

CITY COUNCIL STUDY SESSION

TO: Mayor and City Council
FROM: Mari E. Macomber, City Manager
SESSION DATE: November 5, 2012
TIME: 4:30 p.m.
PLACE: Second Floor Conference Room

AGENDA:

- **UTILITY FUND UPDATE**
- **TOWER LAND LEASE**
- **REVIEW NEWSLETTER**
- **REVIEW COUNCIL AGENDA**

UTILITY FUND UPDATE

On Monday we will be discussing several items with the Council as they relate to the Utility Fund.

Performance Contracting – Cost Sharing

The first item concerns the Performance Contracting program. One of the issues that we discussed with Schneider and the Council raised concerned the pricing of the project. We asked Schneider about the possibility of the City sharing in any savings that they might receive once they bid out the services.

Schneider Electric noted that they offer performance contracts as a guaranteed fixed price contract, and as a result will not issue any change orders to the contract, unless initiated by the client, therefore the client will not pay more than the agreed upon project price. Through this type of contract, Schneider Electric bears the risk for ensuring the guaranteed fixed price is accurate, and would pay for any overages out of our pocket.

Schneider has noted that they would be willing to offer an alternative to our standard guaranteed fixed price contract. If the City chooses, we are willing to share the risk of the contract price with the City. In this scenario, if the aggregate of all actual subcontractor estimates is less than we have priced, we will refund the price difference to the City. Equally, if the aggregate of all actual subcontractor estimates is more than we have priced, the City will agree to pay Schneider Electric for the price difference. This would mean that the City would share in the savings if there were any and in the additional costs, again if there were any.

We would certainly welcome sharing in the savings, but knowing the price is the price going into the contract is much more appealing, unless the Council wishes to take the risk.

Units of Measure – Cubic Feet versus Gallons

Since we are in the process of replacing the majority of meters, the question came up concerning whether or not it would make sense to change from our current unit of measure – cubic feet to readings in gallons. The only reason to make this sort of change would be to improve the customers understanding of their actual water usage. People understand gallons; they don't necessarily understand cubic feet.

We have evaluated this idea further and suggest that we not make the change. We have several hundred new meters that will not be replaced through the Schneider project leaving us with the future responsibility of replacing these to gallon meters. If this issue continues to be experienced what we could do is see if there is a way when we do the actual billing to show the conversion on the bill. This would require programming on the part of our utility billing software company and would result in an additional cost, but it is a simpler option to consider should it be determined that we would want to change.

Water Meter Relocation

In 2011 the City Council adopted a dangerous animal and restricted animal ordinance. One of the issues that were raised during the public meetings and Council discussions was the location of the water meters in relation to dogs tie to or near the meters. At the time, the Council discussed the possible need of requiring the property owners to relocate the meters at their own expense. With the installation of these new meters, there will be limited requirements to go near the meter (maintenance issues). This will help to reduce this concern.

Accurate Readings

Today, we get our water consumption information by reading the radio reads or remote readers found outside of the homes and businesses. Sometimes, these components stop reading while the meter is still running and registering readings. This has caused some problems over the years. By the time, we determine that the remote reader may have stopped working and are able to get inside the property to read the meter, months may have elapsed. In many instances we find that the property owner used a lot more water than what they were billed and catch up on that usage through an adjusted bill. With the new system, we will no longer have the remote readers and the readings will come from the meters themselves.

Wastewater Treatment Plant Update

John Buckwalter attended a meeting last week with representatives from the Missouri Department of Natural Resources and our consulting engineer HDR. As a reminder, the City's wastewater treatment plant operating permit expired in 2011 and we have been working with DNR and our consultant to come up with a plan to insure compliance with new state and federal standards. This most recent meeting resulted in a decision to direct the City to move toward obtaining a permit for plant modifications. The operating

permit would then be drafted as part of the construction permit. There is a request to authorize the City Manager to apply for State Revolving Loan Funds. This has been placed on the agenda to get the City's wastewater project in the process for possible funding through this low interest loan program. As part of that process, the City would need to go to the voters to ask for support of a bond issue (revenue or general obligation).

John Buckwalter will be giving the Council an update on where things stand with the facility plan and proposed improvements to our wastewater treatment process.

Utility Rates

There has been a lot of talk about rate increases since we began the discussions on the future of our wastewater treatment plant and performance contracting. We want to visit with the Council about the utility rates.

At this point, staff wishes to hold off on the Council making any determinations regarding future rate increases. HDR will be attending the December 3 City Council Study Session to present the completed facility plan. The Council will also be reviewing the proposed utility fund budget for 2013 on November 19. These discussions will help the Council on determine future rate increases for both water and sewer.

There is a staff report from John Buckwalter on the utility rates. Included with this report is a summary page showing the rate increase history for both water and sewer over the last 29 years.

Ordinance Modifications

Included with this Study Session Report is a staff report from Finance Director Katie Myers outlining several proposed changes to the utility ordinance that we wish to discuss with the Council.

The proposed changes cover: Security Deposits; Rendering and Payment of Bills; Termination of Service; and Leak Adjustments. These are issues that continue to come up over and over again. We did discuss leak adjustments with the Council and the idea of eliminating them completely. The Council asked for specific history on the adjustments. We found that our records were not sufficient for us to identify when an adjustment was made to a bill if it was for a leak, a misread, or some other error. It would be ideal to eliminate the leak adjustment provision, but in lieu of that we have a different proposal for the Council to consider.

Included with this packet is the proposed ordinance.

Finally, another area that we would want to explore, if the Council were agreeable is language within the utility ordinance that states if a person is delinquent in other payments owed to the City that the water service could be terminated until the outstanding debt was satisfied either with a payment agreement or actual payment of

the debt. We are not sure if this would be legal and would want to consult with the City's attorney on the matter.

Recommendation: The Council will need to give staff direction on the proposed utility ordinance changes, and if the Council disagrees with the recommendations concerning the performance contracting or other recommendations noted above, will need to give direction to staff on those items as well.

TOWER LAND LEASE

The City has been approached by a telecommunications company to consider leasing city-owned land behind Kellwood for the placement of a cell tower. Included with this Study Session Report is a copy of the proposed lease. This lease has been received by John Slavin who has outlined several issues that would need to be addressed before a final document would be presented to the Council.

However, before too much work is done on the lease, it is important to know whether or not the City Council is interested in this sort of lease. Staff has already reviewed the area proposed for leasing and has determined that if all terms can be worked out that there would be no operational issues affecting the City.

Recommendation: Give the go ahead to work on revisions to the lease to address the concerns outlined by City Attorney John Slavin.

NEWSLETTER REVIEW

REVIEW COUNCIL AGENDA

Attachments

- Staff Report John Buckwalter WWTP
- Staff Report John Buckwalter Utility Rates
- Utility Rate History
- Staff Report Katie Myers Utility Ordinance Revisions
- Ordinance with Revisions included
- Map of proposed leased property
- Draft Land Lease
- City Attorney Comments on Land Lease

KIRKSVILLE CITY COUNCIL STUDY SESSION ATTACHMENT

SUBJECT: Wastewater Treatment Plant Progress

STUDY SESSION MEETING DATE: November 5, 2012

CITY DEPARTMENT: Public Works

PREPARED BY: John R. Buckwalter, PE, Public Works Director

The City's WWTP operating permit expired in February, 2011. A permit renewal was submitted to DNR in July 2010, 180 days prior to the expiration of the permit. The EPA released the final TMDL for Bear Creek on December 23, 2010. The City's permit renewal has been under study or on hold at DNR since the TMDL draft was released in the fall of 2010. The pollutant load limits established by the TMDL are much less than the expired permit limits, less than technically feasible for some pollutants, and not addressed by any MoDNR state-wide effluent limits or guidelines.

In March 2011 the City engaged an engineering team headed by HDR Engineering Inc. to develop a facility plan for the WWTP and to follow that facility plan with permitting and design of required plant improvements. The original timeline would have had the facility plan completed by March, 2012 and a new permit in place by June or July. HDR is under contract to complete the Facility Plan and assist in obtaining a new NPDES permit. During sequential meetings with DNR staff, it was determined that a TMDL implementation plan, and Antidegradation analysis would be completed, and permit limits, hopefully based on state-wide effluent limits established by DNR would be negotiated.

The TMDL implementation plan was submitted to DNR on July 20, 2012. The Facility Plan has been drafted, and is waiting DNR input and permit limits for completion, and has been available for review by City staff since late August. On October 12, 2012 the DNR distributed a draft water quality review (WQR) "For the Protection of Water Quality and Determination of Effluent Limits for Discharge to Bear Creek by Kirksville Wastewater Treatment Plant". The email transmitting the WQR recommended that the City submit an operating permit modification prior to submitting a construction permit application. This is not what had been agreed with DNR leadership previously. The WQR did not include final effluent limits.

A meeting with DNR, the City and our consultant team was held at 10:00 am on Tuesday October 23 at Jefferson City. A pre-meeting between the City and our consultants was held in Columbia at Geosyntec's office at 8:00 am. Refatt Mefrakis, Chief of Permits and Engineering, Water Protection Program, MoDNR, recommended that rather than continuing with the permit renewal process, the City submit an application for a construction permit for the plant modifications. The operating permit would then be drafted as part of the construction permit. Instead of including schedules in a permit renewal, we could draft an operating permit for the new facility that would not

include explicit schedules. He indicated that operating permits issued for new construction do not include schedules as the final permit limits are meant to be effective upon construction. He also suggested including the proposed permit limits as the final limits thereby improving water quality, while recognizing the TMDL WLAs in the permit as longer-term targets. He also suggested including nutrient limits to help address potential concerns from EPA. Other DNR staff noted this permit would not actually have to be issued and that the final permit could change after construction. As EPA would have 30 days to respond to the public noticing of this permit, this option would provide some resolution for the City. HDR Engineering is currently drafting a construction permit application, to be submitted by the City. This permit will be submitted by November 15th.

Time is becoming a serious factor. If we want to use SRF monies for WWTP improvements in 2013 or even 2014, we must get the application submitted by November 15th. That means the facility plan must be complete by the 15th. Council will need to approve submission of the SRF Loan application at its November 5th meeting.

A full review of the TMDL Implementation Plan, Water Quality Review, and Facility Plan will be presented to Council by staff and HDR engineers on December 5, 2012.

In parallel action, the City's projects for collection system improvements, totaling over \$1.4 Million, were moved to the SRF fundable list. During early discussions with DNR they noted that improvements in the collection system should have a high priority. Gary Beck, with GBA has reviewed our submittal and has drafted a design contract and schedule for the collection projects. HDR believes the City should continue to work with GBA on collection system projects, and will integrate their work into the overall facility plan and plant sizing calculations, and construction schedule if they overlap. GBA's schedule would have the project bid in July 2013, with construction from September 2013 thru April 2014.

On October 16th Ed Ieans, City Engineer, Jack Schuster, Deputy Public Works Director, Duane Covington, WWTP Supervisor, and I met with Pat Young of HDR to discuss the next steps in the planning process, and to discuss immediate issues at the plant. Current major issues at the plant are the digesters, the secondary clarifier drive, and the bar screen. The secondary digester is not being used, the floating roof is immobile, and the digester is full of sludge and water. The boiler and the primary digester gas generation system are failing, and major investments (\$80,000 or more) are required to do any more than just get the boiler running. The bar screen is on the verge of failure, and estimates range from \$ 52,665 to rebuild it with OEM equipment to \$90,000 to replace it with a new but similar unit. The secondary clarifier drive has been ordered, and hopefully will be installed before the end of December.

The plant improvements really have three major segments: Headworks and flow control, biological treatment, and solids handling. The bar screen is part of the headworks. If we go with a screen after the lift pumps, the bar screen could be used in the new headworks. If we want the screen before the pumps, which is the operational

preference, the work on the bar screen will be lost. The headworks can be designed and built ahead of the rest of the plant if necessary. The plant improvements include a major change in solids (sludge) handling. The closed digesters would be converted from anaerobic process to open aerobic digesters. The gas capture goes away. The sludge does not have to be heated in an aerobic process. A new furnace would be installed in the plant, eliminating the need for the boiler entirely. The conversion of the digesters could take place at any time in the improvement process, at a cost of about \$1.5 million.

HDR has prepared a detailed schedule for plant design and permitting of the new plant, as well as a proposal for design phase services. The design could be completed by May 2013, and ready for DNR and EPA review and public comment. That could take 90 days or more. The estimated construction cost of the minimum required improvements remains \$18 million. We would not plan on turning earth for any major improvements at the plant until 2014. These details will be discussed with Council on December 5.

KIRKSVILLE CITY COUNCIL STUDY SESSION ATTACHMENT

SUBJECT: Utility Rates, 2013, Preliminary Discussion

STUDY SESSION MEETING DATE: November 5, 2012

CITY DEPARTMENT: Public Works

PREPARED BY: John R. Buckwalter, PE, Public Works Director

As noted in 2011, the City reviews the user charge system for utilities on an annual basis (Sec.25-60.4 of the Municipal Code). This review is normally done in conjunction with the annual budget preparation and review. In order to participate in the State Revolving Loan Fund (SRF) the user charges must be set at a level which will:

- a. Pay the costs of the operation and maintenance of the systems.
- b. Pay the principal and interest on the SRF bonds as they become due
- c. Ensure that net operating revenues are equal to or greater than 110% of the annual debt service,
- d. Provide sufficient reserves to pay debt service and to ensure protection and integrity of the systems.

The City has adjusted rates to meet revenue requirements as outlined in the attached table.

The 2012 rate adjustment was a \$1.00 per month increase in the connection charge for both water and sewer, and a 12% increase in the volume charge.

The 2012 rate review is currently underway by staff. The guidance provided was to have no increase in water rates as a result of the recently approved Performance Contract for meter replacement. Infrastructure and operating expenses are being revised to avoid any increase in water rates in 2013 if at all possible.

The TMDL Implementation Plan and the draft Facility Plan for the Wastewater Treatment Plant recommend an increase in the base charge to \$9.50 per month and in the volume charge to \$3.47 for 2013, or a 12.4% increase. An average customer would see the sewer portion of their bill increase from \$29.04 per month to \$32.64. The schedule for plant improvements has slipped almost 9 months. Staff is reviewing revised debt service schedules to determine if a portion of the rate increase can be deferred until 2014.

Enclosure:

City of Kirksville Rate History

City of Kirksville Rate History from 1983 to 2012 (29 Years)

Year	Water Fixed	Minimum Billing	Water by Tier			Sewer Fixed	Sewer
	Rate		1	2	3	Rate	
	per month		cf	per ccf			per month
1983	none	300	\$1.83	\$1.54	\$1.28	none	\$0.40
1989	none	300	\$1.83	\$1.54	\$1.28	none	\$1.30
1993	none	300	\$1.83	\$1.54	\$1.28	none	\$1.30
1997	none	300	\$1.83	\$1.54	\$1.28	none	\$1.63
1998	none	300	\$1.83	\$1.54	\$1.28	none	\$1.79
2003	none	300	\$1.83	\$1.54	\$1.28	none	\$1.98
2004	none	300	\$1.99	\$1.70	\$1.43	none	\$2.11
2005	none	300	\$2.10	\$1.81	\$1.54	none	\$2.24
2006	none	300	\$2.21	\$1.92	\$1.65	none	\$2.37
2007	none	300	\$2.32	\$2.03	\$1.76	none	\$2.50
2008	\$5.00	100	\$2.32	\$2.03	\$1.87	\$5.00	\$2.50
2009	\$5.00	100	\$2.32	\$2.03	\$1.87	\$5.00	\$2.50
2010	\$7.50	100	\$2.32	\$2.03	\$1.87	\$7.50	\$2.50
2011	\$7.50	200	\$2.55	\$2.23	\$2.06	\$7.50	\$2.75
2012	\$8.50	200	\$2.85	\$2.50	\$2.31	\$8.50	\$3.08

KIRKSVILLE CITY COUNCIL STUDY SESSION ATTACHMENT

SUBJECT: Water Customer Operations Ordinance Chapter 25

STUDY SESSION MEETING DATE: November 5, 2012

CITY DEPARTMENT: Finance

PREPARED BY: Katie Myers, Finance Director

I am requesting a change in the Water Customer Operations Ordinance chapter 25 Article 1 Division 5 for the following sections:

Sec. 25-51. – Security Deposit

- ✓ (1) – Change the \$60 minimum deposit requirement to \$80. Due to the increase in the minimum water and trash service bill, the current \$60 is not equivalent to two months service. The average minimum bill is \$42.61.
- ✓ (a) (2) - Remove the surety bond options for deposits greater than \$1,000. We do not have any bonds on file and allowing this option would create additional staff support for proper record keeping.
- ✓ (b) – Change no delinquent bills during the 24 time period to less than four (4) delinquent payments within the last twelve (12) months. The current wording penalizes current customers that have had occasional delinquent payments to require a new deposit if they are moving or adding a new account.
- ✓ (d) – Remove within a period of twenty-four (24) consecutive months immediately preceding the date of application. The increased deposit requirement should apply to anyone that has service, not just to the newer accounts.
- ✓ (d) – Remove “or a customer’s bill has become delinquent four (4) or more times within twelve (12) consecutive months, or, if a similar pattern of delinquency has been noted among other accounts of the customer”. This has not been monitored due to the city’s inability to get this information efficiently. The customer is already paying a penalty for late payments.
- ✓ (d) (2) – Remove this paragraph. Late payments will not be monitored if eliminated from the above paragraph. Requiring a separate bill for an increased deposit creates additional staff support to bill and monitor 500 to 1,000 accounts each month. Increased deposits will only be due upon disconnection of service which requires the deposit to be paid prior to reconnection.
- ✓ (f) – Add the word “deposit” history. This will allow us to quickly reference a customer’s old deposit record on file rather than determining their usage history. Usage history may not be accessible if the service was prior to 2007. The previous deposit will tell us if they had good payment history with the city.

- ✓ (f) – Remove “until such time that the city’s utility bill for services is delinquent three (3) times in succession”. This has not been monitored due to the city’s inability to get this information efficiently. The customer is already paying a penalty for late payments.

Sec. 25-52. – Rendering and payment of bills

- ✓ (g) – Add the following wording:

“If a bill has been rendered for four (4) or more consecutive months using an estimated consumption due to the city’s inability to correct the meter and the actual reading results in the actual bill to be four (4) times more than the estimated bill, the finance director is authorized to accept payment in equal installments of up to 3 months. A payment plan will not be offered to customers that failed to provide timely access to the meter.”

Sec. 25-54. – Termination of service

- ✓ (c) – Change “for a period of six (6) months or less” to “for a period between five (5) days to six (6) months”. This allows customers who mistakenly disconnect their water to not be charged the \$75 convenience fee if they reconnect within five days of being disconnected.

Sec. 25-55. – Adjustments for leaks

- ✓ Change “excessively high and” to “at least four (4) times the average bill, not including trash services, as calculated by the finance director”.

The intent of the leak adjustment was to accommodate customers that received an “excessively high” bill. This terminology isn’t quantitative and excessive to the customer is not necessarily excessive to the finance director. Adding the quantitative wording allows the city to objectively give leak adjustments. The four times assumes the customer with a minimum bill would be able to receive a minimum \$47 leak adjustment.

- ✓ Change “when the customer can show a paid detailed receipt...” to “A paid detailed receipt for a repair made to remedy the leak must be submitted to the finance department. The vendor on the detailed receipt cannot be the same person or business listed on the account who is requesting the leak adjustment. The leak adjustment will be applied to the customer account when the finance director determines that the leak has been properly repaired based on consumption readings.”

The leak adjustments in the past were given if a property owner submitted an invoice from their own business. The expectation is that the receipt should either be from a plumber or for a part from a hardware store. This wording clarifies that the property owner, even when they are a plumber, cannot submit a receipt showing that a repair was done by their business. If a property management fixes their own property, they would need to submit a receipt from a hardware store showing the part that was purchased for the repair, not an invoice from the property management. Most leak adjustments are for running toilets, faucets, or unknowns. It is difficult to determine if high consumption is from a leak or normal high usage. Leak adjustments for October 2012 totaled \$1,035.

Sec. 25-50. - Customer contract for service.

- (a) No service shall be provided to any customer unless such customer shall have first made application for service and entered into a contract for service upon forms provided by the finance director. All applications for service shall be made in the true name of the customer actually to receive and use the service, unless otherwise permitted by the finance director, and the use of a fictitious name by the prospective customer shall be grounds for the finance director to refuse or terminate service. Presentation of valid customer identification shall be required to ensure accuracy of customer account information. A separate application and customer contract shall be required for each location for which service is desired. Any change in the identity of the customer of record (including the change of ownership of more than fifty (50) percent of the stock of a corporation) for the customer's premises requires a new application and customer contract. The finance director may discontinue service until the new application and customer contract have been executed.
- (b) Any person who obtains service for the benefit of themselves and/or for others without executing the required customer service contract shall be liable for all charges for services rendered and be subject to the provisions of subsection 25-100(d). In addition, any water usage at an address during the time when there is no active customer account will subject the property owner to an illegal turn on fee of fifty dollars (\$50.00) for each instance and for each address turned on without prior execution of a customer service contract. This turn on fee shall be assessed on each party responsible for this violation, including, but not limited to the property owner and/or parties acting on his behalf. This fee can be charged to any active service account of the above named responsible parties.
- (c) The customer shall be liable for all charges for service rendered to the customer's premises until the customer provides written notice to the finance director that the customer wishes to terminate service, or, until otherwise terminated by the city.
- (d) Service will not be allowed to continue in a deceased customer's name. The surviving spouse, who was a member of the decedent's household, will be allowed to put the service in his or her name upon the execution of a customer service contract without the requirement of a deposit for an account in good standing. The execution of a new customer service contract and deposit, as required under sections 25-50 and 25-51, will be required for all others taking over the decedent's service.
- (e) A property owner may execute a landlord responsibility contract under which the landlord may take over responsibility of payment of an account when there is no other customer

signed up for that service address. The landlord responsibility contract is only available to a property owner who has established twenty-four (24) consecutive months of service immediately preceding the effective date of the contract with no more than three (3) delinquent bills nor been disconnected for nonpayment of any account during the time period. Service may be terminated on any customer at a service address under a landlord responsibility contract as provided under section 25-52. The property owner shall be responsible for payment of his tenant's unpaid account prior to any establishment of future service at that address.

- (f) An agent representing a property owner may establish a service continuation agreement with the city where the service at an address as provided to the city will not be disconnected until either a new customer service contract is executed for that address or the service continuation agreement is cancelled by either the agent or the city. No security deposit shall be required of the agent. The agent and property owner represented shall be jointly and severally liable to pay for the services rendered to the premises and failure to pay for such services will result in their disconnection; transfer of outstanding charges to another account of the agent or property owner; and shall result in the agent being ineligible to further participate in the service continuation program. An annual one hundred dollar (\$100.00) nonrefundable administrative fee will be required of each agent prior to participation in the service continuation program.
- (g) All customers shall be subject to the provisions of this article, together with all applicable rules and regulations heretofore or hereafter adopted or promulgated by the city.

(Ord. No. 10911, § 2, 4-2-90; Ord. No. 11378, § 5, 3-15-99; Ord. No. 11848, § 1, 11-17-2008)

Sec. 25-51. - Security deposit.

- (a) A deposit shall be required for all permanent or temporary service connections to the city's public water supply system as security for the payment of bills, except when waived under the conditions hereinafter provided. The cash deposit shall be required prior to provision of service applicable to both residential and commercial accounts. If the city shall connect water service for reasons of its own convenience prior to payment of the cash deposit, and thereafter if the customer shall fail to pay the cash deposit within the time specified by the city, the service may be disconnected. Deposits shall be made according to the schedule as follows:
 - (1) The deposit required for service shall be eighty dollars (\$80.00), or an amount equal to twice the anticipated monthly utility bill, or an amount based on the applicant's previous deposit history, as estimated by the finance director, whichever is greater.
- (b) If an applicant for service shall have previously established a satisfactory record payment of city utility services for a period of twenty-four (24) consecutive months immediately

preceding the date of the customer service contract with less than four (4) delinquent payments within the last twelve (12) months of service, , then the requirement of an initial deposit shall be waived. If an owner of property applies for a service connection, and is not going to occupy the premises to be served thereby, and has executed a lessor responsibility contract with respect to the premises, then the requirement of an initial deposit shall be waived. This waiver shall only be available for premises used as one-or two-family dwellings.

- (c) After a customer has established a satisfactory record of payment of a particular account for a period of twenty-four (24) consecutive months, with no delinquent bills during the time period, then the initial deposit for the account, if any, shall be applied to the account. Deposits on file effective with the date of this section will be subject to the requirements of this section. The customer shall be eligible for a refund of deposit upon termination of service, provided all bills are paid to the date of termination. The finance director will deduct the amount of any unpaid bill from the deposit and credit the account of the customer in such amount. The customer shall be given an automatic refund of any balance of deposit remaining mailed to last known address. Unclaimed refunds will be retained by the city for a period of three (3) years and then will be turned over to the State of Missouri. The city has the right to apply any refund to any outstanding bill owed to the city in the customer's name.
- (d) Reinstatement of deposit; increase of deposit: If, a customer's service has been disconnected for nonpayment of a bill, then the following shall apply:
 - (1) A deposit shall be required, regardless of whether previously waived or refunded. Such deposit shall be equal to three (3) times the anticipated monthly bill, including anticipated penalty fees, as estimated by the finance director, or one hundred eighty dollars (\$180.00), whichever is greater.
 - (2) Anyone who shall violate [section 25-90\(d\)](#), [25-90\(e\)](#) or [25-90\(f\)](#) of this article shall be required to pay the city an increased customer deposit equal to the estimated loss of water over the period of time of the violation or two hundred fifty dollars (\$250.00) whichever is greater.
- (e) No deposit shall be required for industrial customers or governmental agencies.
- (f) If an applicant for service is not the owner of the property, the deposit will be either the minimum of one hundred eighty dollars (\$180.00) or an amount based on the applicant's deposit history under subsection 25-51(a), whichever is greater. The deposit will be held by the city until either the applicant/customer is no longer a customer of the city utility services or becomes the owner of the property served and subject to subsection 25-51(c).

For those tenants having a deposit on file as of January 1, 2009 which is less than one hundred eighty dollars (\$180.00), no additional deposit will be required. .

(Ord. No. 10911, § 2, 4-2-90; Ord. No. 11378, § 6, 3-15-99; Ord. No. 11615, § 1, 4-7-2003; Ord. No. 11642, § 10, 11-17-2003; Ord. No. 11848, § 1, 11-17-2008; Ord. No. 11850, § 1, 12-1-2008)

Sec. 25-52. - Rendering and payment of bills.

- (a) The finance director shall have the right to read meters and render bills on either a monthly or bimonthly basis. A service bill may include any of the following:
 - (1) Water charges at the applicable rate;
 - (2) Sewer charges at the applicable rate;
 - (3) Any applicable state or local taxes;
 - (4) Trash service charges on a pro-rata basis at the applicable rate for the duration of time that the city is responsible for such billing.
 - (5) Clean-up fee assessed as necessary at the applicable rate.
 - (6) Any other cost, charge, or deposit provided for in this article.
- (b) Bills and notices to any customer shall be deemed to have been delivered when deposited in the United States mail, postage prepaid, addressed to the last known address of the customer as shown on records of the finance director.
- (c) Payments shall be made at the Finance Department, City Hall, 201 South Franklin, Kirksville, Missouri 63501, or any authorized agency or location. All bills will be due and payable upon receipt. If any bill is not paid on or before the twenty-first day following the billing date then the bill shall become delinquent and a ten (10) percent penalty will be assessed on the outstanding balance. All customers will be subject to this ten (10) percent penalty.
- (d) The occupant and user of the premises receiving water service and the owner of the premises shall be jointly and severally liable to pay for the services rendered to the premises. A minimum charge shall be paid whether the quantity of water is used or not. Credit shall not be allowed for any cause unless discontinuance of service has been requested by the customer in writing and service has not been shut off by the city.

Landlords responsible for utility bills.

- (1) *Landlords responsible for utility bills.* Every property owner shall be responsible for any utility charges or fees left unpaid by any tenant of the premises served by the water or sewer utility. However, when an occupant is delinquent more than ninety (90) days, the owner shall not be liable for sums due for more than ninety (90) days of service. Further, where the landlord or property owner fails to pay the utility charges, the city may refuse to provide any water service to the property with the delinquent charge even in the name of a subsequent tenant or new owner of the property.
- (2) *Delinquent accounts.* When a tenant is delinquent in payment for thirty (30) days, the city shall make a good faith effort to notify the owner of the premises receiving

such service of the delinquency and the amount thereof. Any notice of termination of service shall be sent to both the occupant and owner of the premises receiving such service. When an account is delinquent more than ninety days, the owner shall not be liable for sums due for more than ninety (90) days of service.

- (3) *Penalty; severability; effective date.* This section shall be in full force and effect upon its passage and approval, except that landlords will not be liable for unpaid delinquent utility bills incurred before the effective date of this section, unless the utility customer remains a tenant of the landlord for ninety (90) days past the effective date of this section. The provisions of this section are severable, as provided in Section 1.140 of the Revised Statutes of Missouri. Those provisions of this section which establish an offense, are subject to the general penalty provisions provided by law, that is a penalty of zero dollar (\$0.00) to five hundred dollars (\$500.00) or zero (0) to ninety (90) days in jail or both a fine and a jail sentence.
- (e) The city shall not be bound by bills rendered under mistake of fact as to the quantity and nature of service rendered.
- (f) A notice of delinquency will be mailed notifying the customer that:
 - (1) The customer's account with the city is delinquent. The amount payable includes a ten (10) percent penalty.
 - (2) If payment of outstanding bill, penalty, and any applicable charges is not received within ten (10) days, service will be terminated without further notice.
 - (3) If the customer believes the amount due is not correct, the customer may meet with the finance director during regular business hours, and the finance director is authorized to adjust customer bills in case of error.
- (g) If payment of outstanding bill, penalty, and any applicable charges is not received within ten (10) days, service will be terminated and be subject to the following charges to be eligible for reconnection...
 - (1) Past due bill is paid in full, including penalties and any applicable charges.
 - (2) Payment of any deposit which may have been reinstated or increased pursuant to section 25-51.
 - (3) Payment of reconnection charges:
 - a. A fifty dollar (\$50.00) nonrefundable delinquent turn on fee will be assessed when reconnection is made between the hours of 8:00 a.m. and 5:00 p.m. on normal business days, Monday through Friday.
 - b. A one hundred dollar (\$100.00) nonrefundable delinquent turn on fee will be assessed when reconnection is made at any time other than as specified in the preceding subsection.
- (h) Sub metering or resale of water by the customer is prohibited unless approved in writing by the Department of Natural Resources, State of Missouri and the city manager. A separate bill shall be rendered for each meter. Water furnished to the same customer through separate meters shall not be added or cumulated for billing purposes. In the event a customer fails to pay a bill incurred at one address to the extent that service is

- terminated, then the finance director shall add the amount of the delinquent bill to the bill for service at any other address at which he is a customer. If the bill thereafter shall become delinquent and remain unpaid fourteen (14) days from and after the date of a notice of delinquency concerning the bill, then service shall be terminated at that address under the procedures provided for herein.
- (i) The finance director is hereby authorized to meet with any customer upon request, during regular business hours, to review any bill alleged by the customer to be in error, and if it is determined that the bill is in error, then the finance director shall be empowered to adjust the bill accordingly.
 - (j) No service shall be furnished or rendered free of charge to any customer, except for the legitimate purpose of the extinguishment of fire.
 - (k) A minimum charge, or applicable tariff, shall be paid whether such quantity of water is used or not. Credit shall not be allowed for any use under the minimum charge.
 - (l) Payments will be applied to an outstanding bill in the following order: trash service, clean-up fee, sewer service and then "water" service, inclusive of applicable taxes. Partial payment of an outstanding bill will subject the customer to the above provisions in sections 25-52(c) through 25-52(g).
 - (m) Mobile home parks that are master metered will also be subject to the above section 25-52 provisions. A seventy-two-hour notice before service is terminated will be given by the city through either a notice posted in a common area at the site, a public notice placed in the newspaper or by door hangers placed at individual tenant sites. This will be deemed sufficient notice to the tenants of a service termination.
 - (n) Customers may request a waiver of the ten (10) percent late payment penalty on a city utility bill paid late if:
 - (1) The customer has a current active account with the city in his/her name;
 - (2) The request for waiver is made within fifteen (15) days of the due date missed; and
 - (3) The customer signs up for the city's direct debit service which remains in effect for a minimum for twenty-four (24) months. If a customer is or becomes disqualified from using the direct debit service or voluntarily terminates the service within that twenty-four-month period, the late payment penalty that was previously waived will then be added back to the account.
 - (o) As a courtesy, the city may send out door hangars prior to disconnection. The issuance of a dollar hangar will result in an additional twenty dollar (\$20.00) fee payable immediately to avoid disconnection of service.
 - (p) A returned check fee of twenty-five dollars (\$25.00) will be assessed to the maker for every check or direct debit that has been returned to the city without being honored by a banking institution. Unpaid returned checks or direct debits may be put back on a customer account and may subject the customer to termination of service if left unpaid.
 - (q) If a bill has been rendered for four (4) or more consecutive months using an estimated consumption due to the city's inability to correct the meter and the actual reading results in the actual bill to be four (4) times more than the estimated bill, the finance director is

authorized to accept payment in equal installments of up to 3 months. A payment plan will not be offered to customers that failed to provide timely access to the meter.

(Ord. No. 10911, § 2, 4-2-90; Ord. No. 11378, § 7, 3-15-99; Ord. No. 11642, §§ 11, 12, 11-17-2003; Ord. No. 11717, § 2, 6-27-2005; Ord. No. 11848, § 1, 11-17-2008; Ord. No. 11849, §§ 1—3, 11-17-2008; Ord. No. 11851, § 1, 12-1-2008)

Sec. 25-53. - Temporary disconnection of service.

- (a) For the purpose of repairs or alterations, the owner of the property served by a particular meter, or a plumber, or the city, may temporarily disconnect service to his premises for a period of less than ten (10) days, without affecting the existing customer service contract, by turning the water off and on at the meter and/or stop box. For the purpose of making repairs or alterations, at the request of the customer or owner, the city will temporarily disconnect service for a period of not less than ten (10) days, without affecting the existing customer contract. A charge of ten dollars (\$10.00) per each trip, after the first, for connection or disconnection shall be assessed a customer if the city temporarily disconnects service to the customer upon the customer's request.
- (b) When a leak occurs from the customer service pipe, service shall be temporarily disconnected by the finance director, if the following conditions exist:
 - (1) A leak has occurred between the street service pipe and the water meter.
 - (2) The customer or property owner has been given written notice that a leak exists.
 - (3) Seventy-two (72) hours have elapsed since notice of leak was given and the leak has not been repaired.
 - (4) If the leak has not been repaired within the ten-day period, the customer's contract for service will then be terminated under the provisions of section 25-54.
 - (5) In the event that a leak continues to exist and the action of the city discontinuing water service would result in multiple customers, (i.e. mobile home parks) being without water, the city may elect to make the repairs necessary to continue water service. The city then may elect to seek prosecution of the owner of land where the leak existed. Any costs, including legal fees, costs incurred by the city for repairing the water lines owned by the land owner will be sought through the city's legal action process.

(Ord. No. 10911, § 2, 4-2-90; Ord. No. 11642, §§ 13, 14, 11-17-2003; Ord. No. 11848, § 1, 11-17-2008)

Sec. 25-54. - Termination of service.

- (a) A customer's contract for service shall be terminated either upon the customer's written notification to the finance director or due to nonpayment of an account for services. Upon receipt of the notification, the customer's meter will be read and charges for services provided to the customer up to and including the time of termination shall be computed. Thereafter, a final bill shall be rendered, given an allowance for any applicable security deposit, and the final bill shall be due and payable in accordance with the terms of

section 25-52. When the customer's contract for service is terminated upon the city's initiative due to nonpayment of an existing account or due to failure to properly execute a customer service contract, then the customer's meter will be read and charges for services provided up to and including the time of termination shall be computed. Thereafter, a final bill shall be rendered, given an allowance for any applicable security deposit, and the final bill shall be due and payable in accordance with the terms of section 25-52.

- (b) If a contract for service is terminated for the failure of a customer to repair a leak on a private main, or the customer service pipe, service shall not be reconnected until the following conditions have been met:
 - (1) Final bill is paid in full, including penalties;
 - (2) Payment of any required deposit;
 - (3) Payment of reconnection charges as follows:
 - a. A fifty dollar (\$50.00) nonrefundable reconnection charge will be assessed when the reconnection is made between the hours of 8:00 a.m. and 5:00 p.m. on normal business days, Monday through Friday.
 - b. A one hundred dollar (\$100.00) nonrefundable reconnection charge will be assessed when reconnection is made at any time other than as specified in the preceding subsection.
 - (4) Satisfactory evidence is provided that the leak has been repaired.
- (c) A convenience fee of seventy-five dollars (\$75.00) will be assessed on those customers who terminate their service(s) for a period between five (5) days to six (6) months who have the intent to return to the same service address and re-establish water service.

(Ord. No. 10911, § 2, 4-2-90; Ord. No. 11848, § 1, 11-17-2008)

Sec. 25-55. - Adjustments for leaks.

(c) An adjustment in a customer's bill may be made by the finance director when a leak has caused the customer's bill to be at least four (4) times the average bill, not including trash services, as calculated by the finance director. A paid detailed receipt for a repair made to remedy the leak must be submitted to the finance department. The vendor on the detailed receipt cannot be the same person or business listed on the account who is requesting the leak adjustment. The leak adjustment will be applied to the customer account when the finance director determines that the leak has been properly repaired based on consumption readings. In the event that a leak adjustment has been given to a property owner which has then prevented a tenant from obtaining a leak adjustment at the same service address, the city has the discretion to disallow the leak adjustment given to the property owner. The leak adjustment disallowed may be assessed on any account in which the property owner is a customer. The property owner will not be eligible for any further leak adjustment requests until the disallowed leak adjustment is paid in full. One (1) leak adjustment per water meter may be allowed in a twelve-month period and will be administered to the highest water bill of the leak period. The leak adjustment will equal an

amount not to exceed fifty (50) percent of the cost of the leak over and above the average amount of the customer's bill using up to the last six (6) billing periods. The city manager may authorize additional leak adjustments up to seventy-five (75) percent of the cost of the leak over and above the average amount of the customer's bill during the preceding six (6) months where unique, extraordinary and specialized circumstances warrant such an adjustment.

(Ord. No. 10911, § 2, 4-2-90; Ord. No. 11152, § 2, 7-18-94; Ord. No. 11848, § 1, 11-17-2008)



GROUND LEASE

This Ground Lease ("Lease") is made and entered into by and between City of Kirksville, Adair County, State of Missouri, a Municipal corporation, having an address at 201 South Franklin Street, Kirksville, Missouri 63501, hereinafter referred to as "Landlord," and USCOC of Greater Missouri LLC, a Delaware limited liability company, having an address at Attention: Real Estate, 8410 West Bryn Mawr Avenue, Suite 700, Chicago, Illinois 60631, hereinafter referred to as "Tenant."

WHEREAS, Landlord is the fee owner of property with an address of XXXX North Cottage Grove Avenue located in the City of Kirksville, County of Adair, State of Missouri legally described in Exhibit A attached hereto and incorporated by reference (the "Landlord's Parcel").

WHEREAS, Tenant desires to occupy, and Landlord is willing to provide Tenant such Premises (as hereinafter defined) on the Landlord's Parcel for Tenant's use, as set forth in this Lease.

NOW THEREFORE, in consideration of the mutual promises, conditions, and other good and valuable consideration of the parties hereto, it is covenanted and agreed as follows:

1. Option to Lease.

- a. Landlord hereby grants to Tenant an option (the "Option") to lease from Landlord the following described parcel (the "Leasehold Parcel"):

Approximate dimensions: 45' x 80'

Approximate square footage: 3,600

Legal descriptions of the Landlord's Parcel and the Tenant's Premises are attached hereto as Exhibit A and a Site Plan of the Leasehold Parcel is attached to the lease as Exhibit B.

- b. During the Initial Option Term (as hereinafter defined) and any Extended Option Term (as hereinafter defined), and during the Initial Term (as hereinafter defined) and any Renewal Term (as hereinafter defined) of this Lease, Tenant and its agents, engineers, surveyors and other representatives will have the right to enter upon the Leasehold Parcel to inspect, examine, conduct soil borings, drainage testing, material sampling, and other geological or engineering tests or studies of the Leasehold Parcel (collectively the "Tests"), to apply for and obtain licenses, permits, approvals, or other relief required of or deemed necessary or appropriate at Tenant's sole discretion for its use of the Premises (as hereinafter defined) and include without limitation applications for zoning variances, zoning ordinances, amendments, special use permits, and construction permits (collectively referred to as "Governmental Approvals"), and otherwise to do those things on or off the Leasehold Parcel that, in the opinion of Tenant, are necessary in Tenant's sole discretion to determine the physical condition of the Leasehold Parcel, the environmental history of the Leasehold Parcel, Landlord's title to the Leasehold Parcel, and the feasibility or suitability of the Leasehold Parcel

for Tenant's Permitted Use (as hereinafter defined), all at Tenant's expense. Tenant will not be liable to Landlord or any third party on account of any pre-existing defect or condition on or with respect to the Leasehold Parcel, whether or not such defect or condition is disclosed by Tenant's inspection.

- c. In consideration of Landlord granting Tenant the Option, Tenant hereby agrees to pay Landlord the sum of Five Hundred dollars and 00/100 (\$500.00) within fifteen (15) days of full execution of this Lease by Landlord and Tenant. The Option will be for an initial term of eighteen (18) months (the "Initial Option Term") and may be renewed by Tenant, at the election of Tenant, for an additional six (6) months ("Extended Option Term") upon written notification to Landlord and the payment of an additional Five Hundred dollars and 00/100 (\$500.00) no later than fifteen (15) days prior to the expiration date of the Initial Option Term. Landlord shall provide a complete and accurate IRS form W9 to Tenant for the Payee of the Option sum prior to payment thereof.
 - d. During the Initial Option Term and during the Extended Option Term, if any, as the case may be, Tenant may exercise the Option by notifying Landlord in writing at any time prior to the expiration of the Initial Option Term and the Extended Option Term, if any, as the case may be. If Tenant exercises the Option, then Landlord shall lease the Leasehold Parcel to the Tenant on, and subject to, the terms and conditions of this Lease.
2. Grant of Easements. Landlord hereby grants to Tenant an access easement thirty (30) feet in width from the Leasehold Parcel to the nearest accessible public right-of-way (the "Access Easement") and a utility easement ten (10) feet in width to the nearest suitable utility company-approved service connection points (the "Utility Easement"); the Access Easement and the Utility Easement are collectively referred to herein as the "Easements"; the lands underlying the Access Easement and the Utility Easement are collectively referred to herein as the "Easement Parcels," which Easement Parcels are further described in Exhibits "A" & "B" attached hereto and incorporated herein). The Easements granted herein shall include, but not be limited to,
- a. The right to clear vegetation, cut timber, and move earthen materials upon the Easement Parcels,
 - b. The right to improve an access road within the Access Easement Parcel,
 - c. The right to place use, repair, replace, modify and upgrade utility lines and related infrastructure and equipment within the Utility Easement Parcel,
 - d. The right to enter and temporarily rest upon Landlord's adjacent lands for the purposes of
 - (i) Installing, repairing, replacing and removing the Improvements (as defined below) and any other personal property of Tenant from the Leasehold Parcel and
 - (ii) Improving the Easement Parcels, including the right to bring in and use all necessary tools and machinery, and

- e. The right of pedestrian and vehicular ingress and egress to and from the Leasehold Parcel at any time over and upon the Access Easement Parcel. The Leasehold Parcel and the Easement Parcels are collectively referred to herein as the "Premises." Landlord agrees to make such additional direct grants of easement, such grants not to be unreasonably withheld, conditioned or delayed, as Tenant may request in order to further the purposes for which Tenant has been granted the easements set forth in this Section 2.
3. Use of the Premises. Tenant shall be entitled to use the Premises to construct, operate, modify as necessary, and maintain thereon a communications antenna tower (including aviation hazard lights when required), an access road, one or more equipment buildings, back-up power devices and a security fence, together with all necessary lines, anchors, connections, devices, legally required signage and equipment for the transmission, reception, encryption, and translation of voice and data signals by means of radio frequency energy and landline carriage (collectively, the "Improvements"); Tenant's use described in this Section 3 is hereinafter referred to as the ("Permitted Use"). Tenant shall have unlimited access to the Premises 24 hours per day, 7 days a week.
4. Term of Lease. In the event Tenant, in Tenant's sole discretion, exercises the Option, the initial Lease term will be five (5) years (the "Initial Term"), commencing upon the Commencement Date (as hereinafter defined) and terminating at midnight on the day in which the fifth (5th) anniversary of the Commencement Date falls.
5. Option to Renew. The Initial Term of this Lease shall automatically extend for up to five (5) additional terms of five (5) years each (each, a "Renewal Term"), upon a continuation of all the same provisions hereof, unless Tenant gives Landlord written notice of Tenant's intention to terminate the Lease at least sixty (60) days before the expiration of the Initial Term or any Renewal Term.
6. Option to Terminate. Tenant shall have the unilateral right to terminate this Lease at any time by giving Landlord written notice of the date of such termination ("Termination Date"). The Indemnification obligations of each party contained in Section 12 and Tenant's requirement to remove improvements as provided in Section 20 shall survive termination of the Lease.
7. Base Rent. Commencing on the date that Tenant commences construction (the "Commencement Date"), Tenant shall pay Base Rent to Landlord in the amount of Five Hundred dollars and 00/100 (\$500.00) per month, the first payment of which shall be due within thirty (30) days of the Commencement Date, and installments thereafter on the first day of each calendar month, provided that Landlord shall submit to Tenant a complete and accurate IRS form W9 prior to Tenant's first payment of Rent. Landlord shall specify the name, address, and taxpayer identification number of a sole payee (or maximum two joint payees) who shall receive Rent on behalf of the Landlord. Rent will be prorated for any partial month. Any change to the Payee must be requested in accordance with the Notice provision herein, and a new IRS form W9 must be supplied prior to payment by Tenant to the new Payee.

8. Adjusted Rent. At the beginning of each Renewal Term throughout the duration of the Lease as renewed and extended, the Rent shall be increased by ten (10%) percent over the previous term's Rent.
9. Utilities. Tenant shall solely and independently be responsible for all costs of providing utilities to the Premises, including the separate metering, billing, and payment of utility services consumed by Tenant's operations. The word "utilities" shall mean any service that is necessary for the Tenant to conduct its operations on the Premises and "utility services" shall mean any provider who provides utility services or utility related infrastructure so that the Tenant can conduct its Permitted Use on the Premises.
10. Property Taxes. Landlord shall pay prior to delinquency any real estate taxes attributable to Landlord's Parcel. Tenant shall pay prior to delinquency any personal property taxes levied against Tenant's Improvements. Tenant shall pay to Landlord upon Landlord's demand, any increase in real property taxes levied against Landlord's Parcel which is attributable to Tenant's use or Improvements, provided that Landlord agrees to furnish reasonable documentation of such increase to Tenant. Furthermore, Landlord agrees to give timely notice to Tenant in the event it is notified of an assessment valuation change, or a change in property status. Landlord agrees that Tenant shall have the right to appeal any such change in status or any increase in real estate assessment for the Leasehold Parcel or Tenant's Improvements, and Landlord will reasonably cooperate, but at no cost to Landlord, with any such appeal by Tenant. Tenant shall only be responsible for property tax reimbursements requested by Landlord within one (1) year of payment of such property taxes by Landlord. Landlord's requests to Tenant for reimbursement of such property taxes should be addressed to:

U. S. Cellular
P.O. Box 31369
Chicago, IL 60631-0369

In order to ensure that Tenant's leasehold interest is not extinguished in the event that the real property taxes related to Landlord's Parcel become delinquent, Tenant shall have the right, but not the obligation, to pay delinquent real property taxes related to Landlord's Parcel. Tenant shall be entitled to take a credit against the Rent under this lease for any such taxes paid by Tenant that exceed Tenant's proportionate share thereof.

11. Repairs and Maintenance. Tenant shall be responsible for all repairs and maintenance of the Improvements, including, if applicable, snow removal if Tenant has exclusive control over its access road, and may at its own expense alter or modify the Improvements to suit its needs consistent with the intended use of the Premises. Landlord will maintain the areas surrounding Tenant's Premises. Landlord's maintenance shall include, but is not limited to, if applicable, to snow removal if all of part of Access Easement is shared between the parties.
12. Mutual Indemnification.
 - a. To the extent permitted by law, Tenant agrees to defend, indemnify and save harmless Landlord from and against all claims, losses, costs, expenses, or damages from a third party, arising from

- (i) The negligence or willful misconduct of Tenant, or its agents, employees, or contractors; or
 - (ii) Any material breach by Tenant of any provision of this Lease. This indemnity and hold harmless agreement will include indemnity against all reasonable costs, expenses, and liabilities incurred in or in connection with any such claim, and the defense thereof. Notwithstanding the foregoing, Tenant will have no liability to Landlord to the extent any claims, losses, costs, expenses, or damages arise out of or result from any act, omission, or negligence of Landlord, or of Landlord's agents, employees or contractors.
 - b. To the extent permitted by law, Landlord agrees to defend, indemnify and save harmless Tenant from and against all claims, losses, costs, expenses, or damages from a third party, arising from
 - (i) The negligence or willful misconduct of Landlord or its agents, employees, or contractors; or
 - (ii) Any material breach by Landlord of any provision of this Lease. This indemnity and hold harmless agreement will include indemnity against all reasonable costs, expenses, and liabilities incurred in or in connection with any such claim, and the defense thereof. Notwithstanding the foregoing, Landlord will have no liability to Tenant to the extent any claims, losses, costs, expenses, or damages arise out of or result from any act, omission, or negligence of Tenant, or of Tenant's, agents, employees or contractors.
- 13. Insurance.
 - a. Tenant shall maintain commercial general liability insurance insuring against liability for bodily injury, death or damage to personal property with combined single limits of One Million and No/100 Dollars (\$1,000,000). In addition, Tenant shall maintain worker's compensation in statutory amounts, employer's liability insurance with combined single limits of One Million and No/100 Dollars (\$1,000,000); automobile liability insurance insuring against claims for bodily injury or property damage with combined single limits of One Million and No/100 Dollars (\$1,000,000); and all risk property insurance covering all personal property of Tenant for full replacement value. Tenant shall provide Landlord with evidence of such insurance in the form of a certificate of insurance prior to obtaining occupancy of the Premises and throughout the term of this Lease or any Renewal Term.
 - b. Landlord shall maintain general liability insurance insuring against liability for bodily injury, death or damage to personal property with combined single limits of One Million and No/100 Dollars (\$1,000,000). In addition, to the extent required by law, Landlord shall maintain worker's compensation in statutory amounts and employer's liability insurance with combined single limits of One Million and No/100 Dollars (\$1,000,000). Landlord shall provide Tenant with evidence of such insurance in the form of a certificate of insurance prior to Tenant obtaining occupancy and throughout the term of this Lease or any Renewal Term.

14. Default. Tenant shall be in default of this Lease if Tenant fails to make a payment of rent when due and such failure continues for fifteen (15) days after Landlord notifies Tenant in writing of such failure. If Landlord or Tenant fails to comply with any non-monetary provision of this Lease, the other party shall serve written notice of such failure upon the defaulting party, whereupon a grace period of thirty (30) days shall commence to run during which the defaulting party shall undertake and diligently pursue a cure of such failure at its sole cost and expense. Such grace period shall automatically be extended for an additional thirty (30) days, provided the defaulting party makes a good faith showing that efforts toward a cure are continuing.
15. Compliance with Laws. Tenant shall, at Tenant's cost and expense, comply with all federal, state, county or local laws, rules, regulations and ordinances now or hereafter enacted by any governmental authority or administrative agency having jurisdiction over the Premises and Tenant's operations thereupon.
16. Assignment of Lease by Tenant. This Lease shall be freely assignable by the Tenant to any other party without the necessity of obtaining Landlord's consent. Tenant's right to effect an outright transfer of the Lease, and the right of any collateral assignee to seize the Premises as defaulted security, is subject only to the limitation that the Premises shall be used for the purposes permitted herein. Tenant shall notify Landlord in writing of the name and address of any assignee or collateral assignee.
17. Subleasing. Tenant shall have the unreserved and unqualified right to sublet or license all or any portion of the Premises to subtenants without the necessity of obtaining Landlord's consent.
18. Right of First Refusal. Tenant (or its successor in interest, assignee or designee) shall have a right of first refusal ("Right of First Refusal") to purchase (a) all or any part of the fee ownership of the Premises; (b) any easement rights in or over all or any part of the Premises; (c) all or any part of Landlord's interest in or rights under this Lease, including, without limitation, the right to collect rents, or (d) any other legally recognizable interest in the Premises that Landlord make seek to transfer (each, "Landlord's Interest") whenever Landlord receives a bona fide offer from an unrelated third party to purchase, directly or indirectly, all or any part of Landlord's Interest that Landlord desires to accept ("Offer"). If the Offer is part of a larger transaction, including, without limitation, involving Landlord's Parcel, equity of Landlord or a larger package of assets which includes the Landlord's Interest, Landlord shall make a good faith estimate of the portion of such larger offer price attributable to the Landlord's Interest and provide that price to Tenant. Prior to accepting such Offer, Landlord shall give Tenant a copy of the Offer and other relevant documents, including the price and the terms and conditions upon which Landlord proposes to transfer Landlord's Interest (collectively, the "Right of First Refusal Notice"). Tenant shall have forty-five (45) days from the receipt of such notice to agree to purchase Landlord's Interest for the price and upon the terms and conditions specified in the Offer ("Tenant Approval Period").

If Tenant elects to so purchase Landlord's Interest, Tenant shall give to Landlord written notice thereof within said Tenant Approval Period ("Acceptance Notice"). If Tenant delivers an Acceptance Notice as provided herein, then Landlord and Tenant shall enter into

a mutually acceptable purchase and sale agreement pertaining to such Landlord's Interest (the "Purchase and Sale Agreement"), reflecting the terms of the Offer, as well as other customary covenants, representations and warranties contained in purchase and sale agreements for similar acquisitions in the metropolitan area in which the Premises is located. The parties agree to act reasonably and cooperatively in negotiating, executing and delivering the Purchase and Sale Agreement. Except as otherwise specified in the Offer, at the closing for the sale of all or any part of the Premises, Landlord shall deliver to Tenant a special warranty deed (or local equivalent), sufficient to convey to Tenant fee simple title. In the case of an assignment of the Lease or the grant of an easement, Landlord shall instead deliver to Tenant a customary assignment of the Lease or a customary easement.

If Tenant does not exercise the Right of First Refusal during the Tenant Approval Period, then Landlord may proceed to transfer Landlord's Interest upon the same terms and conditions set forth in the Offer; provided such transfer occurs within three (3) months following the end of the Tenant Approval Period, the transfer is made in accordance with all the other terms and conditions of this Lease, and such purchaser assumes the obligations of Landlord under this Lease including, without limitation, this Right of First Refusal which shall be an ongoing Right of First Refusal during the lease term. If Landlord has not transferred Landlord's Interest within such three (3) month period, or in the event any terms or conditions of the proposed deal change from the terms and conditions provided in the initial Right of First Refusal Notice, then Landlord shall not thereafter transfer Landlord's Interest to an unrelated third party without first renewing the Right of First Refusal Notice to Tenant in the manner provided above. Tenant's failure to exercise its Right of First Refusal or its express waiver of its Right of First Refusal in any instance shall not be deemed a waiver of Tenant's Right of First Refusal for subsequent instances when Landlord proposes to transfer Landlord's Interest to an unrelated third party during the lease term. Notwithstanding the foregoing, Landlord's right to sell all or any part of the Premises to a third party shall not be encumbered or restricted, except to the extent set forth in this Section.

19. Execution of Other Instruments. Landlord agrees to execute, acknowledge, and deliver to Tenant such other instruments respecting the Premises as Tenant or Tenant's lender may reasonably request from time to time. Such instruments may include, but are not limited to, a memorandum of lease that may be recorded in the appropriate local land records. Landlord also agrees to cooperate with Tenant's efforts to obtain all private and public consents related to Tenant's use of the Premises.
20. Removal of Improvements. The Improvements are agreed to be Tenant's personal property and shall never be considered fixtures to the Premises. Tenant shall at all times be authorized to remove the Improvements from the Premises. Upon the expiration or earlier termination of this Lease, Tenant shall remove the above ground improvements from the Premises. Tenant shall be entitled to abandon, in place, all footings, foundations and other below ground improvements.
21. Quiet Enjoyment. Landlord covenants that Tenant shall have quiet and peaceable possession of the Premises throughout the Initial Lease Term and any Renewal Term, if any, as the case may be, and that Landlord will not intentionally disturb Tenant's enjoyment thereof as long as Tenant is not in default under this Lease.

22. Subordination and Non-Disturbance. Tenant agrees to subordinate this Lease to any mortgage or trust deed which may hereafter be placed on the Premises, provided the mortgagee or trustee thereunder shall ensure to Tenant the right to possession of the Premises and other rights granted to Tenant herein so long as Tenant is not in default beyond any applicable grace or cure period, such assurance to be in writing and otherwise in form and substance reasonably satisfactory to Tenant. If requested by Tenant, Landlord agrees to use Landlord's best efforts to assist Tenant in obtaining from any holder of a security interest in Landlord's Parcel a non-disturbance agreement in form and substance reasonably satisfactory to Tenant.
23. Environmental Warranty. Landlord hereby represents and warrants to Tenant that Landlord has never generated, stored, handled, or disposed of any hazardous waste or hazardous substance upon the Premises, and that Landlord has no knowledge of such uses historically having been made of the Premises or such substances historically having been introduced thereon.
24. Notices. Any notice, request or demand required or permitted to be given pursuant to this Lease shall be in writing and shall be deemed sufficiently given if delivered by messenger at the address of the intended recipient, sent prepaid by Federal Express (or a comparable guaranteed overnight deliver service), or deposited in the United States first class mail (registered or certified, postage prepaid, with return receipt requested), addressed to the intended recipient at the address set forth below or at such other address as the intended recipient may have specified by written notice to the sender in accordance with the requirements of this paragraph. Any such notice, request, or demand so given shall be deemed given on the day it is delivered by messenger at the specified address, on the day after deposit with Federal Express (or a comparable overnight delivery service), or on the day that is five (5) days after deposit in the United States mail, as the case may be.

TENANT: USCOC of Greater Missouri LLC
Attention: Real Estate Department
8410 West Bryn Mawr Avenue
Chicago, Illinois 60631
Phone: 1-866-573-4544

LANDLORD: City of Kirksville
201 South Franklin Street
Kirksville, Missouri
Phone: 1-660-627-1272

25. Contingencies. Tenant shall have the right to terminate this Lease upon written notice to Landlord, relieving both parties of all further obligations hereunder, if Tenant, acting reasonably and in good faith, shall be unable to obtain any or all licenses or permits required to construct its intended improvements upon the Premises or conduct Tenant's business at the Premises at any time during the Term; if Tenant's technical reports fails to establish to Tenant's satisfaction that the Premises are capable of being suitably engineered to accomplish Tenant's intended use of the Premises; if the Premises are taken by eminent domain by a governmental entity or a title commitment or report obtained by Tenant with

respect to the Premises shows as exceptions any encumbrances or restrictions which would, in Tenant's opinion, interfere with Tenant's intended use of the Premises.

26. Attorneys' Fees. In any action on this Lease at law or in equity, the prevailing party shall be entitled to recover from the other party the reasonable costs incurred by such party in such action, including reasonable attorneys' fees and costs of appeal.
27. Governing Law. This Lease will be governed by and construed in accordance with the laws of the State in which the Premises is located.
28. Binding Effect. All of the covenants, conditions, and provisions of this Lease shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Also, that Landlord is duly authorized and empowered to enter into this Lease; and that the person executing this Lease on behalf of the Landlord warrants himself to be duly authorized to bind the Landlord hereto.
29. Entire Agreement; Waiver. This Lease constitutes the entire agreement of the parties, and may not be modified except in writing signed by the party against whom such modification is sought to be enforced. No waiver at any time of any of the provisions of the Lease will be effective unless in writing. A waiver on one occasion will not be deemed to be a waiver at any subsequent time.
30. Modifications. This Lease may not be modified, except in writing signed by both parties.
31. Recording. Each party, on request of the other, agrees to execute a short form lease in recordable form and complying with applicable laws and reasonably satisfactory to both parties, which will be recorded in the appropriate public records.
32. Headings. The section headings throughout this instrument are for convenience and reference only, and are not to be used to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Lease.
33. Invalidity of Particular Provision. If any term or provision of this Lease, or the application of such term or provision to any person or circumstance, to any extent, is invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, will not be affected and each term and provision of this Lease will be valid and be enforced to the fullest extent permitted by law.
34. Remedies. The parties shall be entitled to the application of all appropriate remedies available to them under state and federal law in the enforcement of this Lease.
35. Errors and Omissions. Landlord and Tenant agree as part of the basis of their bargain for this Ground Lease to cooperate fully in executing any and all documents (including amendments to this Ground Lease) necessary to correct any factual or legal errors, omissions, or mistakes, and to take any and all additional action, that may be necessary or appropriate to give full force and effect to the terms and intent of this Ground Lease.
36. Non-Binding Until Full Execution. Both parties agree that this Lease is not binding on both parties until both parties execute the Lease.

Site Name: Kirksville Capacity

Site Number: 672350

37. Electronic Reproductions. The Parties agree that a scanned or electronically reproduced copy of image of this Lease, as executed, shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of such agreement, notwithstanding the failure or inability of either party to produce or tender an original executed counterpart.

[END OF LEASE - SIGNATURE PAGE FOLLOWS]

USCOC LEASE NOTES

The following is a summary of the significant provision/ areas of concern of the proposed lease between the city and USCOC:

¶1.a. This starts out as a option to lease, even though it's titled a "Ground Lease". This makes it a bit confusing because all the provisions of the lease don't apply unless USCOC exercises its option to lease. I would prefer that it more directly state that if they don't exercise their option, the document is null and void. ¶1.c specifies that it's \$500 for the initial option for 18 months plus another \$500 for them to extend the option for another 6 months. The description is also confusing because the introductory clause says that landlord owns the "Landlord Parcel" described in Exhibit A and also the "Leasehold parcel" or the "Tenant's Premises" are described in Exhibit A. Need to be very careful to look at the legal description.

¶1.b. This lease appears to be a form used for private individuals. I want to make sure that by signing this lease and giving them the right to go on the property, we are not consenting to zoning variances, building permit approval etc.

¶1.d This says that if they exercise the lease, then the provisions of the lease apply. I'd like for it to say, that if they don't exercise the lease, then the provision of the lease are null and void.

¶2 This paragraph is the start of the lease. There are Access easements and Utility easements that are supposed to be specified in the attachments to the document. I don't have them. Do they exist and are the descriptions compatible with the city's use of the property? Are these exclusive easements? Doesn't say they are. If they are long easements, might the city want to use them as well. Provisions don't really address their obligation to return any disturbed soil to pre disturbance conditions, or to pay for any conditions occasioned by their use of the Easements (ie drainage that causes a ditch or washouts, etc)

¶3 Specifies the use of the premises. I don't see that the height of the tower is specified. Also I don't see that the type of tower is specified. Is this a self supporting tower or does it require guy wires to hold it up? I want to make sure if it uses guy wires that they are not boot strapping the guy foundations into the easement section, that the location of the guy wires don't interfere with the city's use of the property etc. I know

AT&T and T-Mobile usually build self supporting towers, but normally I have not observed that to be the case with respect to US Cellular or Verizon.

¶4 Initial term is 5 years

¶5 Tenant can extend for 5, 5 year terms (so 30 year term altogether is possible)

¶6 Tenant can terminate at any time (but has continuing obligation to remove the tower and indemnify, both of which survive)

¶7 Rent doesn't start, even though they exercise the right to lease, until they start construction, then they pay \$500.00 per month. Don't really like this. They could exercise their right to lease and not owe anything for quite some period of time.

¶8 During renewal term, rental only increases by 10% for each 5 year period (which averages at 2% per year) That's a pretty small amount over 30 years.

¶12 Pretty much standard indemnification language, but should also include attorney's fees (but see ¶26).

¶13 Insurance obligation. Both landlord and tenant shall have \$1Mil liability coverage. I don't see that City is listed as additional insured, which I think it should be.

¶15 Compliance with law. I think there should be language that says that nothing in lease shall be considered an agreement or acquiescence to any building permit or other requirement set forth in city code, or other federal or state law. Again, I think the lease is based on a private ownership. This, of course, is unique in that the Landlord is actually a municipality which has permit power.

¶¶16 & 17. Tenant has the right to assign and sublease the lease. Probably not a big issue, but important to know that they have this right.

¶18 Right of First Refusal. They have a right to buy the "premises" I don't know if this is the Tenant premises in Exhibit A or the Landlord Premises in Exhibit A. Provisions seem to apply in the event city attempt to sell or LEASE a part of City's larger tract. What if city wants to lease another part of their premises for another tower. I think the right of first refusal kicks in.

¶21 Quiet enjoyment. Pretty my standard stuff, but I'm concerned that if the city's legitimate use of their property causes some interference with the transmitter, we may

not be able to use it. Say, for example, a grinder pump disrupts the transmitter, and to stop the interference, the city has to install a several thousand dollar line conditioner, the city would have to do it.

¶25 Has contingencies for termination, but ¶6 has a absolute right to terminate.