

AGENDA

ITEM

NO. 14

#124

MEMORANDUM

TO: Brian C. Blad, Mayor; Members of the City Council
FROM: Rich Diehl, Deputy City Attorney
RE: Ground Lease Agreement with Riverbend Communication (Water)
DATE: April 27, 2022

I have reviewed the above-referenced Agreement and it meets with my approval for the Mayor's signature once so authorized by the Council. The City has previously entered into similar agreements in the past.

If you have any questions, please feel free to contact me.



WATER OPERATIONS FACILITY
1889 N. Arthur Avenue
P.O. Box 4169
Pocatello, ID 83205-4169

SUPERINTENDENT'S OFFICE
(208) 234-6174
FAX (208) 234-7084

REPAIR SHOP
(208) 234-6182
FAX (208) 234-7084



Executive Summary

TO: Mayor Blad and Pocatello City Council
FROM: Justin Armstrong, Water Superintendent
DATE: April 25, 2022
SUBJECT: Riverbend Communications, LLC - Lease Agreement

Recommendation

Staff recommends that the City Council approve by resolution, a lease agreement between the City and Riverbend Communications, LLC and authorize the Mayor's signature on the agreement, subject to Legal Department review.

Background:

The City of Pocatello entered into a lease agreement with Riverbend Communications, LLC on March 22, 2006 allowing them an easement on City-owned property, commonly known as Fore Road water tank and reservoir site, to erect, operate and maintain a broadcasting booster antenna.

The term of the lease is scheduled for three (3) years, with the current term set to expire on April 30, 2022. Riverbend Communications has requested to enter into another three (3) year lease agreement, commencing on May 1, 2025. The term of this lease shall be three (3) years, commencing on May 1, 2022 and ending on April 30, 2025. Riverbend Communications agrees to pay the City two hundred and forty dollars (\$240.00) per month for the lease and easement rights.

**LEASE AGREEMENT
AND EASEMENT**

This Agreement is entered into this 25 day of April, 2022, by and between the City of Pocatello, a municipal corporation of Idaho, hereinafter referred to as "City", and Riverbend Communications, LLC, an Idaho limited liability company, hereinafter referred to as "Riverbend".

WHEREAS, the City had heretofore entered into an Agreement with Bonneville International Corporation, a Utah corporation, for lease of certain City premises; and

WHEREAS, thereafter Riverbend Communications, LLC purchased the broadcasting assets in Idaho Falls of Eagle Rock Broadcasting Company and assumed the existing agreement with the City of Pocatello effective the 22nd day of March, 2006; and

WHEREAS, the previous lease agreement will expire April 30, 2022, and the parties desire to enter into a new Lease Agreement;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

1. That Riverbend hereby leases from the City the following property as the site for the broadcasting booster antenna previously erected thereon:

A parcel of land located in the Southeast ¼ of the Southwest ¼, Section 35, T6S, R34, E.B.M., consisting of a 10-foot radius circle, the central point of which is more particularly described as follows:

Beginning at the South ¼ corner of said Section 35, and running thence North 0°29'07" East 153.95 feet along the North-South centerline of said Section 35; thence West 38.65 feet to the TRUE POINT OF BEGINNING, said point of beginning being the center of the pole and also being a radius point for the parcel of property, said radius being 10 feet in length.



2. That the term of this lease shall be three (3) years, commencing May 1, 2022 and ending April 30, 2025.

3. The parties agree that Riverbend shall pay the sum of \$240.00 per month for the lease and easement rights, payable in monthly installments beginning May 1, 2022 and by the first day of each month thereafter.

4. That the City hereby grants to Riverbend, an easement along, over, and across the following described property:

The east 50 feet of the SE ¼ of the SW ¼ of Section 35, Township 6 South, Range 34, E.,B.M. lying south of Fore Road and extending south to the South ¼ corner of said Section 35

Said easement being for purposes of maintenance and operation, ingress and egress to the booster antenna on the leased property.

5. Riverbend shall purchase a comprehensive liability insurance policy in the amount of \$1,000,000 combined single limit to indemnify City from any and all public liability claims. Further, such policy shall include coverage for fire legal liability to repair or replace the demised premises. The City shall be named as an additional insured or be acknowledged by Riverbend's insurance carrier as a covered entity under the terms of said policy. Moreover, Riverbend is required to put its surety on notice, that said surety may not change or cancel the existing insurance policy with Lessee without first giving City at least thirty (30) days written notice.

6. The parties agree that the City shall not be held liable for any maintenance, repair, or re-installation costs nor for any loss or damage which might occur to Riverbend's property on the leased premises, unless said loss or damage occurs as a result of the City's or its employees' negligent act or acts.

7. Riverbend agrees to fully indemnify and hold harmless the City, its officers, employees, agents, and successors from and against any and all actions, causes of action, claims, judgments, settlements, demands, liabilities, losses, damages, or expenses of whatsoever kind or nature, including, but not limited to, those arising from death, personal injury, or nuisance, which the City, its officers, employees, agents, or successors shall or may sustain or incur by reason of or as a consequence of Riverbend's installation and use of equipment or machinery on City property.

8. The parties agree that the lease and easement shall terminate and become extinguished upon any of the following events:

- a) Riverbend ceases to exist as an Idaho Limited Liability Company;
- b) Riverbend ceases to be licensed to do business in the State of Idaho;
- c) Riverbend files Bankruptcy under the federal bankruptcy laws;
- d) Use of the antenna or other equipment interferes with the communicating systems of the City of Pocatello;
- e) Riverbend allows the antenna or other equipment to fall into such a state of disrepair as to constitute a public nuisance or private nuisance;
- f) Riverbend no longer utilizes said antenna and equipment;
- g) Use of maintenance of the antenna or equipment interferes with the operations of any City department;
- h) Failure to pay the monthly fee as provided for in this Agreement; and/or
- i) The City requires the use of said property for its operations.
- j) Either party provides thirty (30) days written notice of its intent to terminate the Lease Agreement.



The failure by the City to require strict performance of any condition of this Lease Agreement shall not affect the City's right to subsequently enforce the same, nor shall a waiver of any term or condition be construed to be a waiver of any succeeding term or condition of this clause. To be effective, any waiver by the City must be in writing.

9. All notices under this Lease Agreement shall be deemed to be properly served if sent by certified mail to the last address previously furnished by the parties hereto. Until hereafter changed by written notice, said addresses shall be as follows:

CITY: Water Superintendent
City of Pocatello
PO Box 4169
Pocatello, ID 83205

RIVERBEND: Riverbend Communications, LLC
Attn: Bill Fuerst
400 W Sunnyside Road
Idaho Falls, ID 83402

Notice shall be complete upon receipt, unless the recipient ignores or refuses to sign for the certified letter, in which event notice shall be deemed to have been completed on the first attempted delivery by the United States Post Office.

10. No right or obligation of this Lease Agreement, nor right in the premises described herein, may be assigned, mortgaged, or subleased by Riverbend without the prior written consent of the City, which should not be reasonably withheld.

11. Any action or proceeding to enforce the provisions of this Agreement shall be maintained in the Sixth District Court, County of Bannock, State of Idaho.

12. This instrument constitutes the sole and only agreement between the City and Riverbend respecting the demised premises, the leasing of said premises to Riverbend, or the lease term herein provided and correctly sets forth the obligations of the City and Riverbend to each



other as of its date. No prior promises, representations, or agreements, written or oral, shall amend, change or add to any of the expressed provisions herein contained. This Agreement can only be modified or amended in writing upon the mutual agreement of the parties hereto.

13. Any individual or individuals executing the within document on behalf of any corporation or government agency which is a party hereto, hereby acknowledge and represent that he, she, or they have the power and authority to so bind the corporate/government authority, and that such authority was conferred by an act of the Board of Directors of such corporate/government authority, unless the binding of any such corporation/government agency is within the power of the person or persons executing this document on such corporation/government agency's behalf. In the event that the party or parties executing this document on behalf of any corporate/government party hereto, do not have authority to so bind the corporation/government agency for any cause or reason, then such person or persons shall be personally liable under the terms hereof.

14. If suit or legal action is instituted by any party hereto to establish or enforce any right under this Agreement, to recover any amount due hereunder, to correct a breach of covenant, term, or condition hereto, or to litigate any other matter arising from the execution of the Agreement, the prevailing party in the trial court and the prevailing party on any appeal shall recover reasonable attorney's fees awarded by the trial and appellate courts, in addition to costs and disbursements. The parties agree that a reasonable rate for attorney's fees will be \$150.00 per hour. This provision shall survive any termination of this Agreement.



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized representatives.

CITY OF POCA TELLO, a municipal corporation of Idaho

BRIAN C. BLAD, Mayor

ATTEST:

KONNI R. KENDELL, City Clerk

RIVERBEND COMMUNICATIONS, LLC, an Idaho limited liability company



BILL FUERST, Manager

STATE OF IDAHO)
 ss:
County of Bannock)

On this _____ day of _____, 2022 before me, the undersigned, a Notary Public in and for the State, personally appeared Brian C. Blad and Konni R. Kendell, known to me to be the Mayor and City Clerk, respectively, of the City of Pocatello, who executed the foregoing instrument, and acknowledged to me that such municipal corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and my official seal the day and year in this certificate first above written.

(SEAL)

NOTARY PUBLIC FOR IDAHO
Residing in: _____
My commission expires: _____

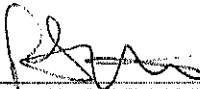
STATE OF IDAHO)
)
 ss:
County of Bonneville)

On this 25 day of APRIL, 2022 before me, the undersigned, a Notary Public in and for the State, personally appeared Bill Fuerst known to me or proved to me to be the Manager of Riverbend Communications, LLC, an Idaho Limited Liability Company, the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for and on behalf of Riverbend Communications, LLC.

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

(SEAL)





NOTARY PUBLIC FOR IDAHO
Residing in: IDAHO Falls, IDAHO
My commission expires: 3/31/2028