



MEMORANDUM

TO: CITY COUNCIL

FROM: WHITNEY MCDONALD, CITY MANAGER / ACTING COMMUNITY DEVELOPMENT DIRECTOR

SUBJECT: CONSIDERATION OF APPROVAL OF A LEASE AGREEMENT WITH PEAK WiFi FOR REPEATER PLACEMENT AT THE CITY'S RESERVOIR SITE LOCATED AT 581 HUEBNER LANE

DATE: JANUARY 12, 2021

SUMMARY OF ACTION:

Consideration of approval of a Lease Agreement for Repeater Placement ("Lease Agreement") with Peak WiFi for the placement of a repeater facility at the City's reservoir site located at 581 Huebner Lane. The Lease Agreement will allow Peak WiFi to use the site as a Wireless Internet Service facility.

IMPACT ON FINANCIAL AND PERSONNEL RESOURCES:

Peak WiFi will provide the City with one 100 Mbps internet connection, and all equipment necessary to support this connection, for use by the Arroyo Grande Police Department as well as rent in the amount of \$50 per month, which will increase to \$100, \$150, and \$200, respectively, when ten, twenty, or thirty Peak WiFi customers are served from the facility. In addition, Peak WiFi will pay the City \$1 per month per direct customer connection once 10 or more customers are served from this location.

RECOMMENDATION:

It is recommended the City Council approve and authorize the Mayor to execute a Lease Agreement for Repeater Placement with Peak WiFi at the City's Reservoir 4 site located at 581 Huebner Lane.

BACKGROUND:

Peak WiFi is a Wireless Internet Service Provider with offices located in Grover Beach that supplies wireless communication services to the local community and local governments. Peak WiFi desires to provide services in and around Arroyo Grande, as well as to provide the Arroyo Grande Police Department (AGPD) with a wireless internet connection that will support the City's street camera network. An existing AGPD radio tower is located at the City's reservoir site at 581 Huebner Lane (Huebner Site). This City property hosts a number of telecommunications facilities, in addition to the reservoir.

ANALYSIS OF ISSUES:

Peak WiFi desires to lease two small portions of the Huebner Site in order to supply

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wireless communication services to the City and its customers. Specifically, Peak WiFi proposes to:

- Install one (1) new 12' mast at the northeast corner of the site;
- Install four (4) new Dual Frequency Antennas;
- Install two (2) new Parabolic Reflector Antennas;
- Install nine (9) new Symmetrical Horn Antennas;
- Install four (4) new Directional Parabolic Dish Antennas;
- Install two (2) new Sector Antennas; and
- Install one (1) new webcam for monitoring the site

The proposed new 12' mast is roughly the size of a flag pole, which will be minimally visible, if at all, from off site. In addition, the existing AGPD radio tower is proposed to be upgraded and Peak WiFi will install and maintain all equipment necessary to provide one 100 Mbps internet connection with static IP for use by AGPD in support of the street camera network. Peak WiFi has applied for an appropriate use permit (Minor Use Permit/Plot Plan Review) from the Community Development Department to enable this use of the Huebner Site.

The value of the 100 Mbps internet connection is estimated to be \$214.95 per month and will be provided at no cost to the City for the life of the lease. In addition, Peak WiFi will pay the City rent in the amount of \$50 per month. This amount will increase to \$100 per month, plus \$1 per direct customer connection, once the 10th connection is made using the Huebner location. When the 20th connection is made, the rent will increase to \$150 per month, plus \$1 per customer. At 30 or more connections, the rent increases to \$200 per month, plus \$1 per customer. It is estimated that the City will receive between \$600-\$2,760+ annually in rent through the proposed Lease Agreement.

ALTERNATIVES:

The following alternatives are provided for the Council's consideration:

1. Approve staff's recommendation;
2. Do not approve staff's recommendation and provide direction to staff regarding the terms of the lease agreement.
3. Provide other direction to staff.

ADVANTAGES:

Approval of the Lease Agreement will provide a benefit to the AGPD through a secured internet connection supporting the City's street camera network at no cost to the City. In addition, the City will receive rental payments annually and will help provide competitive wireless internet access to the community.

DISADVANTAGES:

No disadvantages have been identified.

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ENVIRONMENTAL REVIEW:

Approval of the Lease Agreement is exempt from environmental review under the California Environmental Quality Act because it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment (CEQA Guidelines §15061(b)(3)) and because the project involves the minor alteration of an existing public or private facility that involves negligible expansion of existing or former uses (CEQA Guidelines §15301).

PUBLIC NOTIFICATION AND COMMENTS:

The Agenda was posted at City Hall and on the City's website in accordance with Government Code Section 54954.2.

ATTACHMENTS:

1. Proposed Lease Agreement for Repeater Placement



Lease Agreement for Repeater Placement

This Lease Agreement ("Agreement") is made this ___ day of _____, 2021, by and between PeakWiFi, LLC (hereinafter referred to as the "Lessee") and the City of Arroyo Grande, a municipal corporation (hereinafter referred to as "Lessor").

Lessee is a Wireless Internet Service Provider (WISP) in central California, with offices located at 367 Beckett Place, Grover Beach, San Luis Obispo County, California 93433.

Lessor is the fee simple owner of property located at 581 Huebner Lane, Arroyo Grande, San Luis Obispo County, California 93420 (APN 007-611-016, hereinafter referred to as the "Property"), upon which is located a water tank.

WHEREAS, Lessee proposes to furnish communications services in and around San Luis Obispo County, California, specifically wireless internet service and city street camera networks, and desires to place and maintain repeater pole(s), cables, wires, and other equipment on or near Lessor's water tank and land; and

WHEREAS, Lessor is willing to permit, subject to the terms and conditions set forth herein, the placement of Lessee's equipment on a portion of the Property, where such use will not interfere with Lessor's and other lessees' use of the Property.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the Parties do hereby mutually covenant and agree as follows:

I. Primary Agreement

- a. Lessor hereby leases to Lessee a parcel of ground space measuring approximately 10 feet by 10 feet and a parcel of ground space measuring approximately 5 feet by 5 feet in the locations shown on Exhibit "A," attached hereto and incorporated herein by this reference (the "Premises"), together with the non-exclusive right of ingress and egress to the Property. Lessee shall use the Premises solely for the purpose of constructing, maintaining and operating a wireless communication site.
- b. Lessor agrees that Lessee's network equipment will be used to provide the City of Arroyo Grande with wireless communication for its street camera network as well as the distribution of wireless internet to the public. Lessee shall take all necessary steps to ensure the wifi system is isolated from the City's data network.

II. Equipment and Services

- a. Lessee agrees to provide the Lessor with one 100 Mbps internet connection for the Police Department with static IP. This internet connection will be installed by Lessee for free with all equipment paid for by the Lessee and re-installed if Lessor remodels or replaces its equipment.

- b. Lessee will install a shared network cabinet and additional upgrades at the existing tower utilized by the Police Department. Lessee will also install a separate twelve foot (12') single mast along the upper fence line of the property in the five foot (5') by five foot (5') portion of the Premises, as shown in Exhibit A. The new cabinet and twelve foot (12') single mast shall be considered as shared space and provide safe harbor for the street camera network components, as well as public internet components. Lessor shall continue to have access to and retain ownership of all of its existing equipment located in or about the Premises. Additionally, Lessor shall continue to have control over the Premises, but shall not interfere with the operations of Lessee.
- c. Lessee will provide battery backup and power conditioning components to serve both networks. The network traffic shall be separated from one another and auditable by the Lessor's IT Department at any time.

III. Rent

Lessee shall pay rent to Lessor as follows:

- a. Fifty Dollars (\$50) per month, on or before the 15th day of each month.
- b. Once ten (10) or more customers are serviced from the repeater(s) on the Property, Lessee shall pay the sum of One Hundred Dollars (\$100) per month plus One Dollar (\$1) per direct customer connection, per month, on or before the 15th day of each month starting after the 10th connection has been made.
- c. Once twenty (20) or more customers are serviced from the repeater(s) on the Property, Lessee shall pay the sum of One Hundred Fifty Dollars (\$150) per month plus One Dollar (\$1) per direct customer connection, per month, on or before the 15th day of each month starting after the 20th connection has been made.
- d. Once thirty (30) or more customers are serviced from the repeater(s) on the Property, Lessee shall pay the sum of Two Hundred Dollars (\$200) per month plus One Dollar (\$1) per direct customer connection, per month, on or before the 15th day of each month starting after the 30th connection has been made.
- e. Rent due that is more than thirty (30) days delinquent shall bear interest at the rate of ten percent (10%) per annum.

IV. Interference

Lessee shall construct, maintain and operate the Premises and equipment thereon in such a manner that will not cause interference to Lessor and other lessees of the Property. All operations by Lessee shall be in compliance with all Federal Communications Commission requirements and all applicable laws.

V. Condition, Maintenance and Repair

Lessee is fully aware of the condition of the Premises and accepts its use of the Premises on an "AS IS" basis. Lessor does not warrant that the Premises are suitable for Lessee's use. Lessee's use of the Premises shall be at its sole cost and expense, and Lessee shall keep, manage and maintain its equipment located on the Premises in good and safe condition and repair.

VI. Insurance

Lessee shall, at its sole cost and expense, procure and maintain during the entire term of this Agreement public liability and property damage insurance in accordance with the requirements of Exhibit "B," attached hereto and incorporated herein by this reference. Proof of insurance shall be submitted to Lessor prior to any use of the Property by Lessee. Lessee shall cause Lessor to be a named additional insured.

VII. Indemnity

- a. Lessor shall indemnify, hold harmless and defend Lessee and its employees and agents from and against all claims, damages, losses and expenses, including attorneys' fees, resulting from any negligent act, misconduct or omission on the part of Lessor, its employees, agents, assigns or contractors.
- b. Lessee shall indemnify, hold harmless and defend Lessor and its employees and agents from and against all claims, damages, losses and expenses, including attorneys' fees, resulting from any negligent act, misconduct or omission on the part of Lessee, its employees, agents, assigns or contractors.

VIII. Permits

Prior to installing any equipment on the Property, Lessee shall obtain all necessary governmental permits and approvals for the construction, operation and maintenance of the facilities described herein.

IX. Location Requirements

- a. Lessee and its agents shall be granted access to its equipment 24/7/365, with prior notice if desired, for the purpose of examining, maintaining, or repairing said equipment.
- b. Lessor shall provide electricity for the equipment.

X. Term

- a. The initial term of this Agreement shall be for a period of five (5) years, commencing on the date of its execution and shall remain in force until terminated by written notice by either party.
- b. Unless termination notice is given, the Agreement shall automatically renew on an annual basis after the initial term ends.

XI. Termination

- a. Lessee may terminate this Agreement upon thirty (30) days' written notice if the site no longer has the capability to allow internet service to be provided from the repeater.
- b. Lessor may terminate this Agreement by giving Lessee twelve (12) months' written notice of a termination date to allow for another suitable site to be located and set up.
- c. Termination notices shall be mailed, by certified or registered mail, to Lessee/Lessor at their respective address stated above.

XII. Default

In the event there is a breach by Lessee with respect to any of the provisions of the Agreement or its obligations hereunder, including the payment of rent, Lessor shall give Lessee written notice of such breach. After receipt of such written notice, Lessee shall have fifteen (15) days in which to cure any monetary breach and thirty (30) days in which to cure any non-monetary breach, provided Lessee shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and Lessee commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. Lessor may not maintain any action or effect any remedies for default against Lessee unless and until Lessee has failed to cure the breach within the time periods provided in this section.

XIII. Taxes

Lessee shall pay any personal property and possessory interest taxes assessed on, or any portion of such taxes, which are attributable to Lessee's communications facility or Lessee's use and occupancy of the Premises.

XIV. Hazardous Materials

Lessee, its agents, employees or contractors shall not cause or permit any hazardous substance to be used, stored, generated or disposed of on or about the Premises. If Lessee causes or permits the presence of any hazardous substance on the Premises that results in contamination, Lessee shall promptly, at its sole expense, take any and all necessary action to return the Premises to the condition existing prior to the presence of any such hazardous substance on the Premises. Lessee shall first obtain Lessor's approval for any such remedial action.

XV. Release

Lessor shall not be responsible to Lessee for any loss of property from the Premises, however occurring. Lessee also waives any and all claims against Lessor for damages to any property of Lessee from any cause arising at any time, except for willful misconduct of Lessor.

XVI. Equipment Removal

Upon termination of this Agreement, Lessee shall remove at its expense, its equipment from Lessor's property. Lessee shall be allowed thirty (30) days after the final termination date to remove its equipment. Lessee shall leave the Property in its original condition.

XVII. Entire Agreement

This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof by and between Lessor and Lessee. This Agreement may be modified only by a further writing that is duly executed by both parties. If any provision of the Agreement is held to be invalid or unenforceable by a court of competent jurisdiction with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable shall not be affected, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. The parties acknowledge and agree that each of the parties have been represented by counsel or has had full opportunity to consult with counsel and that each of the parties has participated in the

negotiation and drafting of this Agreement. Accordingly, it is the intention and agreement of the parties that the language, terms and conditions of this Agreement are not to be construed in any way against or in favor of any party hereto by reason of the roles and responsibilities of the parties or their counsel in connection with the preparation of this Agreement.

XVIII. Successors and Assigns

This Agreement shall not be assigned by Lessee without written consent of Lessor. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representative, successors and assigns.

XIX. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

XX. Governing Law

This Agreement shall be governed by the laws of the State of California and any disputes, causes of action or claims shall be brought in the San Luis Obispo Superior Court, and the parties hereto consent to the jurisdiction of such court.

This Agreement is entered into this _____ day of _____, 2021.

LESSOR:

LESSEE:

Caren Ray Russom, Mayor
City of Arroyo Grande

Thomas J. Kosta, President
PeakWiFi, LLC

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____ before me, _____
Date Here Insert Name and Title of the Officer

personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

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who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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Signature of Notary Public

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Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

EXHIBIT A

Aerial image showing land owned by Lessor – icon(s) indicate the approximate location(s) referred to in the above Agreement with PeakWiFi, LLC.



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