

City of Scottsbluff, Nebraska

Tuesday, February 22, 2022

Regular Meeting

Item Reports2

Council to discuss and consider action on approving a revision to the lease with Inventive Wireless, LLC d/b/a Vistabeam for their wireless antenna system on the Cemetery Water Tower.

Staff Contact: Mark Bohl, Public Works Director

Agenda Statement

Item No.

For Meeting of: February 22, 2022

AGENDA TITLE: Council to consider approving a revision to the Lease with Inventive Wireless LLC, dba Vistabeam for their wireless antenna system on the Cemetery Water Tower.

SUBMITTED BY DEPARTMENT/ORGANIZATION: Public Works

PRESENTATION BY: Dustin Rief, City Manager

SUMMARY EXPLANATION: Vistabeam has an existing Lease with the city where they pay \$150 a month for space on the Cemetery Water Tower. They have recently acquired Action Communications who also leases space for \$150 a month on the Cemetery Water Tower.

The revised Lease with Vistabeam combines the equipment and leased space for \$300 a month and includes an exhibit of where the equipment is located.

BOARD/COMMISSION/STAFF RECOMMENDATION: Staff recommends that Council approve the revised Lease for a 5 year term.

Does this item require the expenditure of funds?

☐ yes ☒ no

Are funds budgeted?

☐ yes ☐ no

If no, comments:

Estimated Amount

Amount Budgeted

Department

Account Description

Approval of funds available

City Finance Director

EXHIBITS

Resolution ☐

Ordinance ☐

Contract ☐

Minutes ☐

Plan/Map ☐

Other (specify) Lease Agreement

NOTIFICATION LIST: Yes ☐ No ☐ Further Instructions ☐

Please list names and addresses required for notification.

APPROVAL FOR SUBMITTAL:

City Manager

Rev: 12/14/ City Clerk

LEASE

This Lease is made _____, 2022, between the City of Scottsbluff, Nebraska, a Municipal Corporation ("City") and Inventive Wireless of Nebraska, L.L.C. d/b/a Vistabeam, a Nebraska limited liability company ("Vistabeam").

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

Vistabeam desires to mount various small aperture directional and non-directional antenna arrays and wireless internet transmission equipment which are used in the furtherance of its business operations as a distributor of wireless internet service ("Transmission Equipment") on the City's water tower. A schematic of the Transmission Equipment is set forth on Exhibit "A", attached hereto and incorporated by this reference. The City agrees to lease space on its water tower at the tower site to Vistabeam 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. Vistabeam agrees to pay rent in the amount of \$300.00 per month, payable in advance, for each month of the term of this Lease.

3. Access.

Vistabeam, 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.

Vistabeam 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. Vistabeam 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 Vistabeam's Transmission Equipment. If for any reason, any obstruction making signal is later required which would not have been necessary but for Vistabeam's Transmission Equipment,

Vistabeam agrees to pay the cost of the signal and it's installation.

5. Vistabeam's Representations.

Vistabeam 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. Vistabeam'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. Vistabeam 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 Vistabeam'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 Vistabeam 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 Vistabeam 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, Vistabeam 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 Vistabeam'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 prior written consent.
- g. Vistabeam 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

Vistabeam'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 Vistabeam.

7. Default.

It shall be deemed a default by Vistabeam 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 Vistabeam, or by mail, to Vistabeam, at 1225 Sage Street, Gering, Nebraska 69341. Upon declaration of a default, City shall have all legal remedies available to it to include the right to render Vistabeam's 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)

INVENTIVE WIRELESS OF NEBRASKA, L.L.C., D/B/A VISTABEAM,
A Nebraska limited liability company

By 
Matthew Larsen, Authorized Member

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**Scottsbluff Soccer or Cemetery
Water Tank**