

2115
6/11/19

RESOLUTION NO. 2019- 91

A RESOLUTION ACCEPTING AND APPROVING A COMMUNICATIONS SITE LEASE AGREEMENT WITH LR COMMUNICATIONS, INC., AND AUTHORIZING TIMOTHY A. KAUMO, AS MAYOR OF THE CITY OF ROCK SPRINGS, TO EXECUTE SAID LEASE ON BEHALF OF THE CITY OF ROCK SPRINGS.

WHEREAS, LR Communications, Inc. has submitted to the City a Communications Site Lease Agreement to lease a portion of the water tank located at or near 1501 Clubhouse Drive, Rock Springs, Sweetwater County, Wyoming for the purpose of placing communications equipment; and,

WHEREAS, the Governing Body of the City of Rock Springs has said lease before it and has given it careful review and consideration.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF ROCK SPRINGS, STATE OF WYOMING:

Section 1. That the Communications Site Lease Agreement with LR Communications, Inc., to lease a portion of the water tank located at or near 1501 Clubhouse Drive, Rock Springs, Sweetwater County, Wyoming for the purpose of placing communications equipment, attached hereto and by this reference made a part hereof, is hereby accepted and approved by the Governing Body of the City of Rock Springs.

Section 2. That the Mayor of said City be, and he is hereby authorized, empowered and directed to execute said lease on behalf of said City; and that the City Clerk of said City be, and he is hereby authorized and directed to attest to said lease and to attach to said lease a certified copy of this Resolution.

PASSED AND APPROVED this _____ day of _____, 2019.

President of the Council

Mayor

Attest:

City Clerk



Rock Springs Parks & Recreation Department

3900 Sweetwater Drive, Rock Springs, WY 82901

(307) 352-1440 • FAX (307) 352-1444

P & R - #19-12

To: Honorable Mayor Timothy A. Kaumo and City Councilors

From: David M. "Dave" Lansang – Director – Parks and Recreation Department

Date: June 10, 2019

Re: L & R Communications, Inc.

A handwritten signature in black ink, appearing to read "David M. Lansang", is written over the "From:" line.

At this time I am requesting your consideration to allow L & R Communications, Inc. to lease space atop the golf ball water tower located at White Mountain Golf Course for placement of their transmission equipment.

I have discussed this with the owner of the company and find that it will not affect or impede anything we currently do at this site. In addition, I am unaware of anyone making a formal request to utilize this location for a transmission site since the inception of this recreation facility. This will afford us annual monetary compensation as well as two surveillance cameras for our use at this location.

If you have any questions regarding this opportunity, please contact me at any time.

Thank you for your consideration.

Communications Site Lease Agreement

KNOW ALL MEN BY THESE PRESENT, THAT:

This Communications Site Lease agreement is effective the _____ day of June, 2019 between the City of Rock Springs, Wyoming and their successors in interest, of 212 D Street, Rock Springs, Wyoming 82901, hereinafter referred to as "City" and LR Communications, Inc, a Wyoming Corporation of 550 Broadway St, Rock Springs, Wyoming 82901, hereinafter referred to as "Tenant".

WHEREAS Tenant is in the business of providing communications services to the citizens of Sweetwater County; and

WHEREAS the City supports the provision of communication services to its residents; and

WHEREAS the provision of communications services requires placement of necessary communications equipment; and

WHEREAS Tenant wishes to lease a portion of the water tank located at or near 1501 Clubhouse Dr., Rock Springs, Sweetwater County, Wyoming for the purpose of placing communications equipment; and

WHEREAS the City wishes to grant such a lease in order to facilitate the provision of communication services to its residents;

NOW THEREFORE, in consideration of the covenants and agreements contained in the instant Lease, the parties agree as follows:

- 1) Property Rented. Tenant shall lease such portions of the Tank located at 1501 Clubhouse Dr., Rock Springs, Sweetwater County, Wyoming as are necessary for the purpose of installing and maintaining wireless internet equipment, including but not limited to microwave or other satellite dish equipment, electrical equipment, or other equipment necessary for the purpose.

The parties agree that the property rented shall not be used in any fashion which (a) materially interferes with the use or operation of the Tank; (b) interferes with signals used by other commercial entities operating in the area; or (c) does not comply with all material applicable rules and regulations of the Federal Communications Commission and/or the applicable electrical codes for Rock Springs, Sweetwater County, or the State of Wyoming.

- 2) Term of Lease Agreement. The term of this Lease Agreement shall be five years, commencing on July 1, 2019 and terminating on June 30, 2024.

Rent. Tenant agrees to pay City, as rent for said premises during the term of this Agreement, an annual rental fee of \$2,400 as well as 2 IP cameras for use by the City at the Tank. Rent shall be due and payable on the first day of July for each and every year during the term of this Lease.

Rental payments shall be delivered to City by hand delivery or mailing to the City at the address it has specified for notice unless the City otherwise directs in writing. Rent shall be considered delinquent if it is not paid by the fifth day of July.

- 3) Option to Renew. The parties agree that this lease may be renewed at the expiration of the lease period at the option of and by the agreement of both parties for an additional five year period, provided that notice of said renewal shall be given at least one hundred eighty (180) days before the expiration of this lease.
4. Maintenance. Tenant shall bear responsibility for the installation and maintenance of its equipment, and shall perform all work concerning installation and maintenance in a professional and workmanlike manner. Tenant covenants that neither installation nor maintenance of the equipment shall interfere with any use of the Tank by the City. Tenant may make alterations and additions that will not adversely affect the integrity or primary use of the Tank site as providing water to the City's citizens and businesses.
5. Subleasing. Tenant shall not sublease the Tank site without written approval from the City.
6. Indemnification. Tenant shall indemnify the City against and hold the City harmless from all expenses, liabilities and claims of every kind, including reasonable attorney fees, made by or on behalf of any person or entity arising out of (a) the use, installation, removal, or replacement of equipment on the Tank by Tenant, its agents, invitees, customers and employees; (b) a failure by Tenant to perform any of the terms or conditions of this Lease Agreement; (c) any injury or damage happening on the property, except to the extent caused by the City or another tenant of the Tank site; (d) compliance with any law of any governmental authority; (f) any mechanic's lien or security interest filed against the property due to Tenant; (g) any repairs made to the Tank site by Tenant; and/or (h) any claim brought as a result of Tenant's action or inaction.
7. Assumption of Risk. Tenant agrees to use and occupy the Premises at its own risk and hereby releases City, its agents and employees, from all claims for any damage or injury that occur from Tenant's own negligence or recklessness to the full extent permitted by law.
8. Insurance. During the term of this Lease, Tenant shall maintain at its expense liability insurance and property damage insurance on the Tank site to insure both parties against any liability of whatsoever kind or nature arising from Tenant's use, operation, or maintenance of its equipment on the Tank site. All insurance related to Tenant's equipment at the Tank site shall at all times remain the choice and responsibility of the Tenant.
9. Access. During the term of this Lease, Tenant shall have reasonable ingress and egress to the tank at all times. The parties agree that Tenant may use this access exclusively for the purposes of inspection, maintenance, installation, repair, and removal of its Equipment. Only authorized engineers, technicians, or employees of Tenant, or persons under Tenant's direct supervision, will be permitted to enter the Premises to inspect, install, remove, and/or repair Tenant's Communications Equipment. Nothing in this agreement shall be read to prevent or prohibit the

City or its other tenant(s) at this location (if any) from accessing the premises on which the Tank is located in order to conduct their own business.

10. Warranty. Tenant understands that, although the City has taken, and will continue to take, steps to enhance the security of the Tank, the City does not warrant or guarantee the security of the Tank or Tenant's equipment against trespass or the actions of third parties.
11. Duties of the City. The City shall be responsible for providing power to the premises on which the Tank is located.
12. Compliance with Laws. Tenant shall not use nor permit the use of the above described leasehold for any purpose which may be contrary to the laws of the City, the State of Wyoming, or of the United States. Tenant shall obtain and maintain all permits and licenses necessary to operate its equipment.
13. Damage to Property.
 - a. Damage by Tenant. Except as permitted by the City, Tenant shall not deface the structure of the Tank and the cost of any defacement, damage, or injury caused by Tenant, its agents or employees, shall be paid by Tenant. Repairs shall be made within thirty (30) days upon Tenant receiving notice that such repairs are necessary unless the repairs are required to maintain the structural integrity of the Tank or to ensure the provision of water to the City, in which case repairs shall be made immediately.
 - b. Damage not Caused by Tenant. In the event the Tank site is destroyed or partially destroyed by fire or other casualty and Tenant is without fault, the City at its option, may repair or rebuild said Tank or terminate this lease. If the City chooses to repair or rebuild the Tank, rent shall abate during the period of repair or rebuilding, and the terms of the lease shall be, at Tenant's option, extended by a like period. Abatement of rent shall be in proportion to the unusable portion of said Tank. Except as specified in this paragraph, rent shall not abate for any reason.
14. Default. The parties agree that time of payment under Paragraph 2 of this Lease is of the essence of this contract. In the event Tenant fails to make any payment due hereunder within five (5) days of the date upon which the same is due, or in the event Tenant fails to cure any other failure in performance of the duties and obligations assumed by it hereunder within five (5) days after having been given notice of said failure in writing by the City (If the specific failure cannot reasonably be cured within five (5) days of notice, Tenant must commence curing said failure within five (5) days of notice and shall diligently proceed to complete curing said default then) Tenant shall have the option to declare default. In the event the City declares default, the City must provide written notice of the same, after which Tenant shall have 30 days to cure the

Default. If Tenant fails to cure the default at the end of the 30 days, the City shall have the following options:

- a. Cancel and terminate this lease on a date certain, which date the City will specify to Tenant, and re-enter the Tank site on or after said date. If the City exercises this option Tenant shall continue to be liable for rent hereunder until the date upon which the City regains possession of the Tank site. Tenant shall be repaid a pro rata share of the prepaid annual rent for all time after which the City has regained possession of the Tank site.
- b. Re-enter the Tank site on a date certain, which date the City will specify to Tenant, without terminating this lease, and then relet the Tank site upon such terms as are commercially reasonable at the time of reletting, applying the rent received to Tenant's obligations to The City under this lease agreement. If the City exercises this option, Tenant's obligations under this lease shall continue but shall be reduced to the extent the same are discharged by a subsequent Tenant.

The parties agree that the remedies given to the City herein are not exclusive; that in the event of default or breach the City may avail itself of any remedy afforded by law, equity or this agreement; that the City may maintain and prosecute any and every such remedy, contemporaneously or otherwise, with any other remedies available; and that Tenant shall be responsible for costs and expenses, including a reasonable attorney fee, incurred by the City in exercising said remedies and in restoring the premises to the condition it was in at the time of delivery, normal wear and tear excepted.

15. Waivers of Breach or Default. Either party's waiver of any default or breach of this agreement by the other party shall not be deemed a waiver of any subsequent breach or default.
16. Termination. This lease may be terminated without cause at the election of either party upon the written notice to the other party, which notice shall be received at least one hundred eighty (180) days in advance of the sought termination date unless otherwise mutually agreeable. In the event the City should exercise its right to terminate this lease as provided, the pro rata share of all prepaid annual rent shall be returned to the Tenant. Upon termination, Tenant shall surrender the described premises to the City.
17. Notice. Any notice required to be given under this Leaseshall be in writing and shall be delivered by hand or sent by United States Registered or Certified Mail, postage prepaid, addressed as follows:

City: City of Rock Springs

ATTN: City Clerk
212 D Street
Rock Springs, WY 82901

Tenant: LR Communications, Inc
PO Box 962
550 Broadway St
Rock Springs, WY 82902

Either party hereto may change its address to which said notice shall be delivered or mailed by giving notice of such change as provided above. Notice shall be deemed given when delivered, if delivered by hand or fax, or when postmarked if delivered by mail.

18. Assignment. During the term of the lease or any extension thereof, if the City or any successor or assignee of the City agrees to a sale or transfer of all or any portion of the Tank site, such agreement(s) shall include covenants or similar terms which recognize and compel compliance by the purchaser or transferee with the terms of this Lease.
19. Improvements. The parties agree that the improvements constructed, erected, or placed by Tenant on the Tank site shall remain Tenant's personal property and shall at no time be considered "fixtures" notwithstanding all contrary provisions and principles of law. All improvements made by Tenant to the Tank site shall be removed upon vacating the Tank site and any damage created by the installation of the improvements shall be repaired. .
20. Jurisdiction and Venue. Jurisdiction and venue for any action shall be established in the County of Sweetwater, State of Wyoming.
21. Governing Law. This Lease is to be governed by the laws of the State of Wyoming. Tenant acknowledges that City maintains and enjoys certain immunities and claim procedures under the Wyoming's Government Claims Act. Nothing herein shall be read and interpreted as waiving or abrogating the privileges and immunities provided in that Act.
22. Attorney's Fees. If any action at law or in equity shall be brought to enforce or interpret any of the covenants, terms, or conditions of this Lease, the prevailing party shall be entitled to recover from the other party as part of the prevailing party's costs reasonable attorney fees, the amount of which shall be fixed by the court and shall be made a part of any judgment or decree rendered.

23. Entire Agreement. This Lease and any attached exhibits signed and initialed by the parties constitutes the entire agreement between City and Tenant; no prior written or prior contemporaneous or subsequent oral promises or representations shall be binding. This Lease shall not be amended or changed except by written instrument signed by both parties hereto. Paragraph captions herein are for convenience only, and neither limit nor amplify the provisions of this Lease. The provisions of this Lease shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties.

IN WITNESS WHEREOF, City and Tenant have executed this Lease on the ____ day of _____, 2019.

City of Rock Springs:

Tenant:

By: _____

LR Communications, Inc.

Mayor

Attest: _____

By: _____

Lance Laughter, President