

Board of Crawford County Commissioners

Commissioners' Journal

2018, [THIRTY-EIGHTH](#) MEETING

CRAWFORD COUNTY COURTHOUSE, COMMISSIONERS' BOARD ROOM

Girard, KS [Friday, May 25, 2018, 10:00 AM](#)

The Crawford County Board of Commissioners met pursuant to Kansas Statutes Annotated Chapter 19, Article 2, Section 18 in due and regular session with open doors.

Commissioner Jeff Murphy served as the presiding officer.

Commissioners Tom Moody and Carl Wood were in attendance.

County Clerk Don Pyle and County Counselor Jim Emerson were seated with the Board.

Chairman Murphy led the pledge of allegiance.

UNDER THE HEADING BUSINESS FROM A PREVIOUS MEETING

CONSENT AGENDA

On motion (18-192) of Commissioner Moody and the second of Commissioner Murphy that the consent agenda be approved including:

1. Approval of the [May 22, 2018](#) minutes of the Board of County Commissioners, and
2. Authorizing the Chairman to sign the previous week's vouchers.

Yeas: Commissioners Moody, Murphy and Wood

Nays:

Present but not voting:

Absent or not voting:

The motion prevailed and the consent agenda was approved.

SIGNING OF MOTIONS

The County Clerk presented the following motions for Commissioners' signatures:

Motion 18	186	That the consent agenda be approved including: Approval of the May 18, 2018 minutes
Motion 18	187	To recess this open session and go into a closed executive session for a period of not more than 15 minutes to discuss Non-Elected Personnel and to include the Board of County Commissioners. County Counselor Jim Emerson and Noxious Weed Director Ed Fields and to reconvene at 10:21 AM
Motion 18	188	To recess this open session and go into a closed executive session for a period of not more than 10 minutes to discuss items that would be deemed privileged in the Attorney Client Relationship and to include the Board of County Commissioners and County Counselor Jim Emerson and to reconvene at 11:25 AM

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Motion 18	189	To recess this open session and go into a closed executive session for a period of not more than 10 minutes to discuss Non-Elected Personnel and to include the Board of County Commissioners and County Counselor Jim Emerson and to reconvene at 11:36 AM
Motion 18	190	To recess this open session and go into a closed executive session for a period of not more than 15 minutes to discuss Non-Elected Personnel and to include the Board of County Commissioners, County Counselor Jim Emerson, Asphalt Foreman Randy Chiartano and Shop Foreman Greg Hite and to reconvene at 12:08 PM
Motion 18	191	To recess this open session and go into a closed executive session for a period of not more than 10 minutes to discuss items that would be deemed privileged in the Attorney Client Relationship and to include the Board of County Commissioners and County Counselor Jim Emerson and to reconvene at 12:20 PM

UNDER THE HEADING NEW BUSINESS

PUBLIC HEARINGS AND OPENING OF ANNOUNCED BIDS
MESSAGES FROM OTHER GOVERNMENTAL ENTITIES
MESSAGES FROM APPOINTED OFFICIALS
MESSAGES FROM THE PUBLIC
MESSAGES FROM ELECTED OFFICIALS
PROCLAMATION AND ORDERS OF THE BOARD
NEW BUSINESS

Item One: County Clerk Don Pyle stated that June 1, 2018 at 12:00 noon is the filing deadline for running for the federal, state and local positions that are up for election this year. He also stated that June 1, 2018 at 12:00 noon is also the last date to change party affiliation for the primary election.

Item Two: County Counselor Jim Emerson stated that he has been working with Mr. Jason VanBecelaere, Emergency Management Director on a contract to lease a tower near Walnut. Mr. VanBecelaere presented the contract to the Commissioners. Mr. Emerson stated that he has reviewed the contract with Mr. VanBecelaere and made the necessary changes. He explained that the rental rate is \$675.00 per month with a 5% annual increase. He stated that there is a 90 day opt out period with no reason required. Mr. Emerson stated that it is a 5-year lease with an automatic extension of 3 additional terms of 5 years each. Mr. VanBecelaere explained the areas the tower should cover and there is a generator on the tower but it has been decommissioned since it was not in use.

Board of Crawford County Commissioners

Lessor: Heartland Tower, Inc.
Lessee: Crawford County Kansas
Site: Walnut, KS

COMMUNICATIONS SITE LEASE AGREEMENT

This Communications Site Lease Agreement (the "Lease Agreement"), entered into by and between **Heartland Tower, Inc.**, a Kansas Corporation, having an address of PO Box 130, Auburn, KS 66402-0130 and a phone number of (785) 266-3999 (hereinafter referred to as "Lessor"), and Crawford County, having a mailing address of 131 E. Prairie, Girard, KS 66743 and a phone number of (620) 724-7156 (hereinafter referred to as "Lessee").

In consideration of the mutual promises, conditions, covenants and considerations passing between the parties hereto, it is understood and agreed by and between the parties to this Lease Agreement as follows:

Lessor does hereby lease unto Lessee facilities for operating certain radio communication equipment, including transmitters, receivers, antenna or antenna systems and the space required to run cable between the transmitters / receivers and antenna or antenna systems at Lessor's Walnut, KS site located at 1497 W. 710th Ave., Walnut, KS 66780 in Crawford County, Kansas (hereinafter referred to as "Premises" or "Site"). Latitude: 37 38 42.0 N and Longitude 95 05 15.0 W. Attached to this Lease is a copy of the Federal Communications Commission Antenna Structure Registration (ASR). The FCC ASR Number is 1032526. The property to be installed and maintained by Lessee at Lessee's expense on Lessor's Site is described on Exhibit A, attached, and as shown on the Exhibit A diagram which shall be approved by Lessor prior to Lessee's installation.

1. **TERM, RENTAL AND COMPENSATION:** The Initial Term of this Lease Agreement shall be for a period of five (5) years and shall commence upon June 1, 2018. For as long as Lessee does not change equipment, increase the size of its Premises or alter the wind load or structural impact of its equipment upon the Tower and/or the site, monthly rent shall be in the amount of \$675.00 ("Rental Rate" or "Rent") during the initial term, as adjusted by annual increases as set forth herein. Lessee will pay Lessor the ("Rent") annually, in advance, at Lessor's corporate address set forth above, on or before the 1st day of June of each calendar year, in advance. Through the initial term, and all extensions, this Rental Rate will be increased annually effective on the anniversary of the commencement date of this Agreement each year by five percent (5%) of the previous year's rent. In addition to the monthly Rental Rate, Lessee shall pay Lessor if, and when due, any sales, use or other taxes or assessments which are assessed or due by reason of this Lease Agreement and/or Lessee's use of the Site hereunder, and/or the value of any tax increases assessed by Crawford County Kansas. Lessee will also provide maintenance to and for the Site as outlined in section 11.

1.1. This Lease Agreement shall be automatically extended for three (3) additional terms of five (5) years each ("Renewal Terms"), upon the same terms and conditions found herein, unless either Lessee or Lessor notifies the other in writing of their intention not to renew this Agreement at least sixty (60) days prior to the expiration of the existing Lease Term. The Initial Term together with any Renewal Terms are collectively referred to herein as the "Term".

1.2. Lessee may terminate this Lease at any time by providing Lessor with written notice of its intent to terminate at least ninety (90) business days in advance of termination date, accompanied by a termination payment equal to six (6) months' rent (at the current rental rate). Lessee will continue to pay rent as usual, through the ninety business days and until Lessee's equipment is removed from the site as outlined in section 11. Lessor may terminate this Lease at any time by providing Lessee with written notice of its intent to terminate at least ninety (90) days in advance of termination date. Lessee will not be required to pay rent for the ninety (90) days immediately prior to the termination date identified by Lessor.

2. **SECURITY DEPOSIT:** Lessor is not requiring a Security Deposit from Lessee, at this time. Lessor reserves the right upon written notice to Lessee, to require a security deposit in the amount equal to three (3) months' rent. This deposit shall be paid to Lessor within 30 days from Lessors written notice to Lessee. The Security Deposit is non-refundable for the term of this Lease Agreement, and shall be security for the performance of Lessee's obligations hereunder. Said sum may, at Lessor's option, be applied to satisfy any such obligation which may be in default, but the making of such deposit shall not excuse Lessee from any such obligation. Any portion of said sum which has not been so applied by Lessor will be returned to Lessee at the expiration of this Lease Agreement.

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3. **TITLE:** Lessee shall have no right, title or interest in the Site except the non-exclusive use thereof as expressly set forth in this Lease Agreement.
4. **INVOICING:** Lessor will furnish to Lessee an invoice stating the amount of rental and additional charges, if any, are due by Lessee. Lessee shall then make full and timely payment as herein required.
5. **FAILURE TO PAY:** If the rent or other amount due is not paid within ten (10) days after the due date in accordance with the terms of this agreement, Lessee will be in default, as outlined in Section 19.
6. **UTILITIES, ELECTRICITY & EMERGENCY POWER:** Lessor will supply electricity in the form of one 120 Volt, 20 Amp circuit. Cost will be included in the rent and will be adjusted if the Utility Company has a rate increase and/or additional equipment is added or original equipment installed at the Site is changed. Lessor and Lessee will agree to this adjustment in the form of a written agreement amended to this lease. Lessor is not responsible for loss of electricity due to power failure. Lessee is responsible for proper utilities installation as outlined in section 11. Lessor furnished electricity is not to be used to provide power to any HVAC or climate control systems, without prior Lessor approval.
 - 6.1 Lessee agrees to secure and pay for all charges and metering of utility companies (besides electricity) for utilities consumed on the Premises including but not limited to, charges for fuel, gas, water, trash collection, phone, fiber, communications and sewage, etc... Lessee is responsible for proper utilities installation as outlined in section 11.
 - 6.2 If Lessee desires Emergency Generator Backup Power, then Lessee is responsible for purchase and installation of a new propane backup electricity generator, propane tank and emergency automatic transfer switch. Generator will be at least 22 Kilowatts or larger in capacity, to provide electricity to the entire site. Lessee is responsible for all expenses associated with the generator, including, but not limited to installation, upkeep, maintenance, propane fuel costs, permits, etc. Lessee, at Lessee's expense, will schedule and have performed by qualified personnel routine (at least annually) maintenance on the generator. Installation/placement will need prior approval by Lessor.
7. **DEPOSITS, FEES AND TAXES:** In the event that the Government, any public utility, or any other agency requires or increases any fees and/or deposits in connection with the Lessee's use of the Site, Lessee agrees to pay said fees and/or deposits upon notice.
8. **PERMITS, LICENSES AND REGULATIONS:** Lessee agrees and understands that it is the Lessee's responsibility to abide by all federal, state and local rules and regulations pertaining to the operation of the Site and of Lessee's equipment; including without limitations, those pertaining to the installation, maintenance, height, location, use, operation, and removal of its equipment, antenna systems, and other alterations or improvements authorized herein. Lessee agrees and understands that changes in rules and policies by agencies or persons other than Lessor that affect the operation or use of Lessee's equipment and of the Site are not the Lessor's responsibility. Lessee hereby represents that Lessee has obtained the necessary licenses and permits required to use said Site, or that Lessee will obtain said licenses or permits, at Lessee's own expense, prior to any such use.
9. **USE:** It is expressly agreed by Lessee and Lessor that: (1) while using the Site, Lessee shall be responsible for proper operation of its equipment in compliance with all Federal, state and local rules; (2) Lessee hereby consents to the execution of agreements between Lessor and other parties eligible to share the Site, whereby such parties may utilize and share said Site with Lessee; and (3) Lessee represents that it has independently ascertained that the Site is adequate and proper for Lessee's intended use and has entered into this Lease Agreement based solely upon said independent investigation, and not by any representation by Lessor.
10. **COVERAGE AND INTERFERENCE:** Lessor makes no representations concerning the distance at which useable radio signals may be transmitted and received from the Site or location thereof. Lessee is

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Lessor: Heartland Tower, Inc.
Lessee: Crawford County Kansas
Site: Walnut, KS

hereby notified that the Site is subject to degradation of performance from, but not limited to, natural and man-made phenomena such as so-called "skip" interference, power line and ignition noise, intermodulation, co-channel interference, and interference from users of the same or other radio frequencies. The Lessor is not responsible for interference due to the above or other causes.

10.1. Lessee shall be responsible for taking such steps as may be necessary to prevent any spurious radiation or "objectionable interference" (as hereafter defined) with the broadcasting or transmission facilities of Lessor or other lessees on the Site caused by Lessee. If Lessee has not taken corrective measures within twenty-four (24) hours after Lessee has been notified that its equipment is causing objectionable interference, then Lessor may in addition to its other rights or remedies, at its discretion: (1) disconnect power to Lessee's equipment and/or (2) take corrective action and charge Lessee for all costs of labor and materials necessary to eliminate such interference and/or spurious radiation. If such objectionable interference or spurious radiation cannot be reduced to levels reasonably acceptable to Lessor, Lessor may elect to terminate this Lease Agreement by giving Lessee written notice. Lessor or its designated representatives shall have the sole right, initially and during the term of this Lease Agreement, to (a) determine the location of the equipment on the Site, and (b) require Lessee to take whatever action is necessary to eliminate objectionable interference by Lessee's equipment with devices approved by Lessor to minimize spurious radiation. If Lessor requires the equipment to be moved (except as necessary or appropriate to reduce objectionable interference), Lessor shall be responsible for any reasonable costs of moving same.

10.2. Nothing contained in this Lease Agreement shall be deemed to entitle Lessee to the exclusive possession of any span of space on the Site, it being the intention of the parties that the span of space may be used by others at the direction of the Lessor provided no objectionable interference is caused to Lessee's radio transmission activity. It is understood and agreed that Lessor intends to and shall have the right to accommodate as many transmitters and/or receivers as possible at the Site, and in that connection it is understood and agreed that Lessor shall have the right at any time during the term of this Lease Agreement to locate the antenna or other equipment of other lessees within the same vertical space on the Site as Lessee may occupy. For purposes of this Lease Agreement, objectionable interference shall be deemed to exist if: (1) a determination to that effect is made by an authorized representative of the FCC, or (2) a condition exists which constitutes interference within the meaning of the provisions of the Rules and Regulations of the FCC at the time in effect, or (3) there is a material impairment of sound, picture, data or other transmission in any material portion of the protected service area of such activity as such area is or may be defined by the FCC at any hour during the period of operation of such activity, as compared with that which would be obtained if no other lessees were transmitting from the Site or had any equipment at the Site, or (4) a lessee is prevented from using or having access to its equipment at reasonable and usual times to an extent to which interferes to a material degree with the operation and maintenance thereof, it being understood that a reasonable temporary interference which does not materially interfere with the operation or maintenance of said equipment and which is occasioned by the installation of new equipment by another lessee or by repairs to or maintenance of existing equipment of another lessee shall not be considered objectionable interference.

11. LESSEE'S MAINTENANCE AND REMOVAL OF EQUIPMENT:

11.1. Lessee shall install only the equipment, (including antenna and transmission line) which has been approved by Lessor. The Lessee agrees that the installation will be done in a neat, workmanlike manner and in compliance with all applicable laws and regulations. Lessee shall be responsible for the proper installation and maintenance of conduits and lines at the Site, relating to electricity, telephone and other services required by Lessee. All costs of the installation (including repair of damages caused thereby to Lessor's or other lessee's equipment) will be the responsibility of the Lessee. Any additional equipment, other than Lessee's equipment above first referenced herein, shall only be installed at Lessor's consent by amendment hereof.

11.2. Lessee's employees or contracted workers who are to be on the tower will be certified, insured, bonded and experienced with above ground tower work, and shall follow all OSHA and other applicable laws and regulations and shall utilize 100% safety tie off methods when

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Lessee: Crawford County Kansas
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above ground level. Lessee will notify Lessor prior to their (or their contracted workers) arriving at and entering into the site.

- 11.3. No holes are to be drilled into or through the tower, or any galvanized surface without Lessor approval. Mounting of Antennas, cabling, enclosures, etc... is to be done with 'bolt on' or similar attachment methods. Nothing is to be attached to the ladder or its supports or in any way interfere with the climbing area.**
- 11.4.** Lessee shall be required to properly ground all antenna equipment at the uppermost location of its equipment on the tower and properly ground its coaxial cable at the base of the tower.
- 11.5.** Lessee is required to remove all of Lessee's equipment, including Lessee's coaxial cable and antennas, on or before the date of termination of this Lease Agreement at Lessee's sole risk and expense, unless other prior written arrangements are made between Lessee and Lessor. In the event Lessee does not timely remove its equipment, antennas and coaxial cable as herein required, Lessee shall pay to Lessor the cost of said removal. All equipment, antennas and coaxial cable not removed by Lessee within 30 days after lease termination shall be considered abandoned by Lessee and shall become the property of Lessor. Improvements to the site (electrical, utility, communications, security, etc...) shall become part of the premises.
- 11.6.** Lessee, at Lessee's expense, shall keep, maintain and repair the interior and exterior of the Premises including but not limited to roof, walls, heating, air conditioning (HVAC) (if used), generator (if/when installed by Lessee as outlined in section 6.2), electrical systems and equipment, fences, alarm system, access control system, lighting, parking areas, compound, driveway (including snow & ice removal/treatment) and grounds (lawn maintenance, annual ground sterilization, round-up, mowing, trimming, etc...) in good repair and, at the end of the Term, surrender and deliver the Premises to Lessor in good order and condition, reasonable wear and tear excepted.
- 11.7.** Lessee, at Lessee's expense, shall have performed and keep records of any periodic inspections or permitting required for equipment located at the Site.
- 12. INSPECTION AND ACCESS:** Lessor will provide Lessee unlimited access to Lessee's equipment at the Site for the purposes herein agreed and for complying with any reasonable request for inspection by representatives of the FCC. Lessee shall have access only to its own equipment and under no circumstances will Lessee gain access to other equipment located at the Site or allow anyone else access to equipment other than its own. Lessor shall be afforded unlimited access to Lessee's equipment for inspection purposes and Lessee shall furnish Lessor with a key to or the combination of any lock securing Lessee's equipment.
- Lessee, and/or Lessee's designee will notify Lessor each time they will be at the site, prior to arrival, and when Lessee, and/or Lessee's designee will be leaving the site.
- 13. COORDINATION OF INSTALLATION, REPAIR AND MAINTENANCE:** In the event of the need for installation, repair or maintenance of the tower, equipment building or other common facility, or of the equipment of Lessee or other lessees, and if such repair or maintenance is not of an emergency nature, then Lessor or other lessees shall have the right, upon ten (10) days notification to Lessee, to undertake such repair or maintenance at its convenience, or to require Lessee to do so, if the same relates to Lessee's equipment. Lessor and Lessee agree to coordinate such activities in such a manner as to minimize any downtime that may be caused to Lessee's operations, or to the operation of other lessees.
- 14. FAILURES AND MAINTENANCE:** Lessee is hereby notified and understands that the Site will not provide communications 100% of the time and it will, by its very nature, fail and require maintenance from time to time without notice. Such facts have been taken into consideration by Lessee prior to the execution of this Lease Agreement, and such failures shall not constitute nonperformance or negligence on the part of Lessor. Lessor is not liable or responsible for interruptions or termination of service caused by strikes,

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Lessor: Heartland Tower, Inc.
Lessee: Crawford County Kansas
Site: Walnut, KS

lockouts, governmental acts, acts of God or other conditions beyond its control. Any such interruption or termination of service shall not be considered as a breach of this Lease Agreement by Lessor. The Lessee at its own expense shall be totally responsible for any and all maintenance of its equipment due to lightning, power line surges, ground faults, excessive voltage, or any other causes beyond control of Lessor. Lessee promises to notify Lessor in writing of each and every failure and/or malfunction on the part of the Lessor or Site that requires Lessors attention, not later than forty-eight (48) hours after the occurrence of such failure and/or malfunction.

15. **CASUALTY:** If the Site becomes completely unusable due to fire or other casualty and Lessee's equipment becomes inoperable for a period of at least sixty (60) days as a result thereof, either party may elect to terminate this Lease Agreement upon thirty (30) days' written notice to the other given prior to the completion of repairs.

As Lessee's sole recourse or remedy for such casualty, the monthly Rent shall be abated on a per diem basis while the equipment at the Site cannot be operated due to fire or other casualty. Without limiting the foregoing, Lessor shall not, under any circumstances, be responsible for any losses or damage to Lessee's equipment or loss of service from Lessee's equipment as a result of fire, theft, vandalism, lightning, loss of AC power by serving utility, loss of accessibility, power line surges, ground faults, excessive voltage, shut down of Site for necessary repairs or normal maintenance work, and any other causes. In the event of termination of this Lease Agreement, the monthly Rent shall be apportioned on a per diem basis and paid to the date of the fire or other casualty.

16. **TERMINATION OF LESSOR'S RIGHTS TO SITE:** In the event that any state, local or federal governmental agency causes the Site and/or its location to become unavailable, Lessor shall have the right to either (i) terminate this Lease Agreement without liability to Lessee or (ii) subject to Lessee's approval, make another similar Site and/or location available on the same terms, in which event the change of Site and/or location shall not affect the obligations of Lessee.

17. **INSURANCE AND INDEMNITY:** Lessor provides no insurance on Lessee's equipment. Lessee is responsible to maintain property insurance on all of its equipment located at the site. Lessee hereby waives its right of recovery against Lessor for any loss or damage covered by any property insurance maintained by Lessee or which would have been covered by an "all risk" replacement cost insurance policy. Lessee agrees to furnish Lessor with Certificates of Insurance certifying that Lessee has agreed to, at minimum, the below specified insurance.

Bodily Injury and/or Death: \$1,000,000.00 for injury or death to any one person, and \$2,000,000.00 for all injuries and/or death sustained by more than one person in any one occurrence; and

Property Damage: \$2,000,000.00 for damage as a result of any one accident.

Lessee agrees to indemnify Lessor and its representatives, successors and assigns from and against all claims, demands, rights, costs, expenses, compensation and causes of action of whatever kind and nature, including bodily and personal injuries, damage to property and the consequences thereof, resulting and to result from the use, installation, removal, maintenance or repair of Lessee's equipment or Lessee's employees, officers, directors, agents, owners, representatives, contractors, guests, invitees, workers, employees, successors and assigns. Lessee hereby acknowledges and agrees that Lessee's use of the Site is at Lessee's own risk, and Lessee hereby releases Lessor, Lessor's agents, employees and contractors from all claims except for any damage or injury resulting from the sole negligence or intentional wrongful conduct of Lessor, Lessor's agents, employees or contractors.

Lessee's indemnity obligation to Lessor as set forth herein shall include litigation expenses, court costs and reasonable attorney's fees incurred by Lessor subsequent to the first written demand notice that any claim or demand is made. The provisions of this paragraph shall survive the termination of this Lease Agreement with respect to any damage, injury or death occurring before such termination.

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Lessor: Heartland Tower, Inc.
Lessee: Crawford County Kansas
Site: Walnut, KS

18. **HAZARDOUS MATERIALS:** Lessee represents to Lessor, as part of the considerations recited herein that no part of the leased premises shall be used by Lessee for the disposal, storage, treatment, processing, manufacturing or other handling of any hazardous wastes, hazardous substance, asbestos or other materials (collectively, the foregoing are referred to herein as "Hazardous Materials") deemed hazardous or otherwise subject to any federal, state, county or municipal laws, statutes, codes, rules, regulations or ordinances pertaining to the use, handling, release, disposal, storage, treatment, processing or manufacturing of such Hazardous Materials or similar materials and substances (collectively, all such laws, etc. are referred to herein as "Environmental Laws").

Lessee expressly acknowledges and agrees that in the event any such contamination by Hazardous Materials shall hereafter occur, or shall hereafter be determined to have occurred, arising out of or resulting from Lessee's occupancy, at, upon or from the leased premises, such occurrence of contamination shall be deemed, at Lessor's option, to constitute a default under this Lease Agreement. Lessee hereby covenants and agrees, further, that in the event of the occurrence of any such contamination by Hazardous Materials arising from Lessee's occupancy of the leased premises, or in the event of the determination that any such contamination of the property has occurred, Lessee shall be obligated, whether or not required by law, immediately to clean-up, remove, resolve, minimize the impact of or otherwise to remediate (any and all such activities being referred to generally as "Remediation") any such contamination of the property.

Lessee shall indemnify Lessor for, and shall defend and hold Lessor harmless from and against, any and all liabilities, causes of action, demands, penalties, losses, costs and expenses, including, but not limited to, attorney's fees and costs of Remediation, which may be suffered, paid or incurred by Lessor with respect to, or as a direct or indirect result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release upon or from the leased premises of any Hazardous Materials or any contamination by Hazardous Materials, that may arise out of or result from the Lessee's use and occupancy of the leased premises.

Lessor represents and warrants that to the best of Lessor's knowledge, as of the signing of this Lease, the Site is not contaminated, does not contain any Hazardous Material and is not in violation of any applicable environmental laws, rules, regulations and/or ordinances.

19. **DEFAULT:** In the event of Lessee's default in the payment of Rent or in the Lessee's failure to comply with any other material provision of this Lease Agreement, Lessor may, at its option, (i) terminate this Lease Agreement without affecting its right to sue for all past due Rent and any other damages to which the Lessor may be entitled, and/or (ii) disconnect some or all of Lessee's equipment or otherwise prevent its use and/or remove same to Lessor's storage facility at Lessee's expense and hold same until all defaults are cured (without any liability therefore or reduction in monthly Rent), and (iii) in addition, be entitled to all other rights and remedies to which it is permitted under law or in equity. Should Lessor be entitled to collect Rent or damages and be forced to do so through its attorney or by some other legal procedures, Lessor shall, upon receipt of a favorable judicial ruling, be entitled to its reasonable costs and attorney's fees thereby incurred. After any disconnection of Lessee's equipment, Lessee shall be required to pay a reconnection fee of Two Hundred Dollars (\$200.00) prior to reconnection of Lessee's equipment.

20. **ASSIGNMENT:** Lessee may not assign, sublease, sell or transfer its rights hereunder in whole or in part without the written consent of the Lessor. All rights of Lessor hereunder may be assigned, pledged, mortgaged, transferred, or otherwise disposed of, either in whole or in part, with or without notice to Lessee, subject, however, to all of Lessee's rights under this Lease Agreement, and further provided that Lessor shall give notice to Lessee in the event of a sale of its business or other transfer of ownership.

21. **SALE OR TRANSFER OF SITE:** If Lessor sells or transfers the Site, Lessor (or any successor who transfers its interest) shall, upon consummation of the sale or transfer, be released from any liability thereafter accruing under this Lease Agreement, subject to assignee's assumption of this lease agreement.

22. **ESTOPPEL:** Lessee shall at any time upon ten (10) days' prior written notice from Lessor execute, acknowledge and deliver to Lessor a statement in writing (a) certifying that this Lease Agreement is unmodified and in full force and effect (or, if modified, stating the nature of such modification), (b)

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Lessor: Heartland Tower, Inc.
Lessee: Crawford County Kansas
Site: Walnut, KS

acknowledging that there are not, to Lessee's knowledge, any uncured defaults on the part of Lessor hereunder, or specifying such defaults if any are claimed, and (c) setting forth any prepaid Rent. Any such statement may be conclusively relied upon by any prospective purchaser, investor, lessee or encumbrancer of the Site.

23. NOTICES: Any notice, communication, request, demand, reply or advice (severally and collectively referred to as "Notice") in this Lease Agreement required or permitted to be given, made or accepted must be in writing. Notice may, unless otherwise provided herein, be given or served (a) by depositing the same in the United States Mail, postage and fees prepaid, registered or certified, and addressed to the party to be notified, with return receipt requested, (b) by delivering the same to such party, or an agent of such party, in person or by commercial courier or (c) by regular mail, facsimile transmission, telegram or other commercially reasonable means addressed to the party to be notified. Notice sent by registered or certified mail in the manner hereinabove described shall be effective from and after the expiration of three (3) days after such deposit or as of earlier actual receipt. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of Notice, the address of the parties shall, until changed by written notice, be as follows:

LESSOR: Heartland Tower, Inc.
PO Box 130
Auburn, KS 66402-0130
Telephone: (785) 266-3999

LESSEE: Crawford County Kansas
131 E. Prairie
Girard, KS 66743
Telephone: (620) 724-7156

24. GENERAL PROVISIONS: The undersigned certifies that they have read and understands all of the terms and conditions of this Lease Agreement, and each party acknowledges receipt of a true copy hereof at the time of execution. All of the terms and conditions hereof are part of this Lease Agreement, and there are no express or implied warranties, modifications, or performance guarantees other than those expressly stated herein. The parties hereto agree that no subsequent modification, warranty, or waiver shall become valid until and unless it is reduced to writing, and executed by Lessee and Lessor.

25. ATTORNMENT: In the event a third party acquires title to the Site, including by foreclosure or by acceptance of a conveyance in lieu of foreclosure of a lien, Lessee will automatically become the Lessee of such successor in interest without change in the terms or other provisions of this Lease Agreement; provided, however, that such successor in interest shall not be bound (a) by any payment of rent in advance other than in accordance with the terms of this Lease Agreement or (b) by any amendment or modification of this Lease Agreement made without the written consent of such successor in interest or (c) to make any expenditures of funds required by Lessor after the date of acquisition of title by such successor in interest. Upon request by such successor in interest, Lessee shall execute and deliver an instrument or instruments confirming the attornment herein provided.

26. AUTHORITY: Any individual signing this Lease Agreement on behalf of an entity represents and warrants that they have full authority to do so.

27. COUNTERPARTS: This Lease Agreement may be executed in any number of counterparts, each of which shall be deemed an original instrument, and all of which together shall constitute one and the same instrument. This Lease Agreement shall become operative when each party has executed at least one counterpart hereof.

28. MISCELLANEOUS PROVISIONS: The waiver of any term, provision or any default shall not constitute the waiver of any other term, provision or default. This Lease Agreement is made, and is to be performed at the office of Lessor. This Lease Agreement shall be governed by the laws of the State in which the Site is located. If any part of this Lease Agreement shall be adjudged contrary to law, the remaining provisions hereof shall remain in full force and effect.

Board of Crawford County Commissioners

Lessor: Heartland Tower, Inc.
Lessee: Crawford County Kansas
Site: Walnut, KS

This Lease Agreement shall be binding upon the respective successors, assigns and personal representatives of the parties.

IN WITNESS WHEREOF, The parties have executed this Agreement, effective, as of the date the last party executed this Agreement below.

LESSOR: Heartland Tower, Inc.

Signed: _____ Date: _____
Printed Name: Robert Nall TITLE: Director

ACKNOWLEDGMENTS

State of Kansas, County of Shawnee, On this date: May, _____ 2018
before me personally appeared Robert Nall, to me known to be the person who executed the foregoing instrument, and acknowledged that he or she executed the same as his or her free act and deed. In testimony whereof I have hereunto set my hand and affixed my official seal at my office in said county and state the day and year last written above.

My commission expires: _____ Notary Public _____

LESSEE: Kansas County Kansas

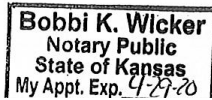
Signed: _____ Date: 25 May 2018
Printed Name: Jeffrey Murphy TITLE: County Commissioner

ACKNOWLEDGMENTS

State of Kansas, County of Crawford, On this date: May, 25th 2018

Before me personally appeared Jeffrey Murphy to me known to be the person who executed the foregoing instrument, and acknowledged that he or she executed the same as his or her free act and deed, and that he or she is authorized to sign this agreement on behalf of Crawford County Kansas. In testimony whereof I have hereunto set my hand and affixed my official seal at my office in said county and state the day and year last written above.

My commission expires: 4-29-20 Notary Public Bobbi K Wicker



Page 8 of 10 Pages

Board of Crawford County Commissioners

Lessor: Heartland Tower, Inc.
Lessee: Crawford County Kansas
Site: Walnut, KS

EXHIBIT A Equipment List

Tower Equipment:

At or near the top level on the tower:

4 – DB 224 VHF Style Antennas on the following frequencies:

_____ MHz

_____ MHz

_____ MHz

_____ MHz

Each antenna will be allowed one feedline run of Coax cable not to exceed 7/8" in diameter.

Interior Equipment:

Lessee will install up to four (4) VHF repeaters for the Fire, EMS, Law Enforcement and Emergency Management agencies.

The repeaters, and associated equipment, will be installed in space equivalent to or within two Standard 19" Rack Cabinets, each, not to exceed 8' in height.

All feedlines will be properly grounded with the feedline manufacturers grounding kits at the top and at the bottom and/or per manufactures recommendations. The feedlines shall be attached to the tower per Lessor's approved method, using the feedline manufacturers style mounts, cable hangers and clips, designed for this purpose. Nothing will be attached to the climbing ladder that will interfere with the safe operation of the ladder, or will violate any rules and regulations regarding the climbing area.

In General: No holes are to be drilled into or through the tower, or any galvanized surface without Lessor approval. Mounting of Antennas, cabling, enclosures, etc... is to be done with 'bolt on' or similar attachment methods.

Lessee will label and attach a copy of their licenses, along with emergency contact information to the outside of their equipment located inside the tower building, so it is clearly visible.

Additional Equipment will only be allowed with Lessor's prior written approval, and will be amended to this agreement.

Lessee Signature: _____ Date: 5-25-2018

Printed Name: Jeff Murphy TITLE: County Commissioner

There was a discussion of the CodeRed System.

Mr. VanBecelaere stated that the City of Girard donated a storm siren to the City of Hepler and Westar donated a pole and it has been installed and will be tested next week.

On motion (18-193) of Commissioner Murphy and the second of Commissioner Moody to approve the Communications Site Lease Agreement between Heartland Tower, Inc and

Board of Crawford County Commissioners

Crawford County for a radio communication tower located at 1497 W 710th Ave, Walnut, Kansas and authorize the Chairman to sign.

Yeas: Commissioners Moody, Murphy and Wood

Nays:

Present but not voting:

Absent or not voting:

The motion prevailed.

Item Three: Commissioner Wood stated that Ms. Susie Boldrini has been appointed to the CTech Committee.

Item Four: Mr. Wood stated that Road & Bridge employees are requesting to work from 6:00 AM to 2:30 PM starting the Tuesday after Memorial Day until Labor Day. The Commissioners approved allowing Road and Bridge Employees to change their hours to 6:00 AM to 2:30 PM starting Tuesday, May 29, 2018 until Labor Day. Mr. Wood addressed skipping lunches and taking off early unless laying asphalt, chip and sealing or when deemed necessary. The other Commissioners agreed and decided to leave the decision on this issue at the foremen's discretion.

Item Five: Mr. Wood discussed having one of his mowers down.

Item Six: Mr. Wood stated the first Codes Court is this afternoon and Mr. Emerson stated that if the landowner does not appear an arrest warrant will be issued.

UNDER THE HEADING OLD BUSINESS

Item One: Mr. Jim Emerson handed out a revised Crawford County Neighborhood Revitalization Plan. Mr. Emerson went over the changes with the Commissioners. He stated that the minimum investment required to qualify for the plan was changed to \$10,000. He also stated that new construction on a vacant lot qualifies in the designated areas only. Mr. Emerson said that an improvement to a current structure over \$10,000 is county wide and a new residential dwelling on land where a dwelling was demolished is also county wide. He explained that county wide is anywhere in the county that is not within any city limits. He stated that another change was that there is no fee to apply for the plan. but an application and a building permit is still required. There was a discussion on being removed from the plan for nonpayment of property taxes. Mr. Emerson stated that Commercial/Industrial is Countywide and could qualify for a rebate under either the Neighborhood Revitalization Plan or the Economic Development Tax Abatement Policy. Mr. Emerson stated that the Crawford County Neighborhood Revitalization Plan must be adopted by Resolution.

Board of Crawford County Commissioners

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CRAWFORD COUNTY, KANSAS.

IN THE MATTER OF THE ADOPTION OF A
NEIGHBORHOOD REVITALIZATION PLAN

REVITALIZATION PLAN

The Board of County Commissioners of Crawford County, Kansas, (herein sometimes called "Governing Body") pursuant to the Kansas Neighborhood Revitalization Act, K.S.A. 12-17, 114 et. seq. does hereby adopt a Neighborhood Revitalization Plan (herein sometimes called "Plan") for the County of Crawford as follows:

PLAN

1. LEGAL DESCRIPTION OF AREA IN PLAN.

(a) A legal description of the real estate forming the boundaries of the area included within the Plan is the entire unincorporated area of Crawford County, Kansas, as set forth in K.S.A 18-119 and such statute is adopted herein by reference.

(b) Maps depicting the existing Parcels of real estate covered by this Plan have been prepared and are on file in the office of the County Appraiser of Crawford County and the same are adopted as a part of the Plan by reference.

2. ASSESSED VALUATION. The existing (i.e. July 2017) assessed valuation of the real estate included in the Plan, listing land and building values separately, is as follows:

Buildings	<u>\$45,524,130</u>
Land	<u>\$22,955,307</u>
Total	<u>\$68,479,437</u>

3. NAMES AND ADDRESSES OF OWNERS. A list of the names and addresses of the Owners of record of the real estate included within the Plan constitutes a part of the records in the office of the County Appraiser of Crawford County, and such list is adopted in and made a part of this Plan by reference.

4. ZONING CLASSIFICATIONS. The existing zoning classifications and zoning district boundaries and the existing land uses within the area included in the Plan are as set forth in the official zoning maps, records and resolutions and of the County of Crawford.

Board of Crawford County Commissioners

5. MUNICIPAL SERVICES. The Plan does not include any proposals for improving or expanding municipal services as described in K.S.A. 12-17,117(a)(5) and, if any proposals for any such improvements or expansions of municipal services are hereafter proposed by the Governing Body, then any such proposal will be prepared and considered independently of this Plan.

6. REAL PROPERTY ELIGIBLE.

(a) The rehabilitation, renovation, alterations or additions to residential dwelling structures located anywhere within the unincorporated area of Crawford County will be eligible for the rebate. The minimum investment required to qualify for the Plan is \$10,000.

(b) Construction of new residential dwelling structures on a vacant lot is eligible to apply for Revitalization under the Plan based on their location. Eligible locations are designated in "Exhibit A".

(c) Rehabilitation, additions or new construction of any office, commercial or industrial structure as permitted by the Crawford County Zoning Regulations and within the unincorporated area of Crawford County will be eligible for the rebate. The minimum investment required to qualify for the Plan is \$10,000.

(d) Improvements to existing or construction of new residential accessory structures such as garages, workshops, and swimming pools, gazebos and storage buildings are eligible anywhere in the unincorporated area of Crawford County provided the \$10,000 minimum investment is met.

(e) A new residential dwelling structure placed on a lot where a residential dwelling structure was demolished will be eligible for the rebate anywhere within the unincorporated area of Crawford County. Demolition must be verified by the County Zoning Office.

7. CRITERIA FOR DETERMINATION OF ELIGIBILITY:

The criteria to be used by the Governing Body to determine what specific real property is eligible for Revitalization and for Property Tax Increment Rebates are as follows:

(A) Construction of an improvement must have begun on or after June 1, 2018, the effective date of this Plan.

(B) An application for rebate must be filed within sixty (60) days of the issuance of a building permit.

(C) In order to qualify for Revitalization, the minimum investment on an eligible Parcel of real estate is \$10,000.

Board of Crawford County Commissioners

(D) All new Construction and all Improvements to existing property must comply with all zoning and building codes, rules, and regulations in effect at the time the improvements are made, and to maintain its eligibility, such Parcel must continue to remain in compliance with all zoning and sanitary codes, rules, and regulations during the entire period of time the Parcel remains eligible for Rebates.

(E) Any Parcel that is delinquent in the payment of any ad valorem property tax assessment or special assessment shall not be eligible for any Rebate. Any Owner of other property within the County who is delinquent in the payment of any ad valorem property tax assessment or special assessment shall not be eligible for any Rebate during the remainder of the time for which the Parcel was eligible.

(F) Properties eligible for tax incentives under any program shall be eligible to submit applications under only one program at a time.

(G) Eligibility for Rebates is subject to the adoption and approval of a Plan by each taxing district. See County Clerk for taxing districts who have adopted a Neighborhood Revitalization Plan.

(H) Only owners are eligible for tax rebates.

(I) In the event of a transfer of ownership of a Parcel during the eligible Rebate period, such Parcel and the subsequent Owner thereof will remain eligible for the Rebate during the remainder of the time for which the Parcel was eligible.

(J) Multiple qualified improvements to the same Parcel completed within one calendar year shall be treated as one improvement. In the event of multiple qualified improvements made to the same Parcel in different or succeeding years, which meet the required minimum requirements in any given year, and, therefore, create an additional qualification for and period of eligibility for a Rebate, the total Rebate in any succeeding year will be calculated and determined after the initial qualified Rebate is determined, and will be based upon the additional increase in the appraised value directly resulting from the succeeding qualified improvement.

(K) Tax rebates are based on the increase of appraised value due to the improvements as of January 1 following the year of 100% completion.

8. CONTENT OF APPLICATION FOR REBATE.

The content of an "Application for Rebate" as authorized under K.S.A 12-17,118 is as set forth in the document which is attached hereto as Exhibit B and entitled "Application for Rebate Neighborhood Revitalization Plan" and is hereby approved and adopted as a part of the Plan by reference.

Board of Crawford County Commissioners

9. APPLICATION PROCEDURE:

- a. The applicant shall obtain an Application for Tax Rebate from the Crawford County Zoning Department.
- b. If required, secure a building permit prior to filing an Application.
- c. The applicant shall complete and sign Part I of the Application, sign and date the Application, and file all copies thereof in the office of the County Appraiser within sixty (60) days of the issuance of the building permit.
- d. The County Appraiser's Office shall verify the existing appraised value.
- e. Owner will complete Part Two and return it to the County Zoning Office at the time construction commences.
- f. After construction or renovation is complete Owner will complete Part Three of the Application and return it to the County Zoning Administrator who will notify the County Clerk and the County Appraiser, who will collectively certify the project is or is not in compliance with the eligibility requirements for a tax rebate. The County will notify the Owner immediately.
- g. In the January following, the County Appraiser shall conduct an on-site inspection of the construction project and determine the new valuation of the real estate and shall complete their portion of the application and shall report the new valuation to the County Clerk by June 1. The tax records on the project shall be revised by the County Clerk to reflect the change in valuation.
- h. Upon payment in full of the real estate tax for the subject property for the initial and each succeeding tax year period, extending through the specified rebate period and within thirty (30) day period following payment and submittal of a receipt by the applicant, a tax rebate in the amount of the tax increment will be made to the applicant.

10. CRITERIA TO BE USED WHEN CONSIDERING MERIT OF APPLICATIONS FOR REBATE. The standards or criteria to be used when reviewing Applications for Rebate for approval or disapproval thereof are as follows:

- (a) The Parcel must meet all criteria for eligibility as set forth in Section 7 above as of the date that the Application for Rebate is filed.
- (b) The Procedure for submission of an Application for Rebate as set forth in Section 9 above must have been fully and correctly complied with.

Board of Crawford County Commissioners

- (c) All ad valorem taxes and all special assessments levied against the Parcel and other properties owned by the Owner on which the Rebate is sought and all other properties owned by the Owner must not be delinquent prior to filing of the Application for Rebate.
- (d) In the case of multiple Owners of a property eligible for a Rebate, absent a written agreement providing otherwise, the Rebate will be made payable to all Owners of record.

11. MAXIMUM TAX REBATABLE; YEARS OF ELIGIBILITY.

- (a) The amount of the Rebate is the resulting increase in the ad valorem tax, if any, which is directly attributable to the Construction and Improvement to the qualified Parcel and the increase in assessed valuation directly resulting therefrom, in any given year during the period of eligibility.
- (b) A Parcel determined qualified for Rebates shall be entitled to such Rebates for a period of five (5) years provided the property declared qualified shall continuously maintain such qualification. Rebates do not include the State mill levy and any other non-participating tax entities.
- (c) The full amount of the tax due, including the increase in the ad valorem tax (property tax increment) resulting from the qualified Construction and Improvement shall be paid over to the Neighborhood Revitalization Fund in accordance with the provisions of the Neighborhood Revitalization Act to be distributed as provided by law and this Plan.

12. DURATION OF PLAN; CONTINUATION OF REBATES ON QUALIFIED PROPERTY.

- (a) Unless hereafter repealed prior thereto, this Plan shall remain in full force and effect for a period of five (5) years from and after June 1, 2018, however the program may be reviewed annually at which time County staff may propose modifications and extensions. The program will be reviewed in the fifth year to determine if an extension is beneficial to the continuation of the Plan.
- (b) Unless otherwise provided by any law of the State of Kansas hereafter enacted, any and all real property which shall have qualified for Revitalization and for Rebates prior to the final termination date of the Plan shall continue to and remain qualified for Rebates, notwithstanding the fact that other real property described in Section 1 above, which has not theretofore qualified for participation under the Plan, will no longer be eligible to do so.

13. AMENDMENT OR REPEAL.

Board of Crawford County Commissioners

- (a) This Plan may at any time hereafter, in whole or in part, be amended, supplemented, or repealed using the procedures set forth in subparagraph (b) of this section.
- (b) Prior to amending, supplementing, or repealing this Plan, or any part thereof, the Governing Body shall first conduct a public hearing upon the feasibility of any such amendment or repeal after first publishing notice of any such hearing at least once each week for two (2) consecutive weeks in the official county newspaper of Crawford County. Such notice shall set forth the specific change or changes proposed, or a summary thereof, and shall advise of the time and place at which such proposed supplement; amendment or repeal shall be heard.

Exhibit A

The following locations in Crawford County are eligible for new construction:

West 4th Street Sewer District Boundary
Franklin Sewer District Boundary
Farlington Sewer District Boundary

The following unincorporated areas of Crawford County are eligible for new construction
(areas defined by County Commission using GIS/Subdivision records):

Opolis
Radley(North and South)
Chicopee
Monmouth
Langdon Lane
Beulah
Englevale
Brazilton
Dunkirk
Camp 50
Croweburg
Ringo

On motion (18-194) of Commissioner Wood and the second of Commissioner Murphy to approve the finalization of the Crawford County Neighborhood Revitalization Plan and to authorize the County Counselor to draw up a Resolution for approval.

Yeas: Commissioners Murphy and Wood

Nays: Commissioner Moody

Present but not voting:

Absent or not voting:

The motion prevailed.

Item Two: Commissioner Murphy regarding the Economic Summit that will be held on June 25, 2018 at Memorial Auditorium and stated that invitations have been sent out.

Item Three: Commissioner Moody explained his reasons for voting no on the motion for the Neighborhood Revitalization Plan and stated he had concerns with the county wide provisions.

Item Four: There was a discussion on the advertisement for part time help for assisting with the tax sale.

EXECUTIVE SESSION

Board of Crawford County Commissioners

UNDER THE HEADING FUTURE BUSINESS AND ANNOUNCEMENTS FUTURE BUSINESS:

Item One: June 1, 2018 – Mr. Mark Lehman & Ms. Diana Hartog presenting the Conservation District Budget.

ANNOUNCEMENTS:

Item One: Monday, May 28, 2018 – The Crawford County Courthouse will be closed in observance of Memorial Day.

UNDER THE HEADING MOTION TO ADJOURN MOTION TO ADJOURN

Item One: Adjournment

On the motion of Commissioner Wood and the second of Commissioner Moody to adjourn the [May 25, 2018](#) meeting of the Board of Crawford County Commissioners at 10:54 AM and to reconvene at the next regularly scheduled time with open doors.

Yeas: Commissioners Moody, Murphy and Wood

Nays:

Present but not voting:

Absent or not voting:

The motion prevailed.

In Testimony whereof, I have hereunto set my hand and caused to be affixed my official seal and submitted these minutes for the approval of the Board of Crawford County Commissioners.

Don Pyle
County Clerk

◇

This submission completed at the Crawford County Courthouse in Girard.

[Taken BKW 5/25/18 10:54 AM/amended BKW 5/25/18 1:30 PM](#)