

★ **Roll Call Number**

Agenda Item Number

3A

Date October 23, 2006

WHEREAS, by Roll Call Number 96-2296, dated June 24, 1996, the Des Moines, Iowa City Council approved a lease agreement with the Ruan Center Corporation, 666 Grand Avenue, Des Moines, Iowa, owner John Ruan III, for leasing of space to house transmitters, receivers and antenna equipment for the public safety communications system; and

WHEREAS, this agreement was for a ten year term and expires on December 31, 2006; and

WHEREAS, all terms and conditions of the new lease agreement have been reviewed by both parties including the rental amount of \$525.00 per month plus \$75.00 per month for each transmitter receiver over seven (7); and

WHEREAS, the agreement has been signed by Ruan Center Corporation, 666 Grand Avenue, Des Moines, Iowa, owner John Ruan III, and

WHEREAS, it is in the best interest of the City of Des Moines, Iowa to renew the lease agreement;

NOW THEREFORE BE IT RESOLVED, that the lease agreement, dated October 23, 2006, between the City of Des Moines, Iowa and the Ruan Center Corporation, 666 Grand Avenue, Des Moines, Iowa, owner John Ruan III, is approved and that the Mayor of the City of Des Moines, Iowa be authorized to sign the lease agreement and the City Clerk to attest thereto.

( Council Letter Number 06-675 attached )

Approved as to form:

  
 \_\_\_\_\_  
 Douglas P. Philip  
 Assistant City Attorney

Moved by \_\_\_\_\_ to adopt

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COLEMAN				
COWNIE				
HENSLEY				
MAHAFFEY				
KIERNAN				
VLASSIS				
TOTAL				

MOTION CARRIED APPROVED

Mayor

**CERTIFICATE**

I, DIANE RAUH, City Clerk of said city hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

City Clerk

LEASE AGREEMENT

Date \_\_\_\_\_

Agenda Item 34

Roll Call # \_\_\_\_\_

This Lease Agreement, made and entered into this \_\_\_\_ day of \_\_\_\_, 2006, by and between the City of Des Moines, Iowa acting through the Des Moines City Council, hereafter referred to as "Lessee", whose address for the purpose of this agreement is 400 Robert D. Ray Drive, Des Moines, Iowa 50309 and Ruan Center Corporation, hereafter referred to as "Lessor" whose address for the purpose of this agreement is 666 Grand Avenue, Des Moines, Iowa 50309.

Whereas such lease is for the benefit of the public interest

Now Therefore it is mutually agreed to as follows:

1. LEASE SITE

In consideration of the covenants set forth and other good and valuable consideration Lessor hereby leases to Lessee the following property:

a) One hundred twenty-seven (127) square feet of space currently occupied on the 35<sup>th</sup> level of the Ruan Center Building

b) Minimum of twenty-five (25) running feet on the supporting railing surrounding the upper perimeter of the penthouse plus other locations to support eleven (11) antenna sites as illustrated in Attachment A.

2. USE OF SITE

The site is to be used for installation, operation and maintenance of two-way radio equipment, including base stations, antenna poles or masts, cabling or wiring, and accessories used therewith. Lessee and its sub-tenants and licensees shall have the unrestricted right to enter or leave the site. Lessee may sublet or license others to use it. All equipment or other property attached to or otherwise brought onto the leased site shall at all times be personal property. Use shall be limited to governmental units and instrumentalities thereof.

### 3. TERM

The term of this lease is for a period of ten years commencing January 1, 2007 and terminating December 31, 2017. Lessee shall have the option to renew the lease for a like period by mailing written notice to Lessor no less than six (6) months prior to the expiration of the lease.

If the site becomes unfit or undesirable for the use for Lessee's purposes, Lessee may terminate this lease by written notice to Lessor in the manner prescribed herein. The termination of the lease will be effective six months after notice is mailed by the Lessee.

If the Lessee holds over at the end of the term, it shall create a month to month tenancy at the rate of Six hundred and three dollars and seventy-six cents (\$603.76) per month and Ninety dollars and no cents (\$90.00) per month for each transmitter receiver over seven (7).

### 4. RENT

Lessee shall pay to Lessor Five hundred twenty-five dollars (\$525.00) per month plus Seventy-five dollars (\$75.00) for each transmitter receiver over seven (7), with payments due the first of each month. The Lessor will provide a written invoice for rental payment to the Lessee two weeks prior to the first of every month.

Prior to six (6) months before expiration of the term of the lease the costs of rental of this antenna site Lease shall be renegotiated, the rental costs not to exceed Federal Consumer Price Index (CPI) of differentials, higher or lower, in effect at the date of execution as compared to CPI at time of renegotiation.

### 5. ALTERATIONS, CONSTRUCTION AND COSTS

Lessee may engage in minor alterations to the site under the condition that the alterations shall be reviewed by Lessor's architect and approved so as to maintain the design concept of the building. Cost of review construction and necessary building permits shall be borne by Lessee.

The Lessee will afford full compliance with overall site management responsibilities as to frequency and equipment compatibility antennas.

Lessor shall make available electrical service to a panel on the 35-36<sup>th</sup> level in the order of 25 KVA. . Costs of consumption of electrical energy by radio stations are to be paid for by Lessee.

Should Lessor erect, or permit additional structures to be erected including but not necessarily limited to walls, penthouses, vents, chimneys, platforms, or others on the rooftop of the building, and should these structures block, inhibit, or otherwise reduce or restrict the radio transmissions or reception as a result, the Lessor agrees to elevate or raise Lessee's antenna mounting structure(s) to the extent that the radiating field of the antennas is not obstructed or blocked. The resultant costs of said elevation shall be divided equally between Lessor and Lessee.

Any additional transmitter receivers or any other alterations may not intrude upon space not leased herein.

6.           CONDITION OF SITE

During the term of this lease, Lessor shall keep the leased site and the premises of which it is a part in good condition and repair. Upon expiration of this lease, Lessee will surrender the site to Lessor in good condition except (a) for reasonable wear and tear, or (b) for damage due to causes beyond Lessee's control or without its fault or negligence, or (c) for both. If the Lessee terminates prior to expiration, Lessor's premises will be restored to their apparent original condition.

7.           EXCLUSIVE AGREEMENT

Lessor will not allow anyone except Lessee and its sub-tenants to enter upon or occupy the site or to use the premises of which the leased site is a part for radio or television transmitting.

Radio station(s) as referred to in this lease shall mean a transmitter and its associated receiver together with control and power circuits used in conjunction therewith.

USE BY OTHER SITE TENANTS

Lessor shall not enter into a contract with another SiteTenant wishing to place equipment on the site, without first notifying the Lessee of the identity of the new tenant and a contact person representing the new tenant. This will allow the City time to work with the new tenant in resolving any possible voice or data interference, which may be generated by the tenant's site equipment. This paragraph in no way entitles the Lessee the authority to deny the Lessor of providing site space to any user so designated by the Lessor.

8. CONDEMNATION OF PREMISES

Lessor is not to be penalized by Lessee in the rare case that lease premises be condemned by governmental agencies such as, but not restricted to, a heliport landing area in the very same location where antennas are present.

9. SPECIAL CONDITIONS – PUBLIC SERVICE

Because of the public service nature of Lessee's installations the following shall be observed:

- a) Access to the site shall be continuous.
- b) Lessee shall be allowed to install security screening as approved by Lessor's architect.
- c) Emergency power shall be provided Lessee to the extent it can be reasonably provided without jeopardy to building functions of more critical priority.
- d) Lessee shall have the right to provide supplemental generation as needed.

10. LIABILITY

The Lessee agrees to protect, indemnify, defend and save harmless the Lessor from and against any and all loss, damages, claims, costs and expenses including attorney's fees, occasioned by, arising out of, connected with, or resulting from any act, omission or other occurrence causing or inflicting injury and/or damage to any person or property, due directly to the use thereof under this lease by the Lessee and its officers, agents, or employees, other than loss, damages, claims, costs and expenses caused by the Lessor or its officers, agents or employees.

The Lessor agrees in view of Chapter 670, Code of Iowa tort liability imposed on the Lessee including the provision of Chapter 670.10 Code of Iowa, for the levying of a tax in excess of any imputation by statute for the payment of any final judgment entered against or settlement made by the Lessee to waive the requirement that a liability insurance policy be provided to insure Lessor against lost due to Lessee's use as described in this lease.

11. 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 in the case of the Lessee to City Manager, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa 50309, and addressed in the case of the Lessor as set forth on the front page of this agreement. Any such notice or demand shall be deemed to have been given or made at the time it is deposited in the United States Post Office. Lessee or the Lessor may from time to time designate any other address for this purpose by written notice to the other party.

12. WAIVER

Failure or delay on the part of Lessee or the Lessor to exercise any right, power or privilege hereunder shall not operate as a waiver thereof.

13. PRIOR NEGOTIATIONS

This contract constitutes the entire agreement of the parties hereto and shall supersede all prior offers, negotiations and agreements.

14. AMENDMENT

No revision of this contract shall be valid unless made in writing and signed by an officer of the Lessee and an authorized agent of the Lessor.

Ruan Center Corporation  
Lessor

City of Des Moines, Iowa  
Lessee

BY *John Ruan III*

BY \_\_\_\_\_  
Mayor

CK  
TD

BY *Janet L. Gellum*  
Witness

BY \_\_\_\_\_  
Attest: City Clerk

Approved as to form:

*Douglas Philip*  
Douglas Philip  
Assistant City Attorney



**RUAM TOWER ROOF GRID**

TAKEN FROM MOTOROLA INC. DIAGRAM DATED 12/15/86 BY J PETERMAN

**ATTACHMENT A**