services. Said Contract shall be in substantially similar form as the document attached hereto as "Resolution Exhibit A." The City Administrator and the officers of the City are hereby authorized to do all things necessary or convenient to carry out the terms and intent of this Resolution.

SECTION 2: This Resolution shall be in full force and effect from and after its final passage by the City Council and after its approval by the Mayor, subject to the provisions of section 3.11(g) of the City Charter.

ADOPTED BY THE CITY COUNCIL THIS 14th DAY OF FEBRUARY 2022.

ATTEST:

CITY CLERK

PRESIDING OFFICER

APPROVED BY THE MAYOR.

ATTEST:

CITY CLERK

MAYOR

APPROVED AS TO FORM:

DATE OF APPROVAL

CITY ATTORNEY

TOWER ATTACHMENT AGREEMENT

THIS TOWER ATTACHMENT AGREEMENT ("Agreement") is entered into upon the day of its execution by both parties, by and between the City of Nixa, a Missouri constitutional charter city, ("Owner") and Christian County Emergency Services ("Tenant").

1. Grant. Subject to the provisions of this Agreement, Owner hereby grants to Tenant the following:

a. The nonexclusive right to install, maintain, operate, remove, and replace certain Equipment and other appurtenances related thereto, on Owner's tower ("Tower") located at 1355 North Street, Nixa, MO 65714, ("Property").

b. Tenant may install equipment, personal property, and other improvements, as listed on "Exhibit A" ("Equipment"). Owner may, in its sole discretion and at the request of the Tenant, authorize Tenant to place additional equipment, personal property, or other improvements on the Property, provided that such approval is in writing. All Equipment so installed shall not interfere with Owner's use of the Property, including without limitation any facilities or utilities on the Property, or undermine the structural integrity of the Tower. The Exhibits referenced in this paragraph are attached hereto and incorporated herein by their reference herein.

c. Any Equipment owned by Tenant, whether or not fixed or attached to the Owner's Property or Tower, shall remain the property of the Tenant. Tenant shall dismantle and remove its Equipment and facilities from the Tower and Property prior to the expiration or termination of this Agreement, unless additional time is provided by the Owner. In the event Tenant's Equipment and facilities are not removed from the Tower or the Property after the time allowed under this Agreement, Owner may cause the Equipment and facilities to be removed, and Tenant shall be responsible for the payment of actual costs incurred by Owner for: (i) removal and storage of Tenant's Equipment and facilities; (ii) repair of damages caused to the Tower or Property by such removal; and (iii) restoration of the Tower or Property to substantially the same condition as its condition prior to Tenant's attachment to the Tower, reasonable wear and tear excepted, together with any reasonable attorney's fees incurred by Owner to enforce such removal. Tenant shall provide Owner with a performance bond or other acceptable form of surety, supported by bids acceptable to Owner, in an amount equal to the estimated cost of removing Tenant's Equipment and restoring the Tower as provided above. The parties expressly agree that the terms contained herein relating to the Tenant's obligation and responsibility for paying the Owner's actual costs incurred for removing Equipment and facilities shall survive the termination of this Agreement and shall continue in full force and effect until the Owner's claims have been resolved.

2. Owner's rights. Owner shall continue to have the full right to occupy and use the Property, operate the Tower, and to grant others the right to occupy or utilize the remainder of the Property and the Tower at Owner's sole discretion, subject to the provisions of this Agreement.

3. Tenant's use.

a. Tenant shall use the Property for the purpose of installing, maintaining, improving and operating, at Tenant's sole cost and expense, a communications facility, which shall

include only the Equipment referenced on "Exhibit A," or any Equipment later authorized by the Owner in writing.

b. Tenant shall be solely responsible for securing any and all building permits and approvals, zoning changes or approvals, variances, use permits, and other governmental permits from applicable governmental authorities, including any Federal Communications Commission and Federal Aviation Administration approval (collectively, "Permits") prior to construction on the Property. Owner agrees to reasonably cooperate with Tenant in obtaining the Permits, and copies of the Permits shall be provided to Owner upon request. Tenant shall promptly pay all costs and expenses of obtaining the Permits and shall not cause or knowingly permit any lien to be maintained against the Owner's Property as a result thereof.

c. During the term of this Agreement, Tenant shall have reasonable access to the Property at all times, subject to Owner's occupancy of the Property, provided that Tenant shall provide notice to Owner when they or their agents will be present on the Property.

4. **Term.** The term of this Agreement shall be **five years** ("Term") commencing on the date this Agreement is fully executed by the parties (the "Commencement Date").

5. **Rent.** Beginning on the Commencement Date, Tenant shall pay Owner \$1.00 monthly for their use of the Property and Tower ("Rent"). Rent payments shall be made monthly and sent to the Owner's notice address as specified below.

6. **Holding Over.** In the event that Tenant continues to occupy the Tower or Property after the expiration of the Term of this Agreement, without executing a new Tower Attachment Agreement with Owner, Tenant shall occupy the Property month-to-month and the terms of this Agreement shall continue in full force and effect during Tenant's continued occupancy.

7. **Tower Maintenance.**

a. Owner represents and warrants that its operation of the Tower, exclusive of Tenant's Equipment, meets and will be maintained in accordance with all applicable laws, rules and regulations of the Federal Communications Commission, Federal Aviation Administration and all applicable local codes and regulations. The costs of maintaining the Tower, including painting of the exterior and finishing or painting the interior of the Tower, shall be borne by Owner, with the exception of maintenance of Tenant's antennae and equipment. Any additional charge for maintenance, operation or painting of the Tower resulting from Tenant's occupancy of the Tower shall be borne by Tenant. In the event damage is caused to Tenant's equipment or personal property by Owner, upon due notice and proof of loss provided by Tenant, Owner shall reimburse Tenant the reasonable cost of repairing such damage.

b. For any maintenance that may affect Tenant's antennae or equipment, Owner shall: (i) give Tenant 48 hours written notice of the proposed maintenance; and (ii) allow Tenant the opportunity to have its personnel or agents present during the maintenance operations.

c. If some or all of Tenant's equipment must be removed from the Tower to accommodate repairs or maintenance, Owner shall use reasonable efforts to permit

Tenant to place temporary transmission facilities at an alternative location acceptable to Tenant until such time as Owner completes its repairs or maintenance.

d. Tenant shall maintain its Equipment in good operating condition. In the event damage is caused to the Tower by Tenant or Tenant's agents, employees, contractors, or subcontractors, the cost of repairing such damages shall be borne by Tenant who shall, upon due notice provided by Owner, timely repair any such damage.

e. Upon termination or expiration of this Agreement, Tenant shall remove its Equipment, and any other facilities or property, from the Tower and Property in accordance with the terms of this Agreement and shall repair damage, if any, to the Tower caused by the removal of Tenant's Equipment (normal wear and tear excepted).

f. Except to the extent provided by this Agreement, Tenant's activities, operations, and Equipment shall not adversely interfere with Owner's maintenance, repair, and operation of the Tower and its lighting system. Tenant expressly agrees that Tenant's use of the Tower, under this Agreement, is subservient to Owner's use of Tower.

8. Tenant's duties.

a. Tenant shall secure any and all appropriate approvals or Permits and maintain said approvals and Permits for the duration of this Agreement, for Tenant's intended use of its Equipment on the Property from the Federal Communications Commission, the Federal Aviation Administration, and any other federal, state or local agency having jurisdiction over Tenant's proposed use of the Equipment or Property.

b. Tenant shall accept the condition of the Property as it exists on the Commencement Date. Tenant has the option of obtaining an environmental audit of the Property performed by an environmental consulting firm of Tenant's choice and at Tenant's sole cost and expense.

c. Tenant shall install Equipment only of types and generating frequencies which will not cause interference to transmissions or signals from the existing equipment of Owner and other users of the Tower as may be already in place on the Tower or Property as of the Commencement Date. At Owner's request, Tenant shall provide a detailed interference analysis showing potential conflicts between Tenant's frequencies and those of the existing equipment of Owner or other users already in place on the Tower or Owner's Property. In the event Tenant's Equipment causes such interference, Tenant will take commercially reasonable steps to correct such interference and will, if necessary, shut down the Equipment causing such interference (except for intermittent operations for the purpose of testing, after performing maintenance, repair, modifications, replacement, or other action taken for the purpose of correcting such interference) and if such interference is not corrected within 30 days after receipt of written notice, Tenant agrees to remove its Equipment from the Tower and the Property and this Agreement shall terminate. After Tenant's equipment has been installed, Owner shall place similar restrictions regarding interference with Tenant's frequencies on others using the Tower with Owner's permission, or under Owner's authority, installed on the Tower after installation of Tenant's Equipment.

9. Utilities. Tenant represents that utilities adequate for Tenant's intended use of the Property are presently available as of the Commencement Date. Tenant shall be responsible for

paying for any utility use generated by Tenant's occupancy of the Property and Tower. Owner shall not be responsible for providing or paying any utility costs associated with Tenant's occupancy of the Property or Tower.

10. Termination. Except as otherwise provided herein, this Agreement may be terminated as follows:

a. By either party upon default of any material term of this Agreement by the other party and when such default is not cured within **30 days** after receipt of written notice of default (without, however, limiting any other rights available to the parties pursuant to any other provisions of this Agreement).

b. By Owner or Tenant for any reason upon **90 days** written notice.

Any termination right exercised by Tenant, regardless of whether said right appears in this section or another section of this Agreement, shall be predicated on the payment of one year's total rent as an early termination fee, in addition to any rent already paid. Tenant shall not be entitled to any refund on any rent already paid should the Agreement be terminated for any reason. The parties expressly agree that the terms contained in this Agreement which relate to the Tenant's obligation and responsibility for paying the Owner's actual costs incurred for removing Equipment and facilities, or otherwise restoring the Property to its condition prior to Tenant's occupancy, shall survive the termination of this Agreement and shall continue in full force and effect until the Owner's claims have been resolved.

11. Structural Analysis.

a. Tenant shall be solely responsible with ensuring that Tenant's installation of the Equipment shall not adversely affect the structural integrity of the Tower, and that no structural damage results to the Tower due to installation of the Equipment or facilities of the Tenant.

b. Prior to the Tenant's installation, Tenant shall provide a study, showing that Tenant's installation shall not adversely affect the structural integrity of the Tower or showing what modifications or reinforcements, if any, are necessary to make the Tower structurally sound so as to accommodate Tenant's installation. Said study shall be to the reasonable satisfaction of the Owner and Owner shall have the right to require a study be completed by a Missouri Registered Structural Engineer, or to refuse installation by Tenant if said study is not to the reasonable satisfaction of the Owner.

c. Tenant may terminate this Agreement if it determines based on actual and reasonable information that Tenant cannot use the Tower to house the Equipment due to issues concerning the structural integrity of the Tower. Tenant may reinforce or otherwise make the Tower structurally sound for Tenant's use in accordance with the study referenced above, at Tenant's sole cost. Any structural reinforcement is solely the responsibility of Tenant and shall be subject to approval of Owner.

12. Taxes. Tenant shall be responsible for any and all taxes which may be levied upon Tenant's improvements (including Equipment) located on the Property.

13. Liability Insurance. Tenant shall provide Owner with proof of the following insurance coverage and shall name the Owner as additional insured in each coverage. Throughout the Term

of this Agreement, Tenant shall maintain, at its own expense, insurance covering claims for public liability, personal injury, death, and property damage under a policy of general liability insurance, with limits not less than \$3,000,000 for all claims arising out of a single accident or occurrence, and not less than \$500,000 for any one person in a single accident or occurrence. Tenant shall also provide property damage insurance in an amount not less than \$500,000. All such insurance shall insure against liabilities arising out of or in connection with Tenant's use and occupancy of the Property and the Tower. Such insurance shall specifically insure Owner for property damage to the Tower resulting from Tenant's occupancy. On January 1, of each subsequent calendar year Tenant shall provide an increase in the amounts of insurance required herein if the Missouri Department of Insurance has published an increase in the sovereign immunity limits for Missouri public entities. Such increase shall be in an amount to ensure that the coverages required herein meet or exceed the sovereign immunity limits published by the Missouri Department of Insurance. Nothing herein shall be construed as a waiver of either party's sovereign or governmental immunity.

14. Environmental Matters.

a. Tenant shall comply with all laws, ordinances, rules, order or regulations applicable to Hazardous Materials. Tenant shall not use the Property for treatment, storage, transportation to or from, use or disposal of Hazardous Materials in violation of any applicable laws (other than batteries and/or petroleum products necessary for the operation of an emergency electrical generator to serve the Equipment). Tenant shall be responsible for and hold Owner harmless from, any expense incident to the abatement or compliance with the requirements of any federal, state, or local statutory or regulatory requirements caused, directly or indirectly, by the activities of Tenant or Tenant's agents, employees or contractors, or resulting from the presence of any Hazardous Materials brought onto the Owner's Property by Tenant, Tenant's agents, employees, contractors, licenses or invitee.

b. As used in this Agreement, "Hazardous Materials" shall mean any and all polychlorinated biphenyls, petroleum products asbestos, urea formaldehyde and other hazardous or toxic materials, wastes or substances, any pollutants, and/or contaminants, or any other similar substances or materials which are defined or identified as such in or regulated by any federal, state or local laws, rules or regulations (whether not existing or hereinafter enacted) pertaining to environmental regulations, contamination, cleanup or any judicial or administrative interpretation of such law as, rules or regulations, or any substance that after release into the environment or directly through food chains will or may reasonably be anticipated to cause death, disease, behavior abnormalities, cancer or genetic abnormalities.

15. Hold Harmless. Tenant agrees to defend, indemnify and hold Owner, its governing body, and employees, harmless from all costs, damages, losses, claims, actions, suits, causes of action, judgments, and charges of every kind and nature whatsoever, including reasonable attorney's fees, which may in any manner arise out of or relate to (i) Tenant's use of the Equipment or Property, or (ii) Tenant's performance or failure to perform under this Agreement, including without limitation, those claims that may arise out of the use or furnishing of materials, or (iii) any negligence or intentional misconduct by Tenant, or its agents, employees, or contractors, or (iv) Hazardous Materials on the Owner's Property if brought onto the Property by Tenant or its agents, employees, contractors, licensees, or invitees.

16. Notices. All notices, requests, demands and other communications shall be in writing and shall be deemed given upon delivery if personally delivered or mailed, by certified mail, return receipt requested, or via electronic communication to the addresses indicated below:

If to Owner, to:

City of Nixa
Attn: City Administrator
P.O. Box 395
Nixa, MO 65714
Email: jliles@nixa.com (with CC to: tcossey@nixa.com)

If Tenant, to:

Christian County Emergency Services
110 W Elm Street, Rm 50, Ozark MO 65721
Email: bbacon@cces911.org

17. Assignment. Tenant may assign or sublease this Agreement, provided Tenant promptly notifies Owner of such assignment or sublease and obtains Owner's prior written approval therefore, and the assignment or sublease is subject to the provisions of this Agreement.

18. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties, their respective heirs, successors, personal representatives and assigns.

19. Compliance with Laws. All installations and operations in connection with this Agreement by either party shall be conducted in accordance with all applicable rules and regulations of the Federal Communications Commission, Federal Aviation Administration and any other applicable federal, state, or local laws, codes and regulations.

20. Additional provisions.

a. This Agreement constitutes the entire agreement and understanding of Owner and Tenant, and supersedes all offers, negotiations, and other agreements. Any amendments to said Agreement must be in writing and executed by Owner and Tenant.

b. This Agreement shall be construed in accordance with the laws of the state of Missouri. Venue regarding any disputes arising out of the terms of this Agreement shall only be proper in Christian County, Missouri.

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

d. Each of the undersigned warrants that they have the full right, power, and authority to execute this Agreement on behalf of the party indicated.

e. Unless specifically provided to the contrary herein, approvals of Owner herein may be given by the City Administrator, or their authorized designee, without the need of any further action of the City Council. The City Administrator, or their authorized designee, is the Owner's authorized representative for purposes of carrying out the terms of this Agreement.

IN WITNESS WHEREOF, the parties have set their hands on the day and year stated herein.

CITY OF NIXA

Jimmy Liles, City Administrator

Date: _____

ATTEST

Cindy Robbins, City Clerk

Date: _____

APPROVED AS TO FORM

Nick Woodman, City Attorney

CHRISTIAN COUNTY EMERGENCY SERVICES

Printed Name: _____

Date: _____

ATTEST

Printed Name: _____

Date: _____

Antenna, coax and equipment installation - CCES911**Antennas to be added by CCES911**

(1) Andrew/Commscope DB-201L

* Weighs 24 lbs / wind load = 1.1 sq/ft

(1) Sinclair SD314-HF2P2SNM

* Weighs 23 lbs / wind load 1.91 sq/ft

(1) Comprod 572F-70TM-2:

* Weighs 21 lbs / wind load 2.60 sq/ft

(2) Commscope DB-436C

* Weighs 7.055 lbs each / wind load = 0.45 sq/ft each

(1) Ubiquiti PBE-M5-300 Dish

* Weighs 2.65 lbs / wind load = 5.74 sq/ft

Total weight being added by CCES911 antennas:

84.76 lbs

Total wind loading being added by CCES911 antennas:

12.25 sq/ft

CCES911 Antenna Mounting to Nixa Water Tank:

The antenna systems proposed by the CCES911 will mount to existing pipes mounted to the top of the water tower AFTER the antenna systems are removed by Verizon. No new modifications to the water tank structure or to the pipes mounted to the tank will be necessary to mount the CCES911 amateur radio antennas at this location.

General equipment to be installed inside the Nixa Water Tank:

Equipment	Model	Serial #
Motorola Quantar - UHF Amateur Repeater	T5365A	509CJV2054
Motorola UHF Duplexer	0185417U05	379528-161
TX-RX 220 Duplexer	28-52-02-2	2257
S-Com Repeater Controller	7330	733
TYT TH-9000 - 220 MHz Amateur repeater	TH-9000	1803A19764
Motorola CDM - 29.680 Transmit radio	CDM-750	103TBJB151
Motorola CDM - 425.500 MHz Receive Radio	CDM-1550LS+	001THE0067
Motorola CDM - 442/447.425 TX/RX Radio	CDM-1550LS+	103TDWJ106
Power Supply - Astron	RM-35M	N/A
Bext 29 MHz Amplifier	T-1500	T98007
Motorola Enclosed Equipment Cabinet	N/A	N/A