



Victoria F. Sheehan
Commissioner

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION



William Cass, P.E.
Assistant Commissioner

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Bureau of TSMO
March 10, 2017

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Transportation to enter into a **RETROACTIVE** and **SOLE SOURCE** lease agreement with Whittier Communications Inc., of Rochester, NH (Vendor # 158392) for communications facility & tower space located at the summit of Mount Nickerson, Ossipee, NH at a total cost of \$31,854.81 effective upon Governor and Council approval through January 1, 2022. 62% Highway Funds, 37% Intra-Agency Transfers and 1% Agency Income.

Funding to support this request are available in the following account in State FY 2017, and are contingent upon the availability and continued appropriation of funds in FY 2018, FY 2019, FY 2020, FY 2021 and FY 2022 with the ability to adjust encumbrances between State Fiscal Years if needed and justified:

| Account | <u>FY 2017</u> | <u>FY 2018</u> | <u>FY 2019</u> | <u>FY 2020</u> | <u>FY 2021</u> | <u>FY 2022</u> |
|--|----------------|----------------|----------------|----------------|----------------|----------------|
| 04-96-96-960515-3052 Trans Sys Mgmt & Operations | \$3,000.00 | \$6,090.00 | \$6,272.70 | \$6,460.88 | \$6,654.70 | \$3,376.53 |
| 022-500248 Rent/Lease Other Than State | | | | | | |

EXPLANATION

The Department of Transportation operates a statewide radio communications network that consists of mountaintop repeaters, dispatch locations, mobile and portable radios that link toll, bridge maintenance, traffic operations, and highway maintenance facilities with field staff. This lease agreement is a sole source request due to it being a state built communication facility on private property. The Department of Transportation has been in occupancy at this site since 1998. Due to document processing with Whittier Communications Inc., the signed agreement was not received until after the start date making this lease agreement retroactive starting January 1, 2017.

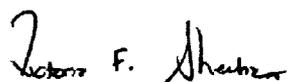
Whittier Communications facility serves as one of the sites in this communications network and houses two discrete repeater stations that support District-3 Highway Maintenance as well as other Department Bureaus that operate on the Whittier statewide repeater channel. Mountaintop communication facility options are very limited in this geographic region of the State.

The Department is satisfied that the annual lease price is reasonable and comparable to other commercial rates throughout the State. The first year cost is \$6,000 with a three percent (3%) increase each year after.

This contract has been approved by the Attorney General as to form and execution and the Department has verified that the necessary funds are available. Copies of the fully executed contract are on file at the Secretary of State office and the Department of Administrative Services office, and subsequent to Governor and Council approval will be on file at the Department of Transportation.

Your approval of this contract is respectfully requested.

Sincerely,

A handwritten signature in black ink that reads "Victoria F. Sheehan". The signature is written in a cursive style with a large initial 'V'.

Victoria F. Sheehan
Commissioner

Attachments

COMMUNICATIONS FACILITIES LEASE AGREEMENT

This COMMUNICATIONS FACILITIES LEASE AGREEMENT (this "Agreement") is made and entered into by and between WHITTIER COMMUNICATIONS, INC. whose mailing address is 8 Anttil Court, Rochester, New Hampshire, 03838 (hereinafter referred to as (LESSOR) and New Hampshire Department of Transportation whose mailing address is P.O. Box 483, Seven Hazen Drive, Concord, New Hampshire 03302-0483 (hereinafter referred to as LESSEE).

WHEREAS, the LESSEE has requested to lease, and the LESSOR has agreed to lease, certain space on the tower facility and within the communications building located on Nickerson Mountain, West Ossipee, New Hampshire under the terms and conditions set forth in the following Agreement.

NOW THEREFORE, IN CONSIDERATION OF THE FOLLOWING TERMS AND CONDITIONS THE PARTIES DO HEREBY AGREE AS FOLLOWS:

1. PARTIES AND PURPOSES; FACILITIES: LESSOR hereby agrees to provide LESSEE with certain tower space and an area within the communications building of the New Hampshire Department of Safety located atop Nickerson Mountain, West Ossipee, New Hampshire (the "Facilities") for housing and operating of certain communications equipment of LESSEE consisting of radio repeaters, combiners, and antenna system that is more specifically described in Attachment (1) attached hereto and made a part hereof; provided, however, that LESSEE shall have the right to add a tunable cavity to the existing combiner rack (the "Equipment"). LESSEE agrees to accept said Facilities subject to the considerations, terms and conditions set forth in this Agreement. LESSEE agrees that LESSOR may use the remaining positions on the antenna combiner rack and may increase the number of tunable cavities with LESSEE's consent, which shall not be unreasonably withheld; provided, however, that LESSEE DISCLAIMS ALL WARRANTIES THAT THE EQUIPMENT IS FIT FOR A PARTICULAR PURPOSE and LESSOR indemnifies LESSEE from and against any and all claims, liabilities, suits or penalties arising out of acts or omissions of the LESSOR with respect to LESSOR's or third parties' use of the Equipment. LESSOR shall not consent to such use by third parties if such use would interfere with LESSEE's use of the Equipment

2. NO CONFLICTS: LESSOR represents and warrants that nothing in this Agreement conflicts with or causes LESSOR to be in default of that certain Sub-Lease and License Agreement with the New Hampshire Department of Safety dated August 28, 1997 as may be amended from time to time (the "Sub Lease"), or that certain Lease Agreement by and between Whittier Lifts Trust and LESSOR dated June 4, 1996 (the "Prime Lease"), and that LESSOR has obtained any approvals required under the Prime Lease and the Sub-Lease in order to enter into this Agreement.

3. TERM: The term of this lease shall commence on January 1, 2017 or the date of Governor and Executive Council approval (which ever is later) (the "Commencement Date") and shall end five (5) years after this date, provided, that upon approval, any increases in rent shall be retroactive to January 1, 2017.

4. TERMINATION; TRANSFER OF EQUIPMENT; CONDITIONAL NATURE OF AGREEMENT: Notwithstanding anything in this Agreement to the contrary, Lessee's obligations hereunder are contingent upon the appropriation of sufficient funds

from the New Hampshire Legislature for the Lessee to carry out its obligations under this Agreement. In the event of a reduction or termination of those funds, Lessee shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement upon 30 days' written notice. Lessee shall not be required to transfer funds from one account to another in the event that funds are reduced or unavailable. Such termination shall relieve both parties of all obligations hereunder, except Lessee's obligation to transfer equipment as provided in this Paragraph. Such notice shall be sent by certified mail, return receipt requested, postage prepaid, to the following addresses:

Whittier Communications Inc.

Attention: John Kenney
8 Ancil Court
Rochester, NH 03839

With copy to:

Michael J. Malaguti, Esq.
Ransmeier & Spellman, P.C.
P.O. Box 817
Alton, NH 03809

NHDOT

Attention: Communications Supervisor
New Hampshire Department of Transportation
Division of Operations
Seven Hazen Drive
Concord, NH 03301

Upon termination, LESSEE will transfer title to the UHF antennas, cables and TX and RX Combiner System (the "Equipment") to LESSOR AS IS, WHERE IS AND WITHOUT MAKING ANY OTHER REPRESENTATIONS OR WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, CONCERNING THE EQUIPMENT, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH REPRESENTATIONS ARE EXPRESSLY EXCLUDED AND DISCLAIMED.

LESSEE will have the right to remove all other radio equipment, fixtures, and structures from the site at LESSEE's cost and expense.

5. RENT: The LESSEE shall pay annually in advance, on or before January 31st of each year (the "Increase Date"), a lump sum equal to six thousand dollars (\$6,000), sixteen and seven-tenths percent (16.7%) of which shall be apportioned to maintenance of the access road. On the first anniversary of the Increase Date, and annually thereafter during the term hereof, the rent shall increase by three percent (3%), so that on the first anniversary of the Increase Date, rent shall equal \$6,180, on the second anniversary, \$6,365.40, and so on.

6. ACCESS AND SECURITY: LESSEE shall have the reasonable right of access to the premises where equipment is located twenty-four (24) hours a day, seven (7) days a week. LESSEE shall have the right of ingress and egress over land over which LESSOR has easement rights. LESSEE shall be responsible to provide its own transportation (snowmobile, four wheel drive vehicles or all terrain vehicles) to the site, provided, however, LESSEE does not damage, interfere or otherwise disturb other land of the

LESSOR or LESSOR's landlord. LESSEE shall communicate with LESSOR or designee regarding (site) road conditions when access to the site is needed. LESSOR and/or vender maintenance shall be required to sign for site gate and door keys at NH State Police, Troop-E Headquarters, at Tamworth. Keys shall be returned to same location when each site visit is completed. LESSOR shall provide changes to access and security terms and conditions to LESSEE by written notice. LESSOR shall maintain the access road so that it is passable to four wheel drive vehicles from June 1 through October 31.

7. RADIO FREQUENCY INTERFERENCE; MAINTENANCE OF EQUIPMENT: LESSEE shall not cause radio frequency interference (RFI) to any co-located (radio) equipment at LESSOR'S facility at beginning and duration of the lease term. Should such interference occur, LESSEE shall confirm its equipment is operating correctly and then if necessary, take reasonable steps to correct such interference, and if such interference cannot be corrected, LESSEE shall immediately cease operating the equipment that is causing the RFI.

In the event that any other lessee of LESSOR causes interference with LESSEE's operation, then LESSOR, upon receiving written notice, shall immediately take all appropriate steps to notify the tenant creating the interference to correct the problem. In the event the tenant does not correct the problem or take appropriate steps to correct the interference within fifteen (15) days of the written notice, then LESSOR shall have the right to retain a third party expert to assist LESSOR in correcting the interference at its own expense.

If after retaining the third party expert, the interference is not corrected, then LESSEE shall have the right to terminate this Lease upon thirty (30) days notice to LESSOR. At all times, LESSEE and LESSOR agree to work together to correct interference problems between LESSEE's equipment and equipment of other tenants.

LESSEE shall be solely responsible for maintaining the Equipment in a condition suitable for its purposes under this Agreement.

8. UTILITIES: Electricity is to be provided at LESSEE's expense. By its signature hereto, LESSEE represents and warrants that it has reached an agreement with said Department of Safety with respect to such electrical expenses.

9. LIABILITY: LESSEE shall at all times comply with all laws and ordinances and all rules and regulation of Municipal, State and Federal operation, removal of its equipment, antenna systems, and other alterations or improvements authorized herein, LESSOR shall not be liable to LESSEE for any loss or damage arising out of personal injuries or property damage, unless caused by the negligent or intentional acts of LESSOR, its agents, or employees.

LESSEE shall only use its own employees or employees of a company that carries workers compensation insurance covering any individual who may perform tasks at the site. LESSEE represents and warrants that it is self insured.

10. CONDITION OF SITE: LESSOR shall furnish the site to LESSEE in good condition and shall maintain the site in a manner that will not interfere with LESSEE's reasonable use of the site. Upon vacating the site, LESSEE shall surrender the Leased premises in substantially the same condition as received, except for ordinary wear and tear and/or damages to the premises due to causes beyond LESSEE's control, as provided in Paragraph 4.

11. GOVERNMENTAL APPROVALS: LESSOR agrees to provide reasonable cooperation and assistance to LESSEE in obtaining all permits or approvals required by governmental or regulatory agencies arising out of the intended use of the property by LESSEE, with any expenses to be paid by the LESSEE.

12. NOTICES: Any notice or demand required or permitted to be given or made hereunder shall be sufficiently given or made by Certified Mail in a sealed envelope, postage prepaid, addressed to the other party at the address set forth on Page 1 of this Lease. Any such notice or demand shall be deemed to have been given or made at the time it is received. Either party may from time to time designate any other address for this purpose by giving written notice thereof to the other party.

13. DEFAULT: LESSEE's failure to make payment of Base Rent or the Road Maintenance Fee within forty-five (45) days of receipt of LESSOR's invoice (except as provided in Paragraph 5), and LESSOR's failure to maintain the access road as required in Paragraph 6 shall constitute Default. Failure to perform any other obligation under this Lease, shall not constitute a default, unless the non-breaching party gives written notice of such failure to the breaching party and the breaching party fails to correct such failure within forty-five (45) days of that notice.

14. ASSIGNMENT AND SUBLEASING: LESSEE shall NOT have the right at any time to assign this Lease or to sublet the premises, or any part thereof, without the LESSOR's written consent.

15. LOCATION AND RELOCATION OF EQUIPMENT: LESSEE shall be authorized to place one (1) Receive only antenna with the tip of said antenna not to exceed its current height without written approval of the New Hampshire Department of Safety. LESSEE agrees that LESSEE shall see to it that their system is grounded and that all components used in their antenna system (including clamps, connectors, grounding cables) are free of corrosion. LESSEE shall also comply with Attachment (2) attached hereto and made a part hereof.

16. TAXES: The parties acknowledges that each party is solely responsible for payment of personal property tax, if any, arising out of its ownership of or interest in the Equipment during the term if this Agreement. Nothing contained herein shall constitute a waiver of LESSEE's sovereign immunity or its right to claim any other exemption from the payment of taxes.

17. NO THIRD PARTY BENEFICIARIES: The parties do not intend to make the public or any member thereof a third party beneficiary of this Agreement or to authorize anyone not a party to this Agreement to enforce this Agreement.

18. NO WAIVER OF SOVEREIGN IMMUNITY: Nothing in this Agreement shall be deemed to constitute a waiver of the LESSEE's sovereign immunity, which is hereby reserved.

17. ENTIRE AGREEMENT: This Lease constitutes the entire Agreement of the parties and supercedes all other previous agreements between the parties concerning the Facilities in their entirety, including that certain Whittier Site Agreement dated October 27, 1998.

18. AMENDMENT: No revision of this Lease shall be valid unless made in writing and signed by LESSOR and LESSEE or their authorized agent(s).

19. GOVERNING LAW: This Lease Agreement shall be construed in accordance with the law of the State of New Hampshire.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement this 28 day of Feb 2017.

WHITTIER COMMUNICATIONS, INC.

Susan H. Lew
Witness

By: John Kenney
John Kenney, President LESSOR

Dawn M. Donsett
Witness

STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION

By: Victoria Sheehan
Name: VICTORIA SHEEHAN

COMMUNICATIONS FACILITIES LEASE AGREEMENT
ATTACHMENT 2
WHITTIER ANTENNA MOUNTING SPECIFICATIONS

1. A customer ID tag will be attached in a visible location on the antenna mount. All antennas will be mounted with stainless steel or heavy Zinc coated hardware. Any welded devices will be painted thoroughly with a heavy-duty type paint. No exposed iron is permitted. On-going maintenance to this spec is the customers responsibility.
2. Pig tails will not be overly long, nor cross in front of, or be connected to any other feed. Pigtails may be mounted to cross braces with stainless steel hose clamps, ½" wide DV resistant tie wraps, or ½" wrap lock, but only on a lower facing surface. No form of adhesive tape or twist wire wrap is acceptable.
3. The terminal end of the feedline must be securely fastened in a manner acceptable to us. This may be by a cable lift harness/strain relief, or bolt on bracket or any other means that will support the total weight of the feed line should all or any intermediate support fail. Again, the guidelines of spec #1 hold true. A customer ID tag will be attached within three (3) feet of the end.
4. The feedline will be securely clamped to the waveguide bridges on the inside, or to the horizontal cross braces on the tower face every seven (7) feet. These attachments will be made with approved hardware. (See attachments). Customers with more than one feedline may bundle their feeds together. All feedlines will run vertically on the tower face or waveguide bridge without crossing any others. A customer ID tag (weather resistant) will be placed on each feed line every fifty (50) foot set minimum. Suggested spacing between adjacent mounting hardware clips is two (2) inches.
5. Feedlines exiting the inside of the tower will neatly follow the general path taken by other feedlines going to the ice guard/waveguide bridges. Feedlines exiting the tower face will likewise neatly follow the general path of other mounted feedlines going to the ice guard/waveguide bridges. Feedlines are to be run just as on tower. ID tags will be placed anywhere in a three (3) foot area midway to the building. No cables are to be run on the ground.
6. Feedlines exiting the ice guard/waveguard bridges going to the equipment room will make a neat bend to the three (3) brackets leading to the building entry port and will be secured in a manner similar to the tower runs. Only one feedline per entry port hole. Sealing of the entry port is required and is the responsibility of the customer and to the satisfaction of Lessor. ID tags just before port entry is required.
7. Feedline runs going to the equipment room will be done neatly. Runs will be as straight as possible and there will be no crossing over on the lower side of runs. We recommend using conduit clips screwed to the joists.
8. Feedline termination at equipment will be done in a professional manner. ID tags will be placed within one (1) foot of the feedline end.
9. All equipment shall be grounded at the top of the cable and at the bottom and at the entrances of the building.
10. Any questions or disputes involving requirements of preceding paragraphs will be resolved by Lessor. Final inspection of installation will be made by the customer and site manager. Site access will be approved by Lessor.

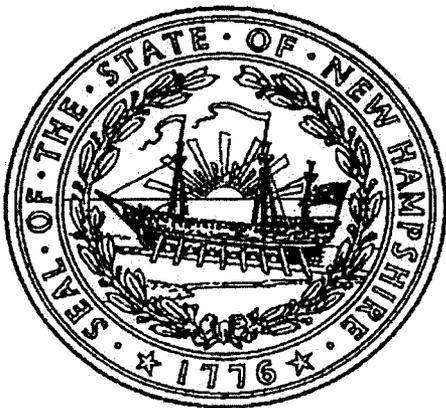
State of New Hampshire

Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that WHITTIER COMMUNICATIONS, INC. is a New Hampshire Profit Corporation registered to transact business in New Hampshire on June 10, 1996. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 251659



IN TESTIMONY WHEREOF,
I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 24th day of February A.D. 2017.

A handwritten signature in black ink, appearing to read "Wm Gardner".

William M. Gardner
Secretary of State

**WHITTIER COMMUNICATIONS INC.,
A New Hampshire Corporation**

A special meeting of the Directors of Whittier Communications, Inc. was held at the offices of the Corporation at 8 Ancil Court, Rochester New Hampshire.

Present was John T. Kenney, the sole Director of the Corporation.

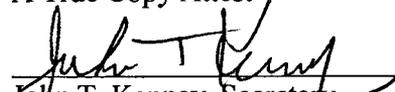
VOTED: That the Corporation enter into a Communications Facilities Lease Agreement with the Department of Transportation (the "Transaction") for tower space and an area within the communications building of the New Hampshire Department of Safety located atop Nickerson Mountain, West Ossipee, New Hampshire for housing and operating of certain communications equipment consisting of radio repeaters, combiners, and antenna system.

VOTED: To authorize the Director of the Corporation, John T. Kenney, to act on behalf of the Corporation to negotiate, execute and deliver all documents, agreements and instruments contemplated by the Transaction and to take all other actions that he deems necessary or desirable to consummate the Transaction or to effectuate the terms of the foregoing vote.

VOTED: To Adjourn

2/28/17
Date

A True Copy Attest


John T. Kenney, Secretary

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

Personally appeared before me on this 28th day of February, 2017, the above named John T. Kenney, duly authorized Secretary of Whittier Communications, Inc., known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same for the purposes therein contained.


Notary Public
Commission expires: 8-8-17

Special Provisions and Insurance

The Insurance requirements for Whittier Communication Inc. are waived.