

FIRST AMENDMENT TO LEASE AGREEMENT

This is the First Amendment to that certain LEASE AGREEMENT by and between the CITY OF SALEM, an Oregon municipal corporation ("Lessor") and CAPITOL COMMUNITY TELEVISION (CCTV) ("Lessee") effective July 24, 2019 ("Lease").

RECITALS:

Whereas, pursuant to the Lease, Lessor leased to Lessee, part of a communications tower located at 1875 Lowen St. NW, Salem, Oregon; and

Whereas, Lessee has requested its lease payments be forgiven for a three year period of time due to: 1) extensive costs in obtaining a full power radio license to operate a bi-lingual radio station within the Salem area which will be available to Lessor as a platform for providing information to the community; 2) extensive equipment, engineering, and other related expenses; and 3) no funding opportunities for radio expenses due, in part, to the unforeseen COVID-19 pandemic currently occurring.

Whereas, Lessor and Lessee are desirous of amending the Lease to delay the beginning date Lessee shall pay rent and to fix scrivener's errors.

Now therefore, the Parties agree to amend the Lease as follows with strikethrough wording deleted and underlined wording added:

1. Section 3 of the Lease is hereby modified as follows:

Section 3: Original Term. Unless sooner terminated as provided herein, the term of this Lease Agreement shall commence on the Effective Date of this Lease Agreement and shall remain in effect for a period of ~~two-five~~ (5) years expiring on May 1, 2024. At the conclusion of this initial term, the contract will renew for One (1) year unless a party has given notice to the other of an intent to non-extend. This process shall continue such that at the end of each one year extension, unless notice of non-extension is given, an additional (1) one year term shall be added. Such notice of non-extension shall be in writing at any point prior to the expiration of the then current term. In the event a party provides notice of non-extension under this agreement, the agreement shall expire upon the conclusion of the current contract term. During any and all extensions of this agreement under this section, all other terms of this agreement shall remain in effect, save for annual increases in charges by the City per Section 4, subsection C of this agreement.

2. Section 4 of the Lease is hereby modified as follows:

Section 4: Rent.

- (a) Lessee shall pay Lessor, without demand, offset or counterclaim on the Commencement Date of August 1, 2022, and on the first day of each calendar quarter month (Jan, April, July, Oct) ~~during the Initial Term~~, rent in the amount of ~~one thousand, four hundred and one dollars and 84 cents~~ one thousand, five hundred and thirty-two dollars and 75 cents (~~\$1,401.84~~, \$1,532.75, the "Quarterly Rental Fee") subject to adjustment as provided herein. If the Commencement Date occurs on a date other than the first day of a ~~month~~ quarter, the Quarterly Rental Fee shall be prorated for such partial ~~months~~ quarter. Likewise, if the Term ends on a date other than the last day of the quarter, the ~~Quarterly-Monthly~~ Rental Fee shall be prorated for such partial quarter
- (b) The Quarterly Rental Fee is due and payable in advance on the first day of each quarter and shall be deemed delinquent if it is not received by Lessor within ten (10) days thereafter. If the Quarterly Rental Fee is not paid when due, then a late charge of the greater of two hundred dollars (\$200.00) or twenty percent (20%) of the Quarterly Rental Fee will be applied on all amounts due and unpaid shall bear interest at the rate of fifteen percent (15%) per annum from the date due until paid.
- (c) Beginning January 1, ~~2020~~ 2023, and each calendar year thereafter, the ~~Monthly~~ Quarterly Rental Fee shall be increased in accordance with the ODOT/SRP Annual Collocation & Ground Lease Rental Rates published in January of each year. The increased Quarterly Rental Fee shall be rounded up to the next highest whole dollar amount. Rack space will be charged at one half of the published rate.
- (d) In addition to the ~~Monthly~~ Quarterly Rental Fee, Lessee shall pay Lessor, if and when due, any sales, use, property or other ~~taxes~~ or assessments which are assessed or due by reason of this or Lessee's use of the Premises hereunder.
- (e) Lessor shall pay all power charges at the site. The lessee is responsible for all costs incurred to install and/or to attach to any utility.

3. Section 7 of the Lease is hereby modified as follows:

Section 7: Equipment

(a) Lessee's Equipment.

- (1) Lessee shall clearly and conspicuously mark the equipment itemized in Exhibit A with weatherproof tape stating the Lessee's name, frequencies and twenty-four (24) hour emergency contact phone numbers. Lessee shall also post a copy of its FCC license on its transmitter upon installation.
- (2) The physical location of all equipment listed on Exhibit A will be determined by Lessor. No equipment other than that set forth in Exhibit A shall be installed without Lessor's written consent. If any equipment other than that described in Exhibit A is installed, Lessor may, at Lessor's sole discretion, increase the above stated ~~Monthly~~ Quarterly Rental Fee, which increased fee shall be determined by Lessor.
- (3) Lessee shall, in the use of the Premises, comply with all federal, state, county, and local government laws, rules, and regulations, specifically including but not limited to appointing as specified in the use permit for the subject premises issued by the government in which the leased premises is located. Lessee will paint all feed-lines to match the Tower.

(b) Common Equipment.

- (1) Lessor contemplates that it may, at its sole option and expense, furnish and install antenna, transmission lines, combiner, multi couplers and/or other related equipment ("Common Antenna Systems") at the site.
- (2) Provided that the Common Antenna Systems are compatible with Lessee's equipment Lessor may require, by written notice to Lessee that Lessee connect its equipment to the Common Antenna Systems within 180 days of such notice.
- (3) Lessor may require Lessee to pay a one-time connection fee and a recurring Common Antenna Systems maintenance fee in connection therewith. After receipt of such notice, Lessee may elect to (a) terminate this Lease Agreement or (b) so connect and pay the applicable fees. Lessee must notify Lessor of its election within thirty (30) days after receipt of Lessor's notice. If Lessee does not respond in said time period, Lessee shall be deemed to have elected option (a). If Lessee elects to terminate this Lease Agreement, such termination shall be effective one hundred eighty (180) days after the date of such notice to Lessor.

4. Section 9 of the Lease is hereby modified as follows:

Section 9: Environmental

- (a) Lessor represents and warrants to Lessee that Lessor has never generated, stored, handled, or disposed of any hazardous waste or hazardous substance upon the Premises, and that Lessor has no knowledge of such uses historically have been made of the Premises or such substances historically having been introduced thereupon.
- (b) Lessee shall be solely responsible for and shall defend, indemnify, and hold ~~Lessee~~ Lessor, its officers, employees, and agents harmless from and against any and all claims, costs, and liabilities, including attorney's fees and costs, arising out of or in connection with the cleanup or restoration of the Premises associated with Lessee's use of asbestos, hazardous substance, waste, waste materials, or hazardous materials as defined by any federal state, or local environmental or safety law or regulation, including but not limited to CERCLA.

5. Section 10 of the Lease is hereby modified as follows:

Section 10: Termination.

(a) **Termination by Lessor.**

- (1) Lessor may terminate this Lease Agreement effective upon the mailing of written notice upon the happening of one or more of the following events of default:

~~(A) In the event Lessee terminates the City of Salem Eagle Crest Tower Space Lease Agreement in effect with Lessor.~~

~~(BA) Failure of Lessee to comply with any other term or condition, or fulfill any other obligation of the lease within ~~30~~ 10 days after written notice by Lessor specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the 10-day period, this provision shall be complied with if Lessee corrects the default within the 10-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as possible.~~

~~(CB) Abandonment by the Lessee of the Premises.~~

- (2) Lessor may terminate this Lease Agreement, effective after 60 days' written notice to Lessee or at such later date as may be established by Lessor, under the following conditions:
- (A) If the federal or state laws, regulations, or guidelines are adopted, modified, or interpreted, in such a way that the use of the Premises under this Lease Agreement is no longer permitted.
 - (B) If Lessor deems the demolition and removal of the Premises is necessary for the public interest.
 - (C) If the Lessor is no longer able, for budgetary or other operational reasons, to maintain the Premises.
 - (D) If a condemning authority takes all of the Premises or a portion sufficient to render the remaining premises reasonably unsuitable for the use that ~~Tenant~~ Lessee was then making of the premises.
 - (E) If the Premises is destroyed or damaged such that the cost of repair exceeds 25% of the value of the structure before the damage.
- (3) On termination of this Lease Agreement, Lessor shall be entitled to re-enter, take possession of the Premises and remove any persons or property by legal action or by self-help, with the use of reasonable force and without liability for damages. The foregoing remedies shall be in addition to and shall not exclude any other remedy available to Lessor under applicable law and in equity.
- (b) **Termination by Lessee.** This Lease Agreement may be terminated by Lessee by not less than thirty (30) days' prior written notice to Lessor.
 - (c) Lessor and Lessee agree that prior to either party terminating this Lease Agreement, both parties will meet to discuss options and consequences.
 - (d) Any termination of this Lease Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.
 - (e) Upon termination of this Lease Agreement, Lessee shall immediately arrange with Lessor for the removal of Lessee's equipment from the Premises and the repair of any damage to the Premises caused by or as a result of Lessee's equipment, reasonable ~~war~~ wear and tear excepted, all at Lessee's expense.

6. Section 20 of the Lease is hereby modified as follows:

Section 20: Indemnity.

- (a) Lessee agrees to defend, indemnify, release, and hold Lessor, its officers, agents, ~~and employees,~~ and affiliates harmless from and against any and all losses, damages to persons or property, injuries or deaths of persons, liability, claims, liens, demands, and causes of action of every kind and character, including environmental liability, and including the amounts of judgments, penalties, interest, court costs, and legal fees incurred by Lessor in defense of same ("Claims") arising in favor of any person, corporation or other entity, including the parties hereto and their employees, contractors, and agents as the result of any break by Lessee of any covenant or condition of this Lease Agreement, or as the result of Lessee's use or occupancy of the Premises, or any careless, negligent, or improper acts or omissions of Lessee, except for claims arising from the gross negligence or willful conduct of Lessor, its officers, agents or employees.
- (b) Lessee warrants to Lessor that its indemnity obligation will be supported by liability insurance to be furnished by it or a self-insurance program that complies with state law; provided that recovery under or in respect of this indemnity shall not be limited to the proceeds of any such insurance. Lessee's indemnity obligation under this Lease Agreement extends to the acts and omissions of any agent, officer, employee, invitee, permittee, or visitor of Lessee. The indemnity obligations under this section shall survive termination of this Lease Agreement for any reason.

- (c) Lessee shall have control of the defense and settlement of any claim that is subject to sections 20.a or 20.b; however, neither Lessee nor any attorney engaged by Lessee shall defend the claim in the name of the Lessor, nor purport to act as legal representative of the Lessor or any of its officers, employees, or agents, without first receiving from the Lessor, in a form and manner determined appropriate by Lessor, authority to act as legal counsel for Lessor, nor shall ~~provide~~ Lessee settle any claim on behalf of the Lessor without the approval of the Lessor. Lessor may, at its election and expense, assume its own defense and settlement in the event that Lessor determines that Lessee is prohibited from defending Lessor, or is not adequately defending the Lessor's interests, or that an important governmental principle is at issue and Lessor desires to assume its own defense.

IN WITNESS WHEREOF the Parties have executed this instrument in their respective names by their duly authorized representatives as of the date above written.

LESSEE:

CAPITOL COMMUNITY TELEVISION

By: 

Jim Randall, President

Date: 2/10/21

LESSOR:

CITY OF SALEM

By: 

Steven D. Powers, City Manager

Date: 04/02/2021