

City of Scottsbluff, Nebraska

Monday, July 15, 2019

Regular Meeting

Item Reports4

Council to consider and take action on a Water Tower Lease Agreement with Action Communications, Inc. to put wireless internet equipment on the Cemetery water tower and authorize the Mayor to sign the Agreement.

Staff Contact: Nathan Johnson, City Manager

Agenda Statement

Meeting Date: July 15, 2019

AGENDA TITLE: Council to consider approval of a Water Tower Lease Agreement with Action Communications, Inc. to put wireless internet equipment on the Cemetery water tower.

SUBMITTED BY DEPARTMENT/ORGANIZATION: Public Works

PRESENTATION BY: Nathan Johnson, City Manager

SUMMARY EXPLANATION: Action Communications, Inc. desires to lease space on the Cemetery water tower for the purpose of placing wireless internet equipment on it. Doing so will allow them to provide access to customers that are unable to use their existing access points. The proposed Lease would have a 5 years term with a monthly rental fee of \$150.00.

The Lease has been through legal review and is ready for Council consideration.

BOARD/COMMISSION RECOMMENDATION:

STAFF RECOMMENDATION: For Council to give direction to staff on how they wish to proceed with this request.

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

Other (specify) ☐ _____

NOTIFICATION LIST: Yes ☐ No ☐ Further Instructions ☐

City of Scottsbluff
Office of the City Manager

Effective date: January 20, 2017

LEASE

This Lease is made July ____, 2019, between the City of Scottsbluff, Nebraska, a Municipal Corporation ("City") and Action Communications, Inc., a Nebraska Corporation ("Action Communications").

1. Description.

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

513 E 42nd Street, Scottsbluff, Nebraska, in Section Twelve (12), Township 22 North, Range 55 West of the 6th P.M., Scotts Bluff County, Nebraska

Action Communications desires to mount antenna arrays and wireless internet equipment ("Transmission Equipment") on the City's water tower which will be used to provide internet access to customers that are unable to use their existing access points. The City agrees to lease space on its water tower at the tower site to Action Communications 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. Payments are to commence on the date that this Lease is signed by both parties and due on the first day of each month thereafter. 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. Action Communications agrees to pay rent in the amount of \$150.00 per month, payable in advance, for each month of the term of this Lease. This Lease may be renegotiated thereafter.

3. Access.

Action Communications, 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.

Action Communications 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. Action Communications 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 Action Communications Transmission Equipment. If for any reason, any obstruction marking signal is later required which would not have been necessary but for Action Communications Transmission Equipment, Action Communications agrees to pay the cost of the signal and its installation.

5. Action Communications Representations.

Action Communications 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. Action Communications 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. Action Communications also warrants and represents that:

- a. Action Communications herein expressly releases, indemnifies and forever discharges and holds harmless the City from any and all liability, claims, demands, causes of action or rights of action in any way connected to the use of the tower site, including those allegedly attributable to negligent acts or omissions of any kind or nature of the City. Action Communications acknowledges that repairs and maintenance of the tower site may be required in the future. Any damage to the City's property is, therefore, the sole responsibility and obligation of Action Communications regardless of any required City work, including, but not limited to, negligence of the City with respect to work on its property. 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 tower site. In such an event, the City agrees to give Action Communications 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 Action Communications giving the City a certificate of insurance for the then current policy period. Said insurance policy shall name "City" as an "Additional Insured." It shall provide "City" with proof of insurance on the anniversary date of this contract each year.
- 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, Action Communications 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 Action Communications 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. Action Communications shall be responsible for the cost of installing and maintaining all power lines and equipment necessary for its use.

- h. Action Communications shall have the responsibility to pay any personal property, real estate taxes, assessments, or charges, if any, owed on the tower site which City demonstrates is the result of Action Communications use of the tower site and/or installation, maintenance, and operation of Action Communications improvements, and any sales tax imposed on the rent (except to the extent that Action Communications is or may become exempt from the payment of sales tax in the jurisdiction in which the tower site is located).

6. City's Obligations and Conduct.

City agrees that it will not intentionally cause any damage or interference with Action Communications 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 Action Communications.

7. Default.

It shall be deemed a default by Action Communications 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 Action Communications, or by mail, to Action Communications, at 315 West 27th Street, Scottsbluff, Nebraska 69361. Upon declaration of a default, City shall have all legal remedies available to it to include the right to render Action Communications Transmission Equipment inoperable and to remove all its equipment from the tower site.

8. Entire Agreement, Amendment and Binding Effect.

This Agreement 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)

ACTION COMMUNICATIONS, INC.
A Nebraska Corporation

By _____
Authorized Member

Rick L. Dorr *7-8-2019*
Rick L. Dorr President