

City of Scottsbluff, Nebraska

Monday, March 20, 2017

Regular Meeting

Item Reports2

Council to consider the renewal of a Lease with DataLink, LLC for their GPS Base Unit Antenna System mounted on the Airport Water Tower and authorize the Mayor to execute the agreement.

Staff Contact: Nathan Johnson, City Manager

Agenda Statement

Meeting Date: March 20, 2017

AGENDA TITLE: Council to consider the renewal of a Lease with DataLink, LLC for their GPS Base Unit Antenna System mounted on the Airport Water Tower.

SUBMITTED BY DEPARTMENT/ORGANIZATION: Public Works Department

PRESENTATION BY: Nathan Johnson, City Manager

SUMMARY EXPLANATION: DataLink, LLC has an existing Lease with the City for renting a portion of the Airport Water Tower where a GPS base unit antenna system is mounted.

They would like to renew this Lease for a 5 year term. The Lease has been reviewed by Legal and we've updated it with changes made to other tower Leases, specifically Item 5.a.

BOARD/COMMISSION RECOMMENDATION:

STAFF RECOMMENDATION: Council approve the renewal of this Lease and authorize the Mayor to sign it.

Resolution <input type="checkbox"/>	Ordinance <input type="checkbox"/>	EXHIBITS Contract <input type="checkbox"/>	Minutes <input type="checkbox"/>	Plan/Map <input type="checkbox"/>
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Please provide all visual presentation materials.

Other (specify) ☒ Copy of Lease

NOTIFICATION LIST: Yes ☐ No ☐ Further Instructions ☐

City of Scottsbluff
Office of the City Manager

Effective date: January 20, 2017

LEASE

This Lease is made 3/4/2017, 2017 between the City of Scottsbluff, Nebraska, a Municipal Corporation ("City") and DataLink, L.L.C., a Nebraska limited liability company ("DataLink").

1. Description.

City owns the following described real estate upon which is located a water tower ("tower site"):

Easement Tract at Airport in Section 20, Township 22 North,
Range 55 West, Scotts Bluff County, Nebraska.

DataLink has mounted a 7db antenna approximately 7 feet in length near the top of the water tower with 7/8" coax Heliac cable down the tower and have placed a Trimble MS 750 Base receiver, Trimble SiteNet 900 radio, 12 volt Automotive Battery Backup, Hoffman box with power supply ("Transmission Equipment") inside the building at the tower site. All this Transmission Equipment operates at 902-928 MHz spread spectrum. The City agrees to lease space on its water tower at the tower site to DataLink for the purpose of maintaining and operating the Transmission Equipment.

2. Term and Rent.

The term of this Lease shall be for five (5) years from the date of this Lease, unless terminated earlier by either party. Either party has the right to terminate this Lease upon giving sixty (60) days written notice to the other party, at which time provision 5.e. will apply. DataLink agrees to pay rent in the amount of \$150.00 per month, payable in advance, for each month of the term of this Lease.

3. Access.

DataLink, upon notice during normal business hours of the City, shall have a right of reasonable access at all reasonable times to the tower site for construction, maintenance and repair of the Transmission Equipment. Provided, its activities will not interfere with the City's use and maintenance of the water tower or tower site.

4. Use.

DataLink agrees to use the tower site for the purposes intended by this Lease. Currently, the City is required by the Federal Aviation Administration to have an obstruction marking signal on the water tower at the tower site. DataLink represents that the addition of its Transmission Equipment to the water tower on the tower site adds no more than 10 feet to the existing height of the water tower, and no obstruction marking signal will be required for DataLink's Transmission Equipment. If for any reason, any obstruction making signal is later required which would not have been necessary but for DataLink's Transmission Equipment, DataLink agrees to pay the cost of the signal and its installation.

5. DataLink's Representations.

DataLink warrants and represents that the installation, use and maintenance of its Transmission Equipment will not interfere with the City's use of the water tower and any other equipment thereon. DataLink's use shall not be exclusive and the City shall have the right to lease space on the water tower at the tower site to anyone else as long as the additional lease(s) do not interfere with each other uses. DataLink also warrants and represents that:

- a. It will be responsible for and shall indemnify and hold harmless the City for any damage caused to City by DataLink's use of the water tower. In addition, it will be responsible for and pay the costs required to move or temporarily relocate the Transmission Equipment in the event the City determines to conduct maintenance or repainting the water tower. In such an event, the City agrees to give DataLink written notice of the maintenance activity at least thirty (30) days prior to it beginning.
- b. It will carry liability insurance for property damage in the amount of \$1,000,000.00 and bodily injury in the amount of \$1,000,000.00. Proof of such insurance shall be furnished to the City by DataLink giving the City a certificate of insurance for the then current policy period.
- c. It will keep its Transmission Equipment and improvements in good repair.
- d. Its use of the water tower and operation of its Transmission Equipment will not be in violation of any law or regulation, nor will its use disrupt or interfere with any of the City's communication activities or the City's other activities, whether or not located at the tower site.
- e. Upon the termination of this Lease for any reason, DataLink will, within 30 days, remove its Transmission Equipment and improvements, and leave the water tower and tower site in as good a condition as when entered, subject to reasonable wear and tear and for damage due to causes beyond DataLink's control, if the Transmission Equipment and improvements are not removed within 30 days, then it shall, at the option of the City, be considered abandoned and become City property.
- f. It will not assign this Lease without City's consent.
- g. DataLink shall be responsible for the cost of installing and maintaining all power lines and equipment necessary for its use.

6. City's Obligations and Conduct.

City agrees that it will not intentionally cause any damage or interference with DataLink's Transmission Equipment or its operation. The City makes no representations to the suitability of the location of the water tower or tower site for the use intended by DataLink.

7. Default.

It shall be deemed a default by DataLink if there is a violation of any provision of this Lease where the violation continues for thirty (30) days from the date of written notification by City, delivered in person to DataLink, or by mail, to DataLink, at P.O. Box P, 1107 Flack Ave., Alliance, Nebraska 69301. Upon declaration of a default, City shall have all legal remedies available to it to include the right to render DataLink's Transmission Equipment inoperable and to remove all its Transmission Equipment from the tower site.

8. Entire Agreement, Amendment and Binding Effect.

This Lease shall constitute the entire agreement of the parties. It shall not be amended and no provisions shall be considered as waived unless in writing signed by all parties. It shall be binding upon the heirs, personal representatives, successors and assigns of the parties.

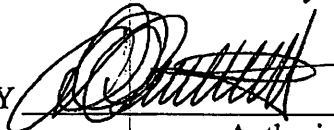
CITY OF SCOTTSBLUFF, NEBRASKA,
A Municipal Corporation,

By _____
Mayor

ATTEST:

City Clerk _____
(Seal)

DATALINK, L.L.C.,
A Nebraska limited liability company

BY  M. Mbr. _____
Authorized Member