

Regular Meeting June 18, 2019

Mayor Dusty Cornelius called the regular meeting to order at 7:02 p.m. with the following members present: Jim Justus, Heidi Hays, Doyle Parrish, Alva Rodriguez, and Brad Thornhill. Abel Reyna was absent. Also present were City Administrator Margot Hardin, City Secretary Amy Wallace, Chief of Police John Wilson, Public Works Director Chase Longo, Gary Hardin, and Terry Kirk.

Approve May 21, 2019 Minutes: Doyle Parrish made a motion to approve the May 21, 2019 minutes. Heidi Hays seconded the motion. Motion carried.

Approve May Accounts Payable: Brad Thornhill made a motion to approve the May Accounts Payable, excluding D & H Spraying and Landscaping Accounts Payable. Jim Justus seconded the motion. Motion carried.

Approve D & H Spraying and Landscaping Accounts Payable: Jim Justus made a motion to approve D & H Spraying and Landscaping Accounts Payable. Heidi Hays seconded the motion. Motion carried.

Public Forum: Dusty Cornelius presented to the Council Members a thank you card sent in by Verna Anne Jackson Wheeler. She was thankful that the Prairie Ladies building had new windows. Brad Thornhill reported to the council that he recently attended the Splash Day at the City Park, and he thanked the public works department and staff for the good job they did on reworking the parking lot and park after the event and rain. Jim Justus reported to the Council Members that the dump truck he was authorized to purchase during the May 21, 2019 meeting was sold, but that he and Chase Longo would travel to Odessa later this week to look at a dump truck that recently came on the market for sale. He also told the Council Members that he thought that the mosquito spray is working.

Police Report: Chief of Police John Wilson presented his monthly police report.

Public Works Report: Public Works Director Chase Longo presented his monthly report.

Backhoe: Brad Thornhill made a motion to approve the cash purchase of the rental backhoe from Warren Cat, as well as the additional options of adding a hydraulic thumb and foam filled

tires. Doyle Parrish seconded the motion. Heidi Hays, Jim Justus, Doyle Parrish, and Brad Thornhill voted for the motion. Alva Rodriguez opposed the motion. Motion carried (4-1).

Police Officers: Terry Kirk and Gary Hardin addressed the Council Members regarding the recruitment and salaries of police officers. No action.

Water Tower Lease Agreement with AW Broadband: Brad Thornhill made a motion to approve the AW Broadband water tower site lease agreement, with corrections. Heidi Hays seconded the motion. Motion carried.

SITE LEASE AGREEMENT

This Site Lease Agreement, hereinafter called “Lease”, made and entered in the ____ day of _____, 2019 (the “Effective Date”), by and between **CITY OF CROSBYTON, TEXAS**, hereinafter called “Lessor” or “Landlord”, and **INNOVATIVE FINANCIAL TECHNOLOGIES, LLC DBA AW BROADBAND**, a TEXAS Limited liability company, hereinafter called “Lessee” or “Tenant”, jointly and together called the “Parties”.

WITNESSETH:

WHEREAS, Lessor owns the real property located at the intersection of W Cedar St and S. Keith Ave, Crosbyton, Texas, behind 204 S. Harrison Street, Crosbyton, Texas 79322, consisting of a water tower (located at 33.657420, -101.250679) hereinafter called the “Premises”; and

WHEREAS, Lessee desires to place wireless communication equipment on the Premises to providing wireless internet services, hereinafter called the “Tenant Equipment”; and

WHEREAS, Lessor desires to lease that portion of the Premises to Lessee, on the terms and conditions hereinafter set forth;

NOW, THEREFORE, it is agreed by and between the Parties hereto as follows:

1. TERM.

The term of this agreement is five (5) years, commencing on the Effective Date. This Lease shall be automatically renewed for one additional one (1) year period unless Lessor or Lessee provide notice of intention to not to renew the agreement at least thirty (30) days prior to the expiration of the initial term or any renewed term, subject to the provisions in Paragraph 9 herein.

2. RENT. Lessee shall pay rent monthly in advance beginning on the Effective Date. The monthly rent shall be \$500.00.

3. LESSEE’S COVENANTS. Lessee agrees and covenants that (A) the Tenant Equipment will not damage the Premises or the water tower in any way; that (B) the Tenant Equipment will not

interfere with the operation and maintenance of the Lessor's water tower and its lighting and protection systems; that (C) Lessee will comply with all applicable rules and regulations of the Federal Communications Commission; and that (D) Lessee will not interfere with the operation of any equipment of Lessor or other lessees heretofore installed at this location and should such interference occur, Lessee shall promptly remedy the situation, or the interfering portion of Lessee's equipment will be removed by Lessee.

4. PREMISES & USE. Lessee at Lessee's expense shall, in the conduct of its business on the Premises, comply with and carry out all applicable laws, ordinances, regulations and orders of public authority respecting the structure and other conditions of the Premises. The area to be leased will be in and upon the tower and equipment cabinet. Lessee shall place a communications cabinet at its expense at the base of the tank to house the electronic components. Lessee shall install the Tenant Equipment at the Premises, which Tenant Equipment will consist of (A) up to eight (8) antennas, (B) a control line, including necessary brackets, fittings and supports to attach the control line to the water tower, between the antennas and Lessee's equipment at the communications cabinet, and (C) communications equipment and switches to be installed at the communications cabinet. Lessee may remove or replace antennas and associated equipment in its normal course of business.

5. CONDITION OF PREMISES. Lessee's entry into possession of the Premises shall be deemed its acceptance of the Premises in order, condition and repair. Upon termination of this lease, whether by lapse of time or otherwise, Lessee shall immediately yield up possession, and surrender same to Lessor, with the leased Premises in good state of repair and condition.

6. UTILITIES/POWER TO SITE. Lessor agrees to provide 120v. 15 amp power with duplex outlet for Tenant Equipment and Lessee agrees to pay the monthly electrical cost to furnish electrical service to the Tenant Equipment. Electrical service entrance equipment will be placed by Lessee on the Premises to accommodate service to the equipment cabinet.

7. REPAIR AND MAINTENANCE. Lessee shall, at its expense, keep and maintain the Tenant Equipment in a clean, neat, sanitary order and in good condition and repair.

8. ACCESS. Lessee and its duly authorized agents, employees, engineers, and contractors shall have nonexclusive access to the Premises on a twenty-four hour a day basis.

9. TERMINATION. Either party may terminate this lease upon thirty (30) days' notice without liability for further rent or damages at any time after the initial terms of five (5) years. Upon expiration or earlier termination of the Agreement, the Lessee shall immediately remove the Tenant Equipment from the Premises and restore and repair the Premises to the Landlord's reasonable satisfaction.

10. LIENS. Lessee agrees and covenants that it will not cause or suffer the creation of any mechanic's liens, or other liens, for any labor performed or materials furnished for or behalf of Lessee, Lessee shall promptly remove the same at its own expense.

11. ALTERATIONS. Lessee shall not make any alterations to the leased Premises, or any part thereof, without the consent of Lessor first had and obtained, other than those indicated in the Lease and required for Lessee's intended use of the Premises.

12. DESTRUCTION OR CONDEMNATION. If the Premises or Tenant Equipment are damaged or destroyed and cannot be repaired or restored within forty-five (45) days, or if the Premises or Tenant's facilities are condemned or transferred in lieu of condemnation, Tenant may elect to terminate this Agreement as of the date of the damage, destruction, condemnation or transfer in lieu of condemnation by giving notice to Landlord no more than forty-five (45) days following the date of such damage, destruction, condemnation or transfer in lieu of condemnation.

13. ASSIGNMENT. Lessee may, with Lessor's written consent, assign Lessee's interest in this Lease. Upon assignment of this Lease and such assignee's written assumption of the payment of rent and performance of all other obligations to be performed on the part of Lessee with respect to the leased Premises, the Lessee's liability hereunder shall cease and terminate.

14. INSURANCE. Lessee shall procure and keep in force, at all times, during the term of this Lease, at its expense, general liability insurance in an amount not less than \$1,000,000. Lessor shall be named as an insured party for the location described above. Within fourteen (14) days from the Effective Date, Lessee shall furnish Lessor with certificate, issued by the insurance carrier evidencing such insurance. Lessee shall notify Lessor in the event of any cancellation or change in coverage of such insurance affecting the interest of the Lessor within seven (7) days of any such event.

15. NOTICES. Any notice required herein shall be sent by certified or registered mail. Notice to the Lessee shall be addressed to:

Innovative Financial Technologies, LLC dba AW Broadband
Attn: Adair Winter, Owner
P. O. Box 20561
Amarillo, Texas 79110
(806) 412-0888

And notice to the Lessor shall be addressed to:

City of Crosbyton
Attn: Margot Hardin, City Manager
221 West Main
Crosbyton, Texas 79322

Upon notice to the other party, either party may change the address to which notice to it is to be sent. Notice shall be deemed to have been given when properly mailed.

16. WAIVER. No waiver by Lessor of any breach or default by Lessee in the performance of any of the provision, agreements or covenants hereunder shall be construed as a waiver of such provision, agreement or covenant or of any other or subsequent breach thereof.

17. REAL PROPERTY TAXES. Tenant shall pay personal property taxes and any other taxes assessed against the Tenant Equipment and Landlord shall pay when due, all applicable real property taxes and all other taxes, fees and assessments attributable to the Premises or this Agreement.

18. MODIFICATION. Parties agree that this Lease contains the entire agreement between them and shall not be modified in any manner, except by an Addendum to this Lease signed by the Parties.

19. BINDING. The terms of this Lease shall become binding upon the successors, administrators, executors, heirs and assigns of the Parties hereto.

20. COUNTERPART SIGNATURES. This agreement may be executed in counterpart documents. The execution of this document and transmittal of same via fax or copy shall bind the executing party and shall be as fully enforceable as would the original.

21. SEVERABILITY. If any portion of this Lease shall be held to be invalid or unenforceable for any reason, the remaining provisions shall be valid and enforceable. If a court finds that any provision of this Lease is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, such provision shall be deemed to be written, construed, and enforced as so limited.

22. GOVERNING LAW. The laws of Texas shall govern this Agreement without giving effect to applicable conflict of law provisions. The courts located in Texas alone have jurisdiction over all disputes arising out of or related to this Agreement. Lessor consents to the personal jurisdiction of such courts sitting in Texas with respect to such matters or otherwise between Lessor and Lessee, and waives Lessor's rights to removal or consent to removal. In the event any litigation or other proceeding is brought by either Party in connection with this Agreement, the prevailing Party in such litigation or other proceeding shall be entitled to recover from the other Party all costs, attorney's fees and other expenses incurred by such prevailing Party in such litigation.

23. NON-INTERFERENCE. Lessor will not grant, after the date of this Lease, a lease, license, or any other right to any third party for use of the property, Tower, or Premises if such use may in any way adversely affect or interfere with Tenant Equipment, the operations of Lessee, or the rights of Lessee under this Lease. If any such interference occurs, Lessor will cause the interfering party to take all steps necessary to correct and eliminate the interference or such interfering party will be required to cease operations until such interference is removed.

24. RIGHTS UPON SALE. Should the Lessor, at any time during the term of this Lease or any renewal term of this Lease, decide (i) to sell or transfer all or any part of the Property to a purchaser other than Lessee, or (ii) to grant to a third party by easement or other legal instrument an interest in and to the that portion of the Property occupied by Lessee, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, such

sale or grant of an easement or interest therein shall be under and subject to this Agreement any such purchaser or transferee shall recognize Lessee's rights hereunder under the terms of this Agreement.

25. HAZARDOUS SUBSTANCES. Lessee shall not introduce or use any such substance on the Premises or near the Premises in violation of any applicable law or regulation. Lessee understands that if the Lessor needs to remove the old paint and/or repaint the water tower on the Premises and the old paint contains sufficient levels of lead that it will require special handling and containment in its removal. Lessee agrees to cooperate fully with Lessor as necessary for the removal of the old paint and the repainting of the water tower on the Premises. Lessee agrees to hold the Lessor harmless for any interruption of service or possible damage of their equipment during this process as well as any other disruption of Lessee's business resulting from repairs or maintenance to the water Premises.

26. INDEMNITY. Tenant shall indemnify, defend and hold Landlord, its Council members, employees and representatives harmless from and against all claims, losses, liabilities, damages, costs, and expenses (including reasonable attorneys' and consultants' fees, costs and expenses) (collectively "Losses") arising from the Tenant's breach of any term or condition of this Agreement or from the negligence or willful misconduct of the Tenant or its agents, employees or contractors in or about the Property. The duties described in this Paragraph 26 shall apply as of the Effective Date of this Agreement and survive the termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in several counterparts, each of which shall constitute an original, as of the date first above written.

ATTEST:

THE CITY OF CROSBYTON, LESSOR

Amy Wallace, City Secretary

Dusty Cornelius, Mayor

ATTEST:

INNOVATIVE FINANCIAL
TECHNOLOGIES, LLC
DBA AW BROADBAND. LESSEE
A Texas Limited Liability Company

By _____
Matthew Carpenter, President

Print Name

Title

Tax Deed-Parcel 11139-616 S. Ayrshire, Lot 4, Blk 1, Ellison Addition: Doyle Parrish made a motion to deny the \$200.00 bid by Rosemary Salinas. Heidi Hays seconded the motion. Motion carried.

Beta Ag Assuming Cone Aerial Spraying Airport Lease: No action.

Administrative Report: City Administrator Margot Hardin updated the council on the status of City projects.

With no further business before the council, the meeting was adjourned at 10:05 p.m.

Dusty Cornelius, Mayor

ATTEST:

Amy Wallace, City Secretary