

RESOLUTION NO. 2019-02R

A RESOLUTION OF THE BOARD OF DIRECTORS OF WYLIE NORTHEAST SPECIAL UTILITY DISTRICT, COLLIN COUNTY, TEXAS (DISTRICT), APPROVING A WATER TOWER LEASE AGREEMENT BETWEEN DATA-LINE COMMUNICATIONS, LLC AND WYLIE NORTHEAST SPECIAL UTILITY DISTRICT FOR THE INSTALLATION, MAINTENANCE AND OPERATION OF A WIRELESS COMMUNICATIONS ANTENNA FACILITY.

WHEREAS, Data-Line Communications, LLC (the "Data-Line") desires to install, maintain and operate a wireless communications antenna facility on the elevated water storage tower owned by Wylie Northeast Special Utility District (the "District") and situated on a 1.868 acre tract of land situated in the I. & G. N. Ry. Co. Survey, Abstract No. 1059, Collin County, Texas, and having the following address: 721 Parker Loop Road, Wylie, Texas 75098; and

WHEREAS, the Board of Directors of the District has investigated and determined that it will benefit the District to allow such use in exchange for monthly rental payments to be paid by Data-Line; and

WHEREAS, the Board finds that Data-Line is a Texas limited liability company in good standing with the State of Texas, and has its principal place of business at 108 S. Jackson Ave, Suite 201, Wylie, Texas 75098; and

WHEREAS, the contemplated Water Tower Lease Agreement incorporates the District's Tower Policies in compliance with Resolution No. 2018-08R adopted by the Board on September 11, 2018.

NOW, THEREFORE, BE IT RESOLVED THAT the above recitals are incorporated herein for all purposes and the attached Water Tower Lease Agreement is hereby approved for execution by the Board President for and on behalf of the District.

PASSED and ADOPTED on the 9th day of April, 2019, by the Board of Directors of Wylie Northeast Special Utility District.

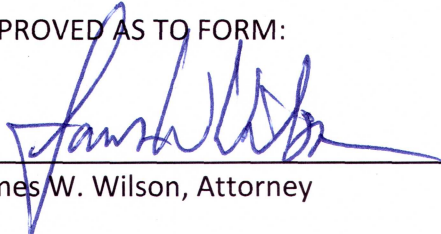



Jimmy C. Beach, President

ATTEST:


Brenda Kellow, Secretary

APPROVED AS TO FORM:


James W. Wilson, Attorney

WATER TOWER LEASE AGREEMENT

This Water Tower Lease Agreement ("Agreement") is entered into by and between **Wylie Northeast Special Utility District**, a Texas political subdivision ("Landlord") and **Data-Line Communications, LLC**, a Texas limited liability company ("Tenant").

WHEREAS, Landlord is the owner of a 1.868 acre tract of land, more or less, situated in the I. & G. N. RY. CO. SURVEY, Abstract No. 1059, and having the following address: 721 Parker Road, Wylie, Collin County, Texas (the "Property");

WHEREAS, Landlord operates public water utility system and owns an elevated water storage tank on the Property (the "Tower");

WHEREAS, Tenant desires to lease space on the Tower for the purpose of installing, operating and maintaining a wireless antenna communications facility;

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

Article 1 Lease Terms

1.01 Purpose. Landlord does hereby lease to Tenant, and Tenant does hereby lease from Landlord, the non-exclusive right to install, maintain and operate wireless data communications equipment on the Property and Tower to be used for the transmission and reception of radio communication signals.

1.02 Equipment Installation. Tenant shall have the right, at Tenant's sole cost and expense, to install, operate and maintain the radio transmitting and receiving antennas, cabling, and appurtenances on those areas of the Tower depicted and listed on the site plan attached hereto as Exhibit "A" (collectively the "Equipment"). The attached site plan has been approved by Landlord.

1.03 Equipment Modification. Tenant may update, replace, relocate or add to the Equipment from time to time in compliance with a new site plan approved in advance by Landlord in writing. The new site plan will be substituted for the existing Exhibit "A" to reflect the modified Equipment. The new Exhibit "A" and any adjustment to the applicable rental amount for increasing the burden on the Tower or Property will be incorporated into this Agreement by execution of an Amendment to this Agreement. Tenant will pay all costs associated with modifying the Equipment including structural studies, if required by Landlord's engineer, and Landlord's legal fees for drafting the amendment.

1.04 Interference. Tenant agrees to install Equipment of the type and frequency which

will not cause harmful interference which is measurable in accordance with then existing industry standards to any equipment of Landlord or other Tenants of Tower space that existed on the Tower prior to the date this Agreement is executed by the parties.

1.05 Standard Tower Policies. Tenant acknowledges and agrees to comply with Landlord's standard Tower Policies applicable to all leases of space on the Tower as set forth in Resolution No. 2018-08R passed by Landlord's governing board on September 11, 2018. The policies in Resolution No. 2018-08R are incorporated in this Agreement by reference for all purposes as if set forth verbatim.

1.06 Maintenance. Tenant shall have sole responsibility for maintaining the Equipment in good repair and condition during the term of this Agreement.

1.07 Safety Compliance. Tenant's employees, contractors, and representatives shall perform all work on the Property and Tower in strict compliance with all Occupational Safety and Health Administration (OSHA) safety requirements.

1.08 No Advertising. Tenant will place no advertising on the Tower or on any structure on the Property. Tenant agrees to install the Equipment in a manner that will not conceal Landlord's name or logo on the Towers.

1.09 Damage to Property or Tower. Tenant will restore any damage to the Tower or Property, including landscaping, caused by Tenant to a condition reasonably acceptable to the Landlord.

1.10 Tower Policies Incorporated. On September 11, 2018, Landlord's governing board of directors passed Resolution No. 2018-08R adopting standard Tower Policies to be incorporated by reference in every tower lease entered into by Landlord. Tenant represents that Tenant has received a copy of Resolution No. 2018-08R acknowledges that Tenant must comply with the Tower Policies.

Article 2

Term of Lease

2.01 The term of this Agreement commences on February 1, 2019, and ends on January 31, 2022 (the "Term"). Upon expiration or termination of this Agreement, Tenant will have 30 days to remove the Equipment and to restore the Tower to its original condition, except for reasonable wear and tear. Any personal property of Tenant that is not removed by the end of the 30-day period becomes the property of Landlord.

2.02 Any holdover by the Tenant after expiration of this Agreement will not constitute a renewal of the Agreement. If Tenant holds over and continues to possess the Property or Tower after the Agreement expires, Tenant will be considered to be occupying the Property or Tower at-will, subject to all the terms of this Agreement.

Article 3
Rental Payment

3.01 Monthly Rent. During the Term of this Agreement, Tenant will pay monthly rent to Landlord in an amount equal to \$13.10 per square foot of Tower space occupied by the Equipment. The amount of Tower space occupied by the Equipment and corresponding monthly rental amount shall be stated in Exhibit "A" attached to this Agreement. The monthly rent is due in advance on the first day of each month during the Term beginning February 1, 2019. Monthly rent shall be paid or delivered to Landlord at 745 Parker Road, Wylie, Texas 75098.

3.02 Delinquency. Failure to pay rent within 5 days after the due date shall be an act of default. The unpaid sum shall accrue interest at an annual rate of twelve percent (12%) beginning on the day after such rent payment was due and continuing until the rent and accrued interest are paid in full. In addition to accruing interest, Landlord shall have the right to terminate this Agreement by providing 30 days written notice to Tenant of Landlord's intent to terminate.

Article 4
Access to Premises

4.01 Nonexclusive Easement. During the Term of this Agreement, Landlord grants to Tenant a nonexclusive easement for ingress, egress, and access over the Property to the base of the Tower.

4.02 Non-emergency Access. Tenant will perform routine maintenance and modify the Equipment during the regular business hours of Landlord. Tenant agrees to notify Landlord by telephone or email before entering the Property of (i) the name and affiliation of all persons expected to enter the Property, and (ii) Tenant's purpose(s) for entering the Property.

4.03 Emergency Access. Tenant agrees to give Landlord reasonable advance notice (under the circumstances) by telephone prior to entering the Property to perform emergency repairs or work on the Equipment. Notice left on telephonic voicemail must include the same information required in paragraph 4.02 above.

Article 5
Default

In the event of a default by either party, the non-defaulting party may provide written notice describing the default and the defaulting party will have 30 days to cure the default. This Agreement shall automatically terminate if the default remains uncured after the 30-day cure period.

Article 6
Indemnification

Tenant shall indemnify and hold Landlord harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or willful misconduct of Tenant, its employees, contractors or agents, except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of Landlord, its employees, contractors or agents.

Article 7
Notices

All notices hereunder must be in writing and shall be deemed validly given if sent by (i) email or (ii) by certified mail, return receipt requested, addressed as follows:

Landlord: Wylie Northeast SUD
 c/o General Manager
 745 Parker Road
 Wylie, Texas 75098
 (972) 442-2075
 Email: chester@wylie-northeastwater.com

Tenant: Data-Line Communications, LLC
 c/o Rodney Lewis
 108 S. Jackson Ave, Suite 201
 Wylie, Texas 75098
 (817) 800-4742
 Email: Rkl@datalinecom.net

Notice by certified mail shall be effective 3 days after the date it is mailed. Notice by email shall be effective on the day it is sent to the correct email address.

Article 8
Miscellaneous Provisions

8.01 Entire Agreement. This Agreement contains the entire agreement between the undersigned parties concerning the subject matter hereof.

8.02 No Waiver of Immunity. By entering into this Agreement Landlord does not waive any defense based on sovereign, official or governmental immunity, and Landlord reserves the right to assert such affirmative defenses notwithstanding any provision in this Agreement to the contrary.

8.03 Controlling Law and Venue. The laws of the State of Texas govern the interpretation, performance and enforcement of this Agreement. This Agreement is performable in Collin County, Texas.

8.04 Severable clauses. If any clause in this Agreement is found invalid or unenforceable by a court of law, the remainder of this Agreement will not be affected and all other provision of this Agreement will remain valid and enforceable.

8.05 Waiver. Landlord's delay, waiver or non-enforcement of acceleration, contractual or statutory lie, rental due date, or any other right will not be deemed a waiver of any other or subsequent breach by Tenant or any other term in this Agreement.

8.06 Quite enjoyment. Provided that Tenant is not in default of this lease, Landlord covenants that Tenant will enjoy possession and use of the leased premises free from material interference.

8.07 Force Majeure. If either party's performance of a term in this Agreement is delayed by strike, lockout, shortage of material, governmental restriction, riot, flood, or any cause outside of parties' control, the time for performance will be abated until after the delay.

8.08 Time. Time is of the essence. The parties require strict compliance with the times for performance.

TENANT:

DATA-LINE COMMUNICATIONS, LLC,
a Texas limited liability company

By: _____
Rodney K. Lewis, Sole Manager

Date: April _____, 2019

LANDLORD:

WYLIE NORTHEAST SPECIAL UTILITY DISTRICT,
a Texas political subdivision

By: _____
Jimmy C. Beach, President

Date: April _____, 2019