



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**

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TO: Mayor Blad and Pocatello City Council  
FROM: Justin Armstrong, Water Superintendent  
DATE: September 14, 2020  
SUBJECT: Sandhill Media Group LLC Lease Agreement

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Staff is requesting approval of a lease agreement between Sandhill Media Group LLC allowing them to continue to operate a broadcasting booster antenna next to an existing broadcasting antenna on City-owned property commonly known as Fore road water tank and reservoir site.

### **Background:**

The City of Pocatello entered into a lease agreement with Sandhill Media Group LLC on April 15, 2011 allowing them to erect and operate a broadcasting booster antenna next to an existing broadcasting antenna on City-owned property commonly known as Fore Road water tank and reservoir site.

The term of the original lease was for ten (10) years, and will expire on December 31, 2020. Sandhill Media has requested to enter into another ten (10) year lease agreement, commencing on January 1, 2021. The term of this lease shall also be ten (10) years, commencing on January 1, 2021 and ending on December 31, 2030. Sand Hill Media agrees to pay the City on-hundred thirty-five dollars per month (\$135) for the lease and easement rights.

### **Recommendation**

Staff recommends approval by resolution of a lease agreement between the City and Sand Hill Media Group LLC and authorization of the Mayor's signature on the agreement.

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LEASE AGREEMENT AND EASEMENT

This Lease Agreement and Easement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Pocatello, a municipal corporation of Idaho, hereinafter referred to as the "City", and Sandhill Media Group, LLC, an Idaho limited liability company doing business as Sandhill Media Radio Group, hereafter referred to as "Sandhill".

WHEREAS, City and Sandhill entered into an agreement on April 19, 2011 allowing Sandhill to erect and operate broadcasting equipment on City owned property commonly known as the Fore Road water tank and reservoir site; and

WHEREAS, to facilitate the transaction, the Pocatello City Council granted Sandhill an exception to Pocatello Municipal Code §15.42.040(F)(I) to allow the construction of a broadcasting tower and associated building on City owned property, subject to conditions; and

WHEREAS, the April 19, 2011, Lease Agreement and Easement will expire in December, 2020; and

WHEREAS, Sandhill has expressed its desire to renew the lease for an additional 10 year term.

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

1. Sandhill hereby leases from the City the following property as a site for the continued operation of a seventy foot (70') monopole capable of supporting a panel antenna and a small building adjacent to said pole to house broadcast components:

A parcel of land located in the Southeast 1/4 of the Southwest 1/4, of Section 35, Township 6 South, Range 34, East Boise Meridian, being a 10-foot radius circle, the central point of which is more particularly described as follows:

Commencing at the South 1/4 corner of said Section 35, Thence North 0°29'07" East 153.95 feet along the Meridional centerline of Section 35; Thence West 13.56 feet to the TRUE POINT OF BEGINNING, said point being the center point of a 10-foot radius circular parcel of land.

2. The term of this lease shall be approximately ten (10) years, January 1, 2021 and ending December 31, 2030.

3. The City hereby grants to Sandhill an easement along, over, and across the following described property:

The East 50 feet of the Southeast 1/4 of the Southwest 1/4 of Section 35, Township 6 South, Range 34, East Boise Meridian, lying south of Fore Road and extending south to the south line of said Section 35.

Said easement shall be for the purposes of maintenance and operation, ingress and egress to the broadcasting equipment on the leased property.

4. Sandhill agrees to pay the sum of One Hundred Thirty Five Dollars (\$135.00) per month for the lease and easement rights beginning January 1, 2021. Thereafter, payments shall be made to the City of Pocatello no later than the 10th day of the month for which payment is due.

5. Sandhill agrees to fully indemnify and hold harmless, and agrees to protect and defend at its own cost and expense, the City, its officers, employees, agents and successors from and against any and all risks, suits, damages, judgments, expenses, claims, settlements or liabilities which the City, its officers, employees, agents and successors may incur or become liable for as a result of the injury or death of any person or persons, or loss or damage of any property, arising out of or in connection with the activities of Sandhill under the lease granted herein, or by any of Sandhill's employees, agents, invitees, or any other person acting on Sandhill's behalf.

The City hereby agrees to fully indemnify and hold harmless, and agrees to protect and defend, at its own cost and expense, Sandhill from and against any and all risks, suits, damages, judgments, expenses, claims, settlements or liabilities which Sandhill may incur or become liable for as a result of the injury or death of any person or persons or loss or damage of any property arising out of or in connection with the City's activities in the vicinity of the Fore Road water tank and reservoir.

6. In order to effectuate the foregoing indemnification provisions, Lessee shall maintain insurance coverage as follows:

A. Lessee shall purchase a comprehensive liability insurance policy in the amount of \$1,000,000 combined single limit to indemnify Lessor from any and all public liability claims. Further, such policy shall include coverage for fire legal liability to repair or replace the demised premises. Lessor shall be named as an additional insured or be acknowledged by Lessee's insurance carrier as a covered entity under the terms of said policy. Moreover, the Lessee 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 Lessor, City of Pocatello, at least thirty (30) days written notice.

B. Lessee shall purchase personal property insurance in an amount sufficient to insure any and all Lessee's personal property, which might be used in Lessee's operation of the business.

C. If applicable, Lessee shall purchase Worker's Compensation insurance or the equivalent as required by Idaho Code.

D. An Accord Certificate of Insurance evidencing compliance with the foregoing insurance requirements shall be filed with the Clerk of City of Pocatello prior to or at the time of execution of this Lease Agreement. The above-described insurance shall contain contractual

coverage sufficiently broad to insure the provisions of Article XIII "Indemnification." The Lessee's failure to maintain insurance shall be a basis for immediate termination of this lease.

7. The City and Sandhill agree that this Lease Agreement and Easement shall terminate and become extinguished upon the occurrence of any of the following events:

- a. Sandhill ceases to be licensed to do business in the State of Idaho;
- b. Sandhill files a voluntary or involuntary petition for relief under the rules of the U.S. Bankruptcy Code which prevents continuance of this Lease Agreement;
- c. Sandhill's use of the antenna or other broadcasting equipment interferes with the communication systems of the City or the duties of any City department;
- d. Sandhill allows its personal property and broadcasting equipment to fall into such a state of disrepair as to constitute a public nuisance or private nuisance;
- e. Sandhill no longer utilizes said antenna and equipment;
- f. Sandhill fails to pay the monthly fee as provided for in this Agreement;
- g. 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.

8. All notices under this Lease Agreement shall be deemed to be properly served if sent by first class mail, postage prepaid, to the last known address furnished by the parties hereto. Until hereafter changed by written notice, said addresses shall be as follows:

CITY: City of Pocatello  
Water Superintendent  
P.O. Box 4169  
Pocatello, ID 83205

SANDHILL: General Sales Manager  
Sandhill Media Radio Group  
854 Lindsay Blvd.  
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 State Post Office.

9. No right or obligation of this Lease Agreement, nor right in the premises described herein, may be assigned, mortgaged, or subleased by Sandhill without prior written consent of the City.

10. This Lease Agreement between the parties is made subject to the findings and conditions contained in that City Council Decision, Exception to Permit Application Process dated March 3, 2011, attached hereto as Exhibit "A", and incorporated herein. This Lease Agreement shall be construed pursuant to the laws of the State of Idaho. The parties agree that no construction of this Lease Agreement shall be made in a court of competent jurisdiction against the interest of any party to the Lease Agreement on the basis that the party had primary responsibility for drafting the Lease Agreement.

11. Any individual or individuals executing this document on behalf of any limited liability company which is a party hereto, hereby acknowledge and represent that he, she or they have the power and authority to so bind the company, and that such authority was conferred by an act of the owners and managers of said company, unless the operating agreement of said company provides such authority to the person or persons executing this document on said

company's behalf. In the event that the party or parties executing this document on behalf of said company do not have authority to so bind the company for any cause or reason, then such person or persons shall be personally liable under the terms hereof.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed by their authorized representatives the date and year first above written.

CITY OF POCA TELLO

\_\_\_\_\_  
BRIAN C. BLAD, Mayor

ATTEST:

\_\_\_\_\_  
RUTH NEWSOM, City Clerk

SANDHILL MEDIA GROUP, LLC

By \_\_\_\_\_  
Title \_\_\_\_\_

STATE OF IDAHO            )  
  ss  
County of Bannock         )

On this \_\_\_ day of \_\_\_\_\_, 2020, before me, the undersigned, a Notary Public in and for the State, personally appeared Brian C. Blad and Ruth Newsom, known to me to be the Mayor and City Clerk, respectively, of the City of Pocatello, an Idaho municipal corporation, who executed the foregoing instrument on behalf of said municipal corporation, and acknowledged to me that such corporation executed the same.

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 \_\_\_\_\_  
Commission Expires \_\_\_\_\_





RESOLUTION NO. 2020-\_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF POCATELLO, A MUNICIPAL CORPORATION OF IDAHO, APPROVING A LEASE AGREEMENT AND EASEMENT BETWEEN THE CITY OF POCATELLO AND SANDHILL MEDIA GROUP, LLC, FOR THE LEASE OF CERTAIN REAL PROPERTY; DECLARING THE PROPERTY NOT NEEDED FOR CITY PURPOSES; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AND ATTEST SAID LEASE AGREEMENT ON BEHALF OF THE CITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Pocatello ("City") is the owner of certain property commonly known as the Fore Road water tank and reservoir site, and more particularly described on the attached Exhibit "A"; and

WHEREAS, Sandhill Media Group, LLC ("Sandhill") owns and operates a broadcasting booster antenna and small adjacent building, which are located on the above described property; and

WHEREAS, City and Sandhill entered into a Lease Agreement and Easement on or about April 19, 2011. Said Lease Agreement and Easement will expire on December 31, 2020; and

WHEREAS, City and Sandhill wish to enter into a new lease agreement for the subject property; and

WHEREAS, the City Council has determined that leasing the subject property pursuant to the terms of the attached Lease Agreement and Easement is appropriate and is in the best interest of the citizens of Pocatello.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF POCATELLO AS FOLLOWS:

1. The Lease Agreement and Easement attached hereto and made a part hereof is hereby approved both as to form and content.

2. The Mayor and City Clerk are authorized to respectively execute and attest said Lease Agreement and Easement for and on behalf of the City of Pocatello.

3. This Resolution shall be in full force and effect immediately upon its adoption and approval.

RESOLVED this \_\_\_\_ day of \_\_\_\_\_, 2020.

CITY OF POCA TELLO, a municipal  
corporation of Idaho

\_\_\_\_\_  
BRIAN C. BLAD, Mayor

ATTEST:

\_\_\_\_\_  
KONNI KENDELL, City Clerk

EXHIBIT A

A parcel of land located in the Southeast 1/4 of the Southwest 1/4, of Section 35, Township 6 South, Range 34, East Boise Meridian, being a 10-foot radius circle, the central point of which is more particularly described as follows:

Commencing at the South 1/4 corner of said Section 35, Thence North 0°29'07" East 153.95 feet along the Meridional centerline of Section 35; Thence West 13.56 feet to the TRUE POINT OF BEGINNING, said point being the center point of a 10-foot radius circular parcel of land.

## EXHIBIT A

A parcel of land located in the Southeast 1/4 of the Southwest 1/4, of Section 35, Township 6 South, Range 34, East Boise Meridian, being a 10-foot radius circle, the central point of which is more particularly described as follows:

Commencing at the South 1/4 corner of said Section 35, Thence North  $0^{\circ}29'07''$  East 153.95 feet along the Meridional centerline of Section 35; Thence west 13.56 feet to the TRUE POINT OF BEGINNING, said point being the center point of a 10 foot radius circular parcel of land.

Together with an easement along, over, and across the following described property:

The East 50 feet of the Southeast 1/4 of the Southwest 1/4 of Section 35, Township 6 South, Range 34, East Boise Meridian, lying south of Fore Road and extending south to the south line of said Section 35.

## LEASE AGREEMENT AND EASEMENT

This Lease Agreement and Easement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Pocatello, a municipal corporation of Idaho, hereinafter referred to as the "City", and Sandhill Media Group, LLC, an Idaho limited liability company doing business as Sandhill Media Radio Group, hereafter referred to as "Sandhill".

WHEREAS, City and Sandhill entered into an agreement on April 19, 2011 allowing Sandhill to erect and operate broadcasting equipment on City owned property commonly known as the Fore Road water tank and reservoir site; and

WHEREAS, to facilitate the transaction, the Pocatello City Council granted Sandhill an exception to Pocatello Municipal Code §15.42.040(F)(l) to allow the construction of a broadcasting tower and associated building on City owned property, subject to conditions; and

WHEREAS, the April 19, 2011, Lease Agreement and Easement will expire in December, 2020; and

WHEREAS, Sandhill has expressed its desire to renew the lease for an additional 10 year term.

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

1. Sandhill hereby leases from the City the following property as a site for the continued operation of a seventy foot (70') monopole capable of supporting a panel antenna and a small building adjacent to said pole to house broadcast components:

A parcel of land located in the Southeast 1/4 of the Southwest 1/4, of Section 35, Township 6 South, Range 34, East Boise Meridian, being a 10-foot radius circle, the central point of which is more particularly described as follows:

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2. The term of this lease shall be approximately ten (10) years, January 1, 2021 and ending December 31, 2030.

3. The City hereby grants to Sandhill an easement along, over, and across the following described property:

The East 50 feet of the Southeast 1/4 of the Southwest 1/4 of Section 35, Township 6 South, Range 34, East Boise Meridian, lying south of Fore Road and extending south to the south line of said Section 35.

Said easement shall be for the purposes of maintenance and operation, ingress and egress to the broadcasting equipment on the leased property.

4. Sandhill agrees to pay the sum of One Hundred Thirty Five Dollars (\$135.00) per month for the lease and easement rights beginning January 1, 2021. Thereafter, payments shall be made to the City of Pocatello no later than the 10th day of the month for which payment is due.

5. Sandhill agrees to fully indemnify and hold harmless, and agrees to protect and defend at its own cost and expense, the City, its officers, employees, agents and successors from and against any and all risks, suits, damages, judgments, expenses, claims, settlements or liabilities which the City, its officers, employees, agents and successors may incur or become liable for as a result of the injury or death of any person or persons, or loss or damage of any property, arising out of or in connection with the activities of Sandhill under the lease granted herein, or by any of Sandhill's employees, agents, invitees, or any other person acting on Sandhill's behalf.

The City hereby agrees to fully indemnify and hold harmless, and agrees to protect and defend, at its own cost and expense, Sandhill from and against any and all risks, suits, damages, judgments, expenses, claims, settlements or liabilities which Sandhill may incur or become liable for as a result of the injury or death of any person or persons or loss or damage of any property arising out of or in connection with the City's activities in the vicinity of the Fore Road water tank and reservoir.

6. In order to effectuate the foregoing indemnification provisions, Lessee shall maintain insurance coverage as follows:

A. Lessee shall purchase a comprehensive liability insurance policy in the amount of \$1,000,000 combined single limit to indemnify Lessor from any and all public liability claims. Further, such policy shall include coverage for fire legal liability to repair or replace the demised premises. Lessor shall be named as an additional insured or be acknowledged by Lessee's insurance carrier as a covered entity under the terms of said policy. Moreover, the Lessee 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 Lessor, City of Pocatello, at least thirty (30) days written notice.

B. Lessee shall purchase personal property insurance in an amount sufficient to insure any and all Lessee's personal property, which might be used in Lessee's operation of the business.

C. If applicable, Lessee shall purchase Worker's Compensation insurance or the equivalent as required by Idaho Code.

D. An Accord Certificate of Insurance evidencing compliance with the foregoing insurance requirements shall be filed with the Clerk of City of Pocatello prior to or at the time of execution of this Lease Agreement. The above-described insurance shall contain contractual

coverage sufficiently broad to insure the provisions of Article XIII "Indemnification." The Lessee's failure to maintain insurance shall be a basis for immediate termination of this lease.

7. The City and Sandhill agree that this Lease Agreement and Easement shall terminate and become extinguished upon the occurrence of any of the following events:

- a. Sandhill ceases to be licensed to do business in the State of Idaho;
- b. Sandhill files a voluntary or involuntary petition for relief under the rules of the U.S. Bankruptcy Code which prevents continuance of this Lease Agreement;
- c. Sandhill's use of the antenna or other broadcasting equipment interferes with the communication systems of the City or the duties of any City department;
- d. Sandhill allows its personal property and broadcasting equipment to fall into such a state of disrepair as to constitute a public nuisance or private nuisance;
- e. Sandhill no longer utilizes said antenna and equipment;
- f. Sandhill fails to pay the monthly fee as provided for in this Agreement;
- g. 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.

8. All notices under this Lease Agreement shall be deemed to be properly served if sent by first class mail, postage prepaid, to the last known address furnished by the parties hereto. Until hereafter changed by written notice, said addresses shall be as follows:



CITY: City of Pocatello  
Water Superintendent  
P.O. Box 4169  
Pocatello, ID 83205

SANDHILL: General Sales Manager  
Sandhill Media Radio Group  
854 Lindsay Blvd.  
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 State Post Office.

9. No right or obligation of this Lease Agreement, nor right in the premises described herein, may be assigned, mortgaged, or subleased by Sandhill without prior written consent of the City.

10. This Lease Agreement between the parties is made subject to the findings and conditions contained in that City Council Decision, Exception to Permit Application Process dated March 3, 2011, attached hereto as Exhibit "A", and incorporated herein. This Lease Agreement shall be construed pursuant to the laws of the State of Idaho. The parties agree that no construction of this Lease Agreement shall be made in a court of competent jurisdiction against the interest of any party to the Lease Agreement on the basis that the party had primary responsibility for drafting the Lease Agreement.

11. Any individual or individuals executing this document on behalf of any limited liability company which is a party hereto, hereby acknowledge and represent that he, she or they have the power and authority to so bind the company, and that such authority was conferred by an act of the owners and managers of said company, unless the operating agreement of said company provides such authority to the person or persons executing this document on said

company's behalf. In the event that the party or parties executing this document on behalf of said company do not have authority to so bind the company for any cause or reason, then such person or persons shall be personally liable under the terms hereof.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed

by their authorized representatives the date and year first above written.

APPROVED BY LEGAL

Date 9/2/20 Atty B. SEC

CITY OF POCATELLO

Comments \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
BRIAN C. BLAD, Mayor

ATTEST:

\_\_\_\_\_  
RUTH NEWSOM, City Clerk

SANDHILL MEDIA GROUP, LLC

By *Jan Dugan*  
Title C.O.O.

STATE OF IDAHO            )  
  ss  
County of Bannock        )

On this \_\_\_ day of \_\_\_\_\_, 2020, before me, the undersigned, a Notary Public in and for the State, personally appeared Brian C. Blad and Ruth Newsom, known to me to be the Mayor and City Clerk, respectively, of the City of Pocatello, an Idaho municipal corporation, who executed the foregoing instrument on behalf of said municipal corporation, and acknowledged to me that such corporation executed the same.

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 \_\_\_\_\_  
Commission Expires \_\_\_\_\_

