

Debbie Kemp

From: Scott Hockins
Sent: Friday, March 19, 2021 8:28 AM
To: Debbie Kemp
Subject: Fw: 32 Waves - Invoicing

Hey Debbie,

I spoke with 32Waves directly on this cancellation, so this is the only written communication do discontinue the lease payments.

Thanks,
Scott Hockins
IT Business Operations
City of Grand Junction
970-244-1540 Office

From: Scott Hockins <scotth@gjcity.org>
Sent: Wednesday, April 1, 2020 12:35 PM
To: Danni Ferguson <dannif@gjcity.org>
Subject: 32 Waves - Invoicing

Hey Danni,

Will you please discontinue the invoicing to 32Waves for the stadium lease and cancel the last one if it is not yet paid?

Thanks,
Scott Hockins
IT Business Operations
City of Grand Junction
970-244-1540 Office

OPTION AND LEASE AGREEMENT
(BUILDING/ROOFTOP -- STADIUM)

This Agreement is made this 27 day of September, 2017, between the City of Grand Junction, with its principal offices located at 250 N. 5th Street, Grand Junction, 32 Waves LLC, with principal offices located at 750 Main Street, Grand Junction, Colorado (Lessee) (referred to collectively as the Parties).

Lessor is the owner of that certain building known as the Lincoln Park Stadium Building (Building) and real property located at 1240 Gunnison Avenue in the City of Grand Junction and County of Mesa Colorado (Property). Lessee desires to lease a portion of the Property, approximately 27 square feet of space on the roof of the Building (Rooftop Space) and approximately 5 square feet of space on the ground (Ground Space) for the installation, operation and maintenance of communications equipment; together with such additional space within the Building for the installation, operation and maintenance of wires, cables, conduits, and pipes (Cabling Space) running between the Ground Space and Rooftop space and to necessary electrical and telephone utility sources located within the Building or on the Property, and together with reasonable access rights over the Property to and from the nearest public-right-of-way and Ground Space, Rooftop Space and Cabling Space necessary to reasonably install, maintain and operate the equipment. The Rooftop Space, Ground Space and Cabling Space are referred to collectively herein as the Premises.

LEASE AGREEMENT
(BUILDING/ROOFTOP -- STADIUM)

This Agreement is entered into on this date: 9/27/17 by and between the City of Grand Junction (Lessor) with principal offices located at 250 N. 5th Street, Grand Junction, Colorado 81501, and 32Waves LLC (Lessee), with principal offices located at 750 Main Street, Grand Junction, Colorado (collectively, Parties).

In consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties agree as follows:

1. **Premises.** Lessor hereby leases to Lessee approximately 27 square feet of space on the roof of the Building (Rooftop Space) and approximately 5 square feet of space on the ground (Ground Space) for the installation, operation and maintenance of communications equipment; together with such additional space within the Building for the installation, operation and maintenance of wires, cables, conduits, and pipes (Cabling Space) running between the Ground Space and Rooftop space and to necessary electrical and telephone utility sources located within the Building or on the Property, and together with reasonable access rights over the Property to and from the nearest public-right-of-way and Ground Space, Rooftop Space and Cabling Space necessary to reasonably install, maintain and operate the equipment 24 hours per day, 7 days a week. The Rooftop Space, Ground Space and Cabling

Space are referred to collectively herein as the Premises and are shown on Exhibit 1 which is attached hereto and made part hereof. In the event there are not sufficient electric and telephone utility sources located within the Building or on the Property, Lessor agrees to grant Lessee or the local utility provider the right to install such utilities on, over and/or under the Property and through the Building necessary for Lessee to operate its communications facility, provided the location of such utilities shall be as reasonably designated by Lessor, and provided that installation and maintenance of such utilities shall be at Lessee's sole expense.

2. **Term and termination.** The initial term shall be five years. This lease may be renewed for up to four (4) additional five-year terms by mutual agreement of the Parties, with a rent increase of 10% over the preceding term. Lessor may decline to renew any term in its sole discretion by giving Lessee six months written notice of intent not to renew. Lessee may terminate at the end of the initial or any subsequent term by giving Lessor written notice of the intent to terminate at least six months prior to the end of the then current term. Lessor may terminate the lease for cause.

3. **Rent.** Rent shall be \$6,480 per year to be paid by Lessee in equal monthly installments on the first day of the month, in advance, to Lessor.

4. **Utilities.** Electricity use of approximately \$40 per month is included in the Rent

Lessee shall be permitted to install, maintain, and/or provide access to and use of, as necessary during any power interruption at the Premises a temporary power source, and all related equipment and appurtenances within the Premises, or elsewhere on the Property in such locations as reasonably approved by Lessor. Lessee shall have the right to install conduits connecting the temporary power source and related appurtenances to the Premises.

5. **Taxes.** Lessee shall be responsible for payment of all taxes, assessments or charges owed on the Property which result from Lessee's use of the Premises and installation, maintenance and operation of Lessee's improvements, including but not limited to any sales tax imposed on the rent, increase in real estate taxes at the Property, franchise or similar taxes imposed on the business of Lessee.

6. **Use of Premises.** Lessee shall use the Premises for the purpose of constructing, maintaining, repairing and operating a communications facility and for no other purpose(s). Lessee's activities on the Property shall not unreasonably interfere with Lessor's use of the Property as a public park and stadium, and shall not interfere with team, group, school, or community events held at any park, pool, athletic or stadium facility on the Property. Lessee shall not block or inhibit public access to the Property. All improvements, equipment, antennas, conduits, installed by Lessee shall be installed, maintained, repaired and removed at Lessee's expense. Lessee shall obtain all required land use permits and all other permits required for Lessee's, equipment, services, improvements, antennas, business or use of the Premises. Lessor will cooperate with Lessee in obtaining required land use approvals.

7. **Maintenance.** During the term, Lessee will maintain its equipment, facilities, improvements, conduits, antennas, cabinets, utility systems serving Lessee's equipment, and all

its other installations on the Premises in good condition. Lessor shall be responsible for maintaining structural elements of the Building and Building foundations, exterior walls, interior bearing walls, fire sprinklers, parking lots, walkways, parkways, driveways, landscaping, fences, signs and other utility systems serving the Building.

Upon the request of Lessor, Lessee will, at its sole expense, relocate its equipment on a temporary basis to another location on the Property to allow Lessor to perform maintenance, repair or similar work on the Property or the Building. Lessor will give reasonable notice to Lessee of the need for such temporary relocation. The temporary location shall be similar to Lessee's existing location in size and compatibility for Lessee's use. Lessee shall return to its original location promptly upon completion of Lessor's work. Lessor will notify Lessee of completion.

8. **Representations.** Lessor makes no representations, assurances or warranties to Lessee regarding the fitness of the Building or Property for any purpose. Lessee shall be responsible for ascertaining structural and other fitness of the Premises for its purpose(s). Lessor represents that it is lawfully possessed of the Property and has the right to enter into this lease with Lessee. Lessee represents by signing this Agreement that it has determined that the building and rooftop can safely support the structures, equipment and antenna(s) to be installed by the Lessee and represents and warrants that installations will not harm the building or rooftop.

9. **Indemnification.** Lessee shall indemnify and hold harmless the Lessor against any claim of liability or loss resulting or arising from Lessee's equipment, installations, facilities, improvements, activities, and/or use of the Property. This requirement shall survive any termination or expiration of this Agreement.

10. **Insurance.** Lessor will maintain insurance on the Property and the Building. Lessee understands and acknowledges that Lessor is self-insured as a governmental entity and participates in a local government insurance pool for coverages over certain amounts. Lessee will not be named as an additional insured on any City policy of insurance.

Lessee will maintain at its own cost commercial general liability insurance with limits not less than \$1,000,000 for injury to or death of one or more persons in any one occurrence and \$500,000 for damage or destruction to property in any one occurrence, commercial auto liability insurance on all automobiles it owns or uses on the Property with a minimum combined limit of not less than \$1,000,000 per occurrence, and workers' compensation insurance providing the statutory benefits required by the State of Colorado and not less than \$1,000,000 of employers liability coverage. Lessee will include the Lessor as an additional insured on the CGL and Auto policies.

11. **Waivers.** The City does not waive any right of action for fire or other damage to the Property or to the Building caused by or related to Lessee's equipment, installations, facilities, improvements, activities, and/or use of the Property. Nothing in this Agreement shall be deemed or construed to constitute a waiver of Lessor's governmental or sovereign immunity under any law.

12. **Notices and payments.** Notices and payments hereunder shall be given to the Parties as follows:

TO LESSOR: Purchasing Manager
 City of Grand Junction
 250 N. 5th St
 Grand Junction, Colorado 81501

TO LESSEE: Colter Lovette
 32Waves, LLC
 200 Grand Ave
 Grand Junction, CO 81502

All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addresses by the end of the next business day following the courier's receipt from the sender.

13. **Limitation of liability.** Except for indemnification, neither Party shall be liable to the other, or to any of their respective agents, representatives, employees or officers, for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

14. **Termination.** Notwithstanding anything to the contrary contained herein, provided Lessee is not in default hereunder beyond applicable notice and cure periods, Lessee shall have the right to terminate this Agreement upon the annual anniversary of the Commencement Date provided that three months prior notice is given to Lessor. Lessor may terminate this Lease if Lessee is in default hereunder with notice in accordance with Paragraph 24 below (Default).

15. **Interference.** Lessee 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 Lessor or other lessees of the property which existed on the Property prior to the date this Agreement is executed by the Parties. In the event any after-installed Lessee's equipment causes such interference, and after Lessor has notified Lessee in writing of such interference, Lessee will take all commercially reasonable steps necessary to correct and eliminate the interference, including but not limited to, at Lessee's option, powering down such equipment and later powering up such equipment for intermittent testing. In no event will Lessor be entitled to terminate this agreement or relocate the equipment as long as Lessee is making a good faith effort to remedy the interference issue. Lessor agrees that Lessor and/or any other tenants of the Property who currently have or in the future take possession of the Property will be permitted to install only such equipment that is of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to the then existing equipment of Lessee. The Parties acknowledge that there will not be an adequate remedy at law for noncompliance with the provision of this Paragraph and

therefore, either Party shall have the right to equitable remedies, such as, without limitation, injunction relief and specific performance.

16. **Removal at End of Term.** Lessee shall, upon expiration of the Term, or within sixty (60) days after any earlier termination of the Agreement, remove its equipment, conduits, fixtures and all personal property and restore the Premises to its original condition, reasonable wear and tear and causality damage excepted. Lessor agrees and acknowledges that all of the equipment, conduits, fixtures and personal property of Lessee shall remain the personal property of Lessee and Lessee shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and attachments to real property under applicable law. If such time for removal causes Lessee to remain on the Premises after termination of this Agreement, Lessee shall pay rent at the then existing monthly rate or on the existing monthly pro-rata basis if based upon a longer payment term, until such time as the removal of the building, antenna structure, fixtures and all personal property are completed. Lessee's obligations pursuant to this Paragraph shall survive any termination or expiration of this agreement.

17. **Holdover.** Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration of that removal period set forth in Paragraph 16 herein, unless the Parties are negotiating a new lease or lease extension in good faith. In the event of Lessee holdover not authorized by this Agreement, the rent then in effect payable from and after the time of the expiration or earlier removal period set forth in Paragraph 16 shall be equal to the rent applicable during the month immediately preceding such expiration or earlier termination.

18. **Title.** Lessor represents and warrants to Lessee as of the execution date of this Agreement, and covenants during the Term that Lessor is seized of good and sufficient title and interest to the Property and has full authority to enter into and execute this Agreement. Lessor further covenants during the Term that there are no liens, judgments or impediments of title on the Property, or affecting Lessor's title to the same and that there are no covenants, easements or restrictions which prevent or adversely affect the use or occupancy of the Premises by Lessee as set forth above.

19. **Integration.** It is agreed and understood that this Agreement contains all agreements, promises and understanding between Lessor and Lessee and that no verbal or oral agreements, promises or understandings shall be binding upon either Lessor or Lessee in any dispute, controversy or preceding law, and any addition, variation, or modification to this Agreement shall be void and ineffective unless made in writing signed by the Parties. In the event any provision of the Agreement is found to be invalid or unenforceable, such finding shall not affect the validity and enforceability of the remaining provisions of this Agreement. The failure of either Party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights under the Agreement shall not waive such rights and such Party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, in law or equity.

20. **Governing Law.** This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the Laws of the State of Colorado, with venue in Mesa County.

21. **Assignment.** This Agreement may be sold, assigned or transferred by the Lessee without any approval or consent of the Lessor to the Lessee's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of Lessee's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition or other business reorganization. As to other parties, this Agreement may not be sold, assigned or transferred without the written consent of the Lessor, which such consent will not be unreasonably withheld, delayed or conditioned. No change of stock, ownership, partnership interest or control of Lessee or transfer upon partnership or corporate dissolution of Lessee shall constitute an assignment hereunder.

22. **Successors.** This Agreement shall extend to and bind the heirs, personal representative, successors and assigns and the Parties hereto.

23. **Recording.** Lessor agrees to execute a Memorandum of this Agreement which Lessee may record with the appropriate recording officer if Lessee so desires. The date set forth in the Memorandum of Lease is for recording purposes only and bears no reference to commencement of either Term or rent payments.

24. **Default.** In the event there is a breach by Lessee with respect to any of the provisions of this Agreement or its obligations under it, including payment for 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 Paragraph.

25. **Remedies.** Upon a default, the non-defaulting Party may at its option (but without obligation to do so), perform the defaulting Party's duty or obligation on the defaulting Party's behalf, including but not limited to the obtaining of reasonably required insurance policies. The costs and expense of any such performance by the non-defaulting Party shall be due and payable by the defaulting Party upon invoice therefor. In the event of default by either Party with respect to a material provision of this Agreement, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such default, the non-defaulting Party may terminate the Agreement and/or pursue any remedy now or hereafter available to the non-defaulting Party under the Laws of Colorado provided, however, Lessor shall use reasonable effort to mitigate its damages in connection with a default by Lessee.

26. **Casualty.** In the event of damage by fire or other casualty to the Building or Premises that cannot reasonably be expected to be repaired within forty-five (45) days following

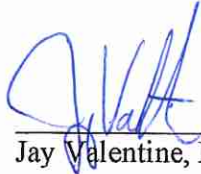
same or, if the Property is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt Lessee's operations at the Premises for more than forty-five (45) days, then Lessee may, at any time following such fire or other casualty, provided Lessor has not completed the restoration required to permit the Lessee to resume its operation at the Premises, terminate this Agreement upon fifteen (15) days prior written notice to Lessor. Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the Parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under this Agreement. Notwithstanding the foregoing, the rent shall abate during the period of repair following such fire or other casualty in proportion to the degree to which Lessee's use of the Premises is impaired.

27. **Submission of Agreement/Partial Invalidity/Authority.** The submission of this Agreement for examination does not constitute an offer to lease the Premises and this Agreement becomes effective only upon the full execution of this Agreement by the Parties. If any provision herein is invalid, it shall be considered deleted from this Agreement and shall not invalidate the remaining provisions of this Agreement. Each of the Parties hereto warrants to the other that the person or persons executing this Agreement on behalf of such Party has the full right, power and authority to enter into and execute this Agreement on such Party's behalf and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this Agreement.

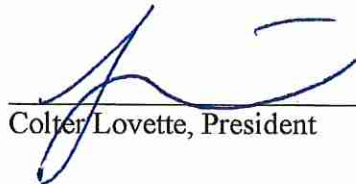
IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

Lessor: City of Grand Junction

Lessee:



Jay Valentine, Deputy Finance Director



Colter Lovette, President

Date: 9/27/17

Date: 9/25/17