

City of Fayetteville Staff Review Form

2022-1118

Legistar File ID

12/20/2022

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Mike Reynolds

11/28/2022

CENTRAL DISPATCH (260)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Staff recommends approval of an amendment to the Radio Tower Site Lease Agreement with Smith Two Way Radio Communications LLC for the radio tower site located at 3300 W. Dinsmore Trail. The lease agreement will also include an extension to the length of the contract for five three-year renewable terms. The increased costs associated with this amendment are \$8,400 annually, and they have been budgeted within the City's 2023 approved operating budget.

Budget Impact:

1010.090.6600-5309.00	General
Account Number	Fund
Project Number	Project Title
Budgeted Item? <u>Yes</u>	Current Budget \$ 53,185.00
	Funds Obligated \$ -
	Current Balance \$ 53,185.00
Does item have a cost? <u>No</u>	Item Cost \$ -
Budget Adjustment Attached? <u>No</u>	Budget Adjustment \$ -
	Remaining Budget \$ 53,185.00

V20210527

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF DECEMBER 20, 2022

TO: Mayor and City Council
THRU: Mike Reynolds, Chief of Police
FROM: Kathleen Stocker, Dispatch Manager
DATE: November 28, 2022
SUBJECT: Radio Tower Site Lease Agreement Amendment (3300 W Dinsmore Trail)

A handwritten signature in black ink that reads "Mike Reynolds".

RECOMMENDATION:

Staff recommends approval of an amendment to the Radio Tower Site Lease Agreement with Smith Two Way Radio Communications LLC for the radio tower site located at 3300 W. Dinsmore Trail. The lease agreement will also include and extension to the length of the contract for five three-year renewable terms. The increased costs associated with this amendment are \$8,400 annually, and they have been budgeted within the City's 2023 approved operating budget.

BACKGROUND:

In 2010, the City entered into a lease agreement with Smith Two Way Radio Communications LLC for the use of radio tower space at 3300 W. Dinsmore Trail via Resolution 233-10. The original lease agreement contained five three-year renewable terms, which is set to expire in 2025.

DISCUSSION:

Additional space on the radio tower is needed for an upgrade in the microwave dish size and new equipment to connect the Central Dispatch Center to the radio system from the new police headquarters at 1800 N Stephen Carr Memorial Blvd. This amendment includes an extension of five three-year renewable terms to the original tower lease agreement, and if approved, will extend the final lease expiration date to December 31, 2038. This amendment will increase the amount of the current tower lease agreement by \$8,400 to a total 2023 cost of \$53,185. Funding for the total cost of \$53,185 has been budgeted and approved in the City's 2023 operating budget.

BUDGET/STAFF IMPACT:

The additional cost for the tower space was included in the City's 2023 annual budget, which was approved by City Council on November 15, 2022. The amended contract will increase the cost Eight Thousand Four Hundred (\$8,400.00) per year. This amendment has no effect on current staffing.

Attachments:

Tower Lease Amendment and Current Tower Lease Agreement

FIRST AMENDMENT TO TOWER SPACE AND GROUND LEASE AGREEMENT

THIS FIRST AMENDMENT TO TOWER SPACE AND GROUND LEASE AGREEMENT ("FIRST Amendment"), dated as of the latter of the signature dates below, is by and between the City of Fayetteville, a municipality organized and existing under the laws of the State of Arkansas, (hereinafter referred to as "CITY OF FAYETTEVILLE" or "Lessee") and Smith Communications, LLC, a limited liability company organized and existing under the laws of the State of Arkansas, (hereinafter referred to as "SMITH" or "Lessor").

WHEREAS, Lessor and Lessee entered into a TOWER SPACE AND GROUND LEASE AGREEMENT dated December 21, 2010, and commenced January 1, 2011, whereby Lessor agreed to lease to Lessee a certain portion or portions of the of the Fulbright Wireless Communications Facility located at 3450 N. Hemlock Avenue, Fayetteville, Washington County Arkansas, said property being more specifically described in the attached Exhibit "B" which is incorporated herein by reference (hereinafter referred to as the "Leased Premises").

WHEREAS, Lessee and Lessor, in their mutual interest, wish to amend the Agreement as set forth below accordingly.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessee and Lessor agree as follows:

1. To modify **Exhibit "A"** to reflect the needed increase in tower equipment. (Updated Exhibit "A" attached).
2. To modify **SECTION TWO TERM** to add five (5) additional three (3) year renewal terms effective January 1, 2023 extending final lease expiration date to December 31, 2038, unless terminated prior by written notification per original agreement SECTION FIVE.
3. To modify **SECTION THREE RENT** to increase the current rent amount effective January 1, 2023, by an additional Seven Hundred and No/100 Dollars (\$700.00) per month or a total of Eight Thousand Four Hundred and No/100 (\$8400.00) per year, for the increase in tower equipment as documented in the updated "Exhibit A" hereto attached.
4. **Other Terms and Conditions Remain.** In the event of any inconsistencies between the Agreement and this First Amendment, the terms of this First Amendment shall control. Except as expressly set forth in this First Amendment, the Agreement otherwise is

unmodified and remains in full force and effect. Each reference in the Agreement to itself shall be deemed also to refer to this First Amendment.

5. **Capitalized Terms.** All capitalized terms used but not defined herein shall have the same meanings as defined in the Agreement.

IN WITNESS, WHEREOF, the parties have caused their properly authorized representatives to execute and seal this Third Amendment on the dates set forth below.

LESSOR:

CITY OF FAYETTEVILLE

By: _____

Lioneld Jordan

Title: Mayor

LESSEE:

SMITH COMMUNICATIONS, LLC

By: _____

Michael B Smith

Title: President

LIMITED LIABILITY COMPANY ACKNOWLEDGEMENT

STATE OF ARKANSAS)
) SS.
COUNTY OF WASHINGTON)

BE IT REMEMBERED, That on this 29th day of Nov, 2022 before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Michael B. Smith of Smith Communications, LLC, a Limited Liability Company duly formed under the provisions of the Arkansas Limited Liability Company Act, who is personally known to me to be the such member(s) and who is personally known to me to be the same person(s) who executed as such member(s) the foregoing instrument on behalf of said company, and such person(s) duly acknowledged the execution of same to be the act and deed of said company.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

My Commission Expires: 4-9-2030

[Signature]
Notary Public



INDIVIDUAL ACKNOWLEDGEMENT

STATE OF ARKANSAS)
) SS.
COUNTY OF WASHINGTON)

BE IT REMEMBERED, That on this _____ day of _____, 2022. before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Lioneld Jordan, who is personally known to me (or satisfactorily proven) to be the same person(s) who executed the within instrument of writing and duly acknowledged the execution of same.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

My Commission Expires: _____

Notary Public

EXHIBIT A
(Leased Premises & Updated Equipment Rights)

Existing (1) Rx Antenna w/TMA, (1) 3/8" coax & 1-1/4" coax @ 195'

Existing (1) Tx Antenna w/TMA, (1) 5/8" coax & (1) 7/8" coax @ 160'

Upgrading (1) existing 2' dish w/ice shield @ 145' to 3' dish w/ ice shield @ 145'
(Fay Disp to Dinsmore)

Upgrading and Relocating (1) existing 4' dish w/ice shield @ 77' to 6' dish w/ice shield @ 80'
(Dinsmore to L03 ASP)

Upgrading and Relocating (1) existing 2' dish w/ice shield @ 60' to 3' dish w/ice shield @ 70'
(Dinsmore to Sequoyah)

Adding (1) new 4' dish w/ice shield (height to be determined at later time)

NO CHANGE TO GROUND SPACE

RESOLUTION NO. 233-10

A RESOLUTION TO APPROVE TWO TOWER SPACE AND GROUND LEASE AGREEMENTS WITH SMITH COMMUNICATIONS, LLC FOR A TOTAL ANNUAL RENT OF \$36,000.00

WHEREAS, the Fayetteville Police Department needs additional tower space for new antennas to improve the range and coverage for its police and emergency services radio network; and

WHEREAS, use of two of Smith Communications, LLC's radio towers is the most cost effective way to mount the needed antennas in the proper location and height.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves two Tower Space and Ground Lease Agreements with Smith Communications, LLC (both are attached) for a total annual rent of \$36,000.00 and authorizes Mayor Jordan to sign those leases.

PASSED and APPROVED this 21st day of December, 2010.

APPROVED:

ATTEST:

By: 
LIONELD JORDAN, Mayor

By: 
SONDRA E. SMITH, City Clerk/Treasurer



Revised
12-14-10

TOWER SPACE AND GROUND LEASE AGREEMENT

**Smith Two-Way Radio, Inc.
Tower and Wireless Communications Facility**

Located at:

**3300 Dinsmore Trail
Fayetteville
Washington
AR**

Between

SMITH TWO-WAY RADIO, INC.

and

CITY OF FAYETTEVILLE

TOWER SPACE AND GROUND LEASE AGREEMENT

This TOWER SPACE AND GROUND LEASE AGREEMENT (the "Lease") is entered into on the 21 st. day of December, 2010, and is effective ____ day of _____ 2011, by and between City of Fayetteville, a municipality organized and existing under the laws of the State of Arkansas, (hereinafter referred to as "CITY OF FAYETTEVILLE"), and SMITH COMMUNICATIONS, LLC, a limited liability company organized and existing under the laws of the State of Arkansas (hereinafter referred to as "SMITH"), wherein the following mutual covenants and understandings are made and entered into upon the following terms and conditions:

WITNESSETH

SECTION ONE DESCRIPTION OF PROPERTY

SMITH hereby lets and leases unto City of Fayetteville, and City of Fayetteville accepts from SMITH, subject to the terms and conditions contained herein, a certain portion of the Fulbright Wireless Communications Facility located at 3450 N. Hemlock Avenue Fayetteville, Arkansas, (hereinafter referred to as the "Leased Premises") for the duration of this Agreement.

The Leased Premises also includes a right for ingress and egress, seven days per week, twenty-four hours per day, on foot or motor vehicle, including trucks, along a twenty-five foot wide right-of-way together with the right to install, replace and maintain utility wires, poles, cables, conduits and pipes. The Leased Premises is generally depicted in the attached Exhibit "A".

SECTION TWO TERM

This Lease shall be for an initial term of Three(3) years, beginning on the date of City of Fayetteville's Installation of equipment at the facility, executing the agreement, incorporated herein in full by reference (the "Initial Term"). This Lease shall automatically be extended for FIVE (5) subsequent THREE(3) year terms (the "Renewal Terms") unless City of Fayetteville terminates it pursuant to the provision set forth herein. The Initial Term and any Renewal Term or Renewal Terms shall be collectively referred to as the "Lease Term".

**SECTION THREE
RENT**

City of Fayetteville shall pay to SMITH Ten and No/100 Dollars (\$10.00) upon the full execution of this Lease and the Agreement. City of Fayetteville shall pay to the SMITH One Thousand Five Hundred and No/100 Dollars (\$1,500.00) per month for a total of Eighteen Thousand and No/100 Dollars (\$18,000.00) per year (the "Rent"). Lease payments shall consist of equal monthly installments with the first payment due at the commencement of the Initial Term with subsequent payments due on the first (1st) day of each following month for the duration of the Lease. In addition, on each annual renewal date the amount of the Rent shall be increase by an amount equal to 2% and hence forward shall be the amount known as the Rent.

**SECTION FOUR
USE OF LEASED PREMISES**

The City of Fayetteville shall use the Leased Premises and all easements, rights and privileges herein granted only for the purpose of constructing, installing, maintaining and operating the City of Fayetteville Radio Communication System and uses incidental thereto. Premise use per Exhibit "B" and attached survey when complete. It is understood and agreed that all improvements shall be undertaken at City of Fayetteville's sole expense. City of Fayetteville will maintain the Leased Premises in a reasonable, neat and safe condition. SMITH hereby does covenant that it shall not take any action that would adversely affect the status of the Leased Premises with respect to the proposed use by City of Fayetteville.

**SECTION FIVE
City of Fayetteville's RIGHT OF TERMINATION**

City of Fayetteville shall have the unilateral right to terminate this Lease, at any time, by providing SMITH with One Hundred Eighty (180) days prior written notice in conformance with the Notice requirements outlined in the Lease.

Upon termination of this Lease by City of Fayetteville, shall become null and void and all of the parties shall have no further obligations, except that Leased Premises property shall be reasonably restored to its condition prior to the Lease execution. If restoration period extends beyond the termination notice period SMITH shall be entitled regular monthly rent until restoration is complete.

SECTION SIX APPROVALS

(a) SMITH agrees that City of Fayetteville's ability to use the Premises is contingent upon the suitability of the Premises for Tenant's Permitted Use and Tenant's ability to obtain and maintain all governmental licenses, permits, approvals or other relief required of or deemed necessary or appropriate by City of Fayetteville for its use of the Premises, including without limitation applications for zoning variances, zoning ordinances, amendments, special use permits, and construction permits (collectively, the "**Government Approvals**"). SMITH authorizes City of Fayetteville to prepare, execute and file all required applications to obtain Government Approvals for Tenant's Permitted Use under this Agreement and agrees to reasonably assist Tenant with such applications and with obtaining and maintaining the Government Approvals. In addition, Tenant shall have the right to initiate the ordering and/or scheduling of necessary utilities.

(b) Tenant may also perform and obtain, at City of Fayetteville's sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigation or other tests or reports on, over, and under the Property, necessary to determine if the City of Fayetteville's use of the Premises will be compatible with City of Fayetteville's engineering specifications, system, design, operations or Government Approvals.

SECTION SEVEN CONTINGENCY

SMITH and City of Fayetteville agree that City of Fayetteville's ability to use the Leased Premises is contingent upon City of Fayetteville obtaining, after the full execution of this Lease and the Agreement, all of the certificates, permits, licenses and other approvals deemed necessary by City of Fayetteville, within City of Fayetteville's absolute discretion, to utilize the Leased Premises for the purposes set forth in Section Six above (the "Approvals"). SMITH agrees to execute any and all documents necessary to petition the appropriate public bodies for the Approvals and to be named as applicant if requested by City of Fayetteville. In the event that: (1) City of Fayetteville does not obtain, for any reason whatsoever, all of the Approvals; (2) any of the Approvals are in a form unacceptable to City of Fayetteville, within City of Fayetteville's absolute discretion; (3) any Approval issued to City of Fayetteville is canceled, expires, lapses or is otherwise withdrawn or terminated by governmental authority; or, (4) any investigation, including but not limited to soil boring tests, are found to be unsatisfactory so that City of Fayetteville, in its absolute discretion, will be unable to use the Leased Premises for its intended purposes, then City of Fayetteville shall have the right, at its sole discretion, to terminate this Lease.

SECTION EIGHT ENVIRONMENTAL

City of Fayetteville shall not cause or permit to be caused the use, storage, generation, escape, disposal or release of any Hazardous Substances or Hazardous Wastes in any manner not sanctioned by law. In all events, City of Fayetteville shall indemnify and hold SMITH harmless from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, any and all sums paid for settlement of claims, attorneys' fees, and consultants' and experts' fees) from the presence or release of any Hazardous Substances or Hazardous Wastes on the Leased Premises if caused by City of Fayetteville. City of Fayetteville shall execute such affidavits, representations and the like from time to time as SMITH may reasonably request concerning City of Fayetteville's best knowledge and belief as to the presence of Hazardous Substances or Hazardous Wastes on the Leased Premises

For purposes of this Lease, the term "Hazardous Substances" shall be as defined in the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 *et seq.*, and any regulations promulgated pursuant thereto, and as used to define "Hazardous Wastes" in the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.*, and any regulations promulgated thereto.

SECTION NINE INSURANCE

At all times during the Lease Term, City of Fayetteville, at its sole expense, shall obtain and keep in force insurance which may be required by any federal, state or local statute or ordinance of any governmental body having jurisdiction in connection with the operation of City of Fayetteville's business upon the Leased Premises.

SECTION TEN SALE OF PROPERTY

If at any time during the Lease Term SMITH decides to sell all or part of SMITH's property, of which the Leased Premises is a part, to a purchaser other than City of Fayetteville, then such sale shall be under and subject to this Lease and City of Fayetteville's rights hereunder. Any sale by SMITH of the portion of the Leased Premises underlying the right-of-way herein granted shall be under and subject to the right of City of Fayetteville in and to said right-of-way.

SECTION ELEVEN COVENANT OF TITLE

SMITH covenants that SMITH is seized of good and sufficient title and interest to the Property of which the Leased Premises is a part and has full authority to enter into

and execute this Lease. SMITH further covenants that (1) there are no aspects of title that might interfere with or be adverse to City of Fayetteville's interests in and intended use of the Leased Premises and (2) title shall be such that City of Fayetteville will have the ability to obtain title insurance at regular rates.

SECTION TWELVE DEFAULT

In the event that there is a default by City of Fayetteville with respect to any of the provisions of this Lease or City of Fayetteville's obligations under the Lease, including the payment of Rent, SMITH shall give City of Fayetteville written notice of such default. After receipt of such written notice, City of Fayetteville shall have thirty (30) days in which to cure any monetary default and thirty (30) days in which to cure any non-monetary default. City of Fayetteville shall have such extended periods beyond the thirty days if the nature of the cure is such that it requires more than thirty (30) days and City of Fayetteville commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. SMITH may not maintain any action or effect any remedies for default against City of Fayetteville unless and until City of Fayetteville has failed to cure the same within the time periods provided in this Section.

SECTION THIRTEEN MISCELLANEOUS

- A. The consent of either party to any act or the waiver by either party of a breach of any provision of this Lease shall not operate or be construed as a consent or waiver of any subsequent act or breach by the other party.
- B. Time shall be of the essence with respect to every term and condition of this Lease.
- C. This Lease may be executed in multiple counterparts, each of which shall be deemed an original, and all of which taken together shall be deemed one instrument.

SECTION FOURTEEN GOVERNING LAW

Any and all claims or causes of action shall and must be filed only in the courts of the State of Arkansas for Washington County or the United States District Court for the Western District of Arkansas, which shall have exclusive jurisdiction over any and all disputes which arise between the parties under this Lease, whether in law or in equity. Each of the parties expressly agrees, consents, and stipulates that venue shall be exclusively within said courts. Each of the parties expressly agrees, consents and

stipulates to the exercise of personal jurisdiction over it and subject matter jurisdiction over any such controversy arising between the parties being only in the courts listed herein. The prevailing party shall be entitled to recover from the other party any reasonable costs and attorneys' fees incurred as a consequence of enforcing the provision of the lease, amount to be fixed by said court and shall be made part of the judgement or decree rendered.

SECTION FIFTEEN NOTICES

All notices hereunder shall be in writing and shall be given by (i) established express delivery service which maintains delivery records, (ii) hand delivery, or (iii) certified or registered mail, postage prepaid, return receipt requested. Notices may also be given by facsimile transmission, provided that the notice is concurrently given by one of the above methods. Notices are effective upon receipt, or upon attempted delivery if delivery is refused or if delivery is impossible because of failure to provide reasonable means for accomplishing delivery. The notices shall be sent to the parties at the following addresses:

To SMITH: SMITH TWO- WAY RADIO, INC
Michael Smith
520 N. College Ave.
Fayetteville, Arkansas 72701

To CITY OF FAYETTEVILLE
OFFICE OF THE MAYOR
113 MOUNTAIN ST.
FAYETTEVILLE, AR 72701

SECTION SIXTEEN

PARTIAL INVALIDITY

In the event any one or more of the provisions contained in the Lease or Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the remaining provisions of this Lease or the Agreement and this Lease or the Agreement shall be construed as if such invalid, illegal or unenforceable provision or provisions had never been contained herein.

SECTION SEVENTEEN

THIS SECTION OMITED

SECTION EIGHTEEN MERGER

This Lease along with the Agreement contains the entire agreement between the parties and supersedes any prior or contemporaneous oral or written agreements which supplement or contradict the terms and provisions set forth herein.

SECTION NINETEEN SITE MAINTENANCE

SMITH shall be responsible for the routine maintenance of the site common and support areas. to include but not limited to: landscaping, mowing, weed control, signage, road access maintenance, painting, fence repair and damage caused by normal weathering and storm damage, as to the Smith Facility. City of Fayetteville shall be responsible for storm damage to its facilities and property.

SIGNATURES APPEAR ON NEXT PAGE

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STATE OF ARKANSAS)
) ss.
COUNTY OF WASHINGTON)

BE IT REMEMBERED that on this 28th day of December, 2010, came before me, the undersigned, a Notary Public, duly commissioned, qualified and acting, within and for the said County and State, Wm. Jordan, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing instrument and acknowledged that he had executed the same for the purposes therein set forth.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires:
2-1-2016

Lisa Dawn Branson
Notary Public

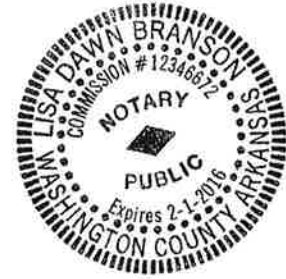


EXHIBIT "A" LEASED PREMISES

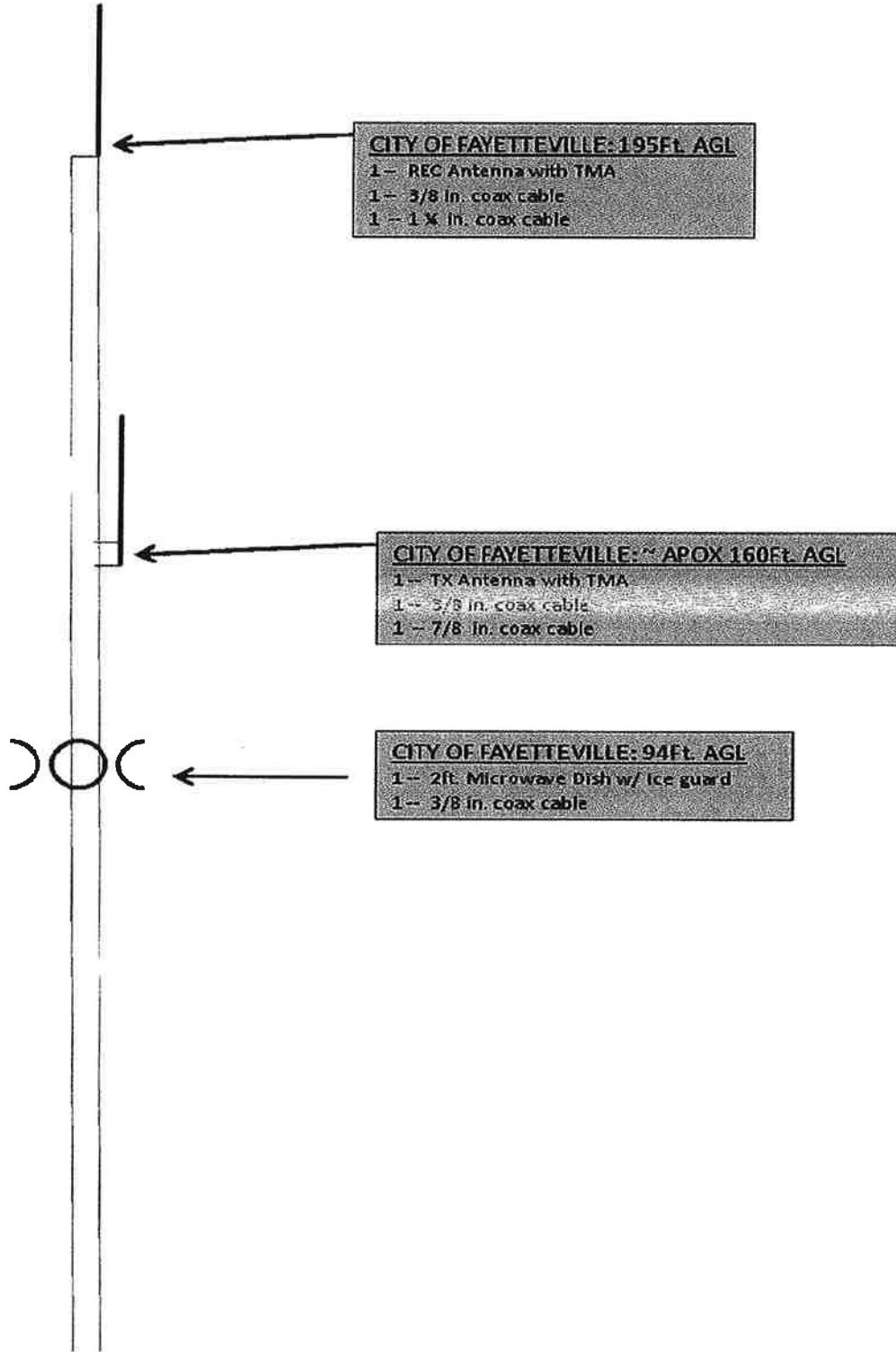


EXHIBIT "A"
LEASED PREMISES

