	CITY OF COFFEYVILLE **BOARD OF COMMISSIONERS AGENDA ITEM**	
MEETING DATE	10/27/2015	
RESOLUTION OR ORDINANCE NUMBER	R-15-132	
AGENDA TITLE	**DEARING WATER TOWER LEASE**	
REQUESTING DEPARTMENT	Internet Utility	
PRESENTER	Chris Felix, IT Manager	
FISCAL INFORMATION	Cost as recommended:	
	Budget Line Item:	
	Balance Available	
	New Appropriation Required:	[ ] Yes [X] No
PURPOSE	To establish a lease agreement with the City of Dearing for use of their water tower	
BACKGROUND	In July of 2015, Dearing approached the City of Coffeyville about the possibility of serving internet to their city hall and emergency services building. Coffeyville Connection has no direct line of sight to either of locations. It was then suggested that we could serve those locations if we had access to the water tower in Dearing. The City of Dearing will welcome our use of their tower to serve their locations and possibly more portions of the community.	

SPECIAL NOTES	The use of the water tower will cost the City no money. We are to provide internet to 2 locations as part of the agreement.
ANALYSIS	The costs we will incur will be for a tower climber and some cabling. We already have the necessary wireless equipment on hand.
PUBLIC INFORMATION PROCESS	
BOARD OR COMMISSION RECOMMENDATION	
STAFF RECOMMENDATION	Staff is recommending that the City enter into a lease agreement with Dearing for use of their water tower for purpose of providing internet service.
REFERENCE DOCUMENTS ATTACHED	Dearing Water Tower Lease Agreement

RESOLUTION NO. R-15-132

A RESOLUTION TO AUTHORIZE THE EXECUTION OF A TOWER/LAND LEASE AGREEMENT WITH THE CITY OF DEARING FOR SPACE ON THEIR WATER TOWER FOR INSTALLATION, OPERATION AND MAINTENANCE OF WIRELESS EQUIPMENT.

BE IT RESOLVED by the Board of Commissioners of the City of Coffeyville, Kansas that the Mayor and City Clerk be and hereby authorized and directed to execute a Tower/Land Lease Agreement with the City of Dearing for space on their water tower for installation, operation and maintenance of wireless equipment for the Coffeyville Internet Utility.

ADOPTED THIS 27th DAY OF OCTOBER 2015.

_____
Christopher V. Williams, Mayor

ATTEST:

_____
Cindy Price, City Clerk

APPROVED AS TO FORM AND LEGALITY:

_____
Paul Kritz, City Attorney

WATER TOWER / LAND LEASE AGREEMENT

THIS TOWER/LAND LEASE AGREEMENT ("this Lease") is entered into this ____day of _____, 2012, between the City of Dearing ("DEARING"), and the City of Coffeyville, Kansas ("CITY").

In consideration of the terms and covenants of this Agreement, and for other good and valuable consideration, the parties agree as follows:

1. Leased Property. Subject to the terms and conditions of this Lease, DEARING leases to CITY and CITY leases from DEARING certain portions of real property owned by DEARING (the "Property"), which property is located in Montgomery County, Kansas, and legally described as follows:

Exhibit A: Attached GIS Map

DEARING also leases to CITY and CITY leases from DEARING sufficient space on DEARING's water tower (the "Tower") located on the Property for the installation, operation and maintenance of City's equipment, as provided herein.

2. Term. The initial term of this Lease shall be two (2) years, commencing upon the date this document is executed by DEARING and CITY. This Lease shall automatically be renewed for successive two (2) year terms unless either party shall notify the other of that party's intention not to renew the Lease at least ninety (90) days prior to the expiration of the any original or any renewal term.

3. Rent. In lieu of rent payment, CITY will provide 2 free internet accounts to DEARING. Internet speeds will be 10Mbps download, 1Mbps upload. Speeds may be changed at any time if DEARING and CITY agree on requested change.

4. Use. CITY may use the leased premises for the installation, operation, and maintenance of facilities for the transmission and reception of internet signals in such frequencies as the CITY may determine and for the operation of related equipment in accordance with the provisions of this Lease. CITY shall use the leased premises in compliance with all federal, state, local laws and regulations. If for any reason CITY's use of the leased premises fails to comply with any federal, state or local law and CITY fails to bring its use within compliance within thirty (30) days of written notice of such noncompliance, this Lease shall be terminated as provided herein, unless sooner authorized by such law. DEARING agrees to reasonably cooperate with CITY in obtaining, at CITY's expense, all licenses and permits required for CITY's use of the leased premises.

5. Installation of Improvements. Access. Utilities.

a. CITY shall have the right, at its sole cost and expense, to install, operate and maintain the facilities on the Tower, which facilities include antennas and cabling. (the "Internet Facilities"). CITY's installation of all such equipment, personal property, and facilities shall be done according to plans approved by DEARING, and no equipment or property shall be subsequently relocated without DEARING's approval which approvals shall not be unreasonably withheld or delayed. The Internet Facilities shall remain the exclusive property of CITY, subject to the provisions of Paragraph 6 of this Lease.

b. CITY may update or replace the Internet facilities from time to time with the prior written approval of DEARING, provided that the replacement facilities are not greater in number or size than the existing facilities and provided that their location on the leased portions of the tower is satisfactory to DEARING. CITY shall submit to DEARING a proposal for any such replacement facilities, and for any supplemental materials as may be reasonably requested for DEARING's evaluation and approval, which

approval shall not be unreasonably withheld or delayed. All costs for required structural studies will be paid by CITY within thirty (30) days of receipt of a detailed invoice.

c. CITY shall have the right to enter and store CITY'S equipment inside the storage shed/pump house located on the leased portions of the Property and to use electrical power for purposed of operating and maintaining the Internet Facilities. All equipment stored or operated therein, for the benefit of CITY, shall remain the exclusive property of CITY, subject to the provisions of Paragraph 6 of this Lease.

d. At all times during this Lease, DEARING hereby grants to CITY a nonexclusive easement for ingress, egress, and access over the Property which gives CITY access to the storage shed/pump house and to the base of the water tower at no additional charge to CITY.

e. CITY, at all times during this Lease, shall have access to the Property and the storage shed/pump house in order to install, operate and maintain its Internet Facilities. CITY shall have access to the Tower only with the approval of DEARING and in the presence of an employee of DEARING. CITY shall request access to the Tower twenty-four (24) hours in advance and DEARING's approval thereof shall not be unreasonably withheld or delayed.

f. CITY shall have sole responsibility for the maintenance, repair, and security of its equipment, personal property, Internet Facilities, and any other leasehold improvements, and shall keep the same in good repair and condition during the Lease term.

6. Interference. CITY's installation, operation, and use of its Internet Facilities under this Lease shall not damage or interfere in any way with DEARING's water tower operations or related repair and maintenance activities. DEARING, at all times during this Lease, reserves the right to take any action it deems necessary, in its sole discretion, to repair, maintain, alter, or improve the leased premises and to temporarily interfere with CITY's leasehold improvements as may be necessary in order to carry out any of such activities. DEARING agrees to give reasonable advance notice of such activities to CITY and to reasonably cooperate with CITY to carry out such activities with a minimum amount of interference with CITY's transmission operations.

7. Termination.

a. Except as otherwise provided herein, this Lease may be terminated by either party upon ninety (90) days written notice to the other party as follows:

1) By either party, upon a default of any covenant or term hereof by the other party, which default is not cured within thirty (30) days of receipt of written notice of default to the other party;

2) By CITY, if it is unable to obtain or maintain any license, permit, or other governmental approval necessary for the construction and/or operation of the Internet Facilities or CITY business;

3) By DEARING, if it determines that the tower is structurally unsound for use as a water tower, including but not limited to consideration of age of the structure, damage or destruction of all or part of the water tower or the Property from any source, or factors relating to condition of the Property; or

4) By DEARING, if CITY's use of the Property becomes illegal under any federal, state or local law, rule or regulation.

b. Upon termination of this Lease for any reason, CITY shall remove all of its equipment, personal property, Internet Facilities, structure and leasehold improvements from the water tower and the Property within sixty (60) days after the date of termination, and shall restore the water tower and the Property to the condition it was in on the commencement date of the term of this Lease, ordinary wear and tear excepted, all at CITY's sole cost and expense. Any such property which is not removed by end of said sixty (60) day period shall become the property of DEARING.

8. Insurance.

a. CITY shall provide Comprehensive General Liability Insurance coverage, including premises/operations coverage, in a combined single limit of not less than One Million Dollars ($1,000,000.00) per occurrence, and Two Million Dollars ($2,000,000.00) aggregate, and name DEARING as an additional insured on such policy or policies. CITY may satisfy this requirement by an endorsement to its underlying Insurance or umbrella liability policy.

b. Neither party shall be liable to the other (or to the other's successors or assigns) for any loss or damage caused by fire or any of the risks enumerated in a standard "All Risk" insurance policy, and, in the event of such insured loss, neither party's insurance City shall have a subrogated claim against the other.

9. Damage or Destruction of Property. If the Property, water tower, or Internet Facilities are destroyed or damaged so as, in CITY's judgment to render the site unusable as an Internet Facility, CITY may elect to terminate this Lease upon thirty (30) days written notice to DEARING. In the event CITY elects to terminate the Lease, CITY shall be entitled to reimbursement of any prepaid rent prorated prior to the date of termination.

10. Notices. All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested to the following addresses:

CITY:	DEARING:
_____	_____
_____	_____
_____	_____

11. Successors and Assigns. This Lease shall run with the Property. This Lease shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives, and assigns.

18. Miscellaneous.

a. This Lease constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations, and other agreements of any kind. There are no representations or understandings of any kind not set forth herein. Any modification of or amendment to this Lease must be in writing and executed by both parties.

b. This Lease shall be construed in accordance with the laws of the State of Kansas.

c. If any term of this Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect.

d. This Lease is subject to all zoning approvals and building permits.

Coffeyville, KS

Legend

Support Structure
- ATT
- City
- Cox
- SBC
- Unknown
- Westar

ATT Points

Ground Feature
- Cabinet
- Fence
- Junction Box
- Pad Mount Transformer
- Switch Gear
- Unknown

Capacitor Bank

Switch
- Overhead Disconnect
- Overhead Load Break
- Unknown

Transformer
- 1 Phase
- 2 Phase
- 3 Phase

Primary Line Overhead
- Unknown

Notes

396.2 0 198.12 396.2 Feet

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

THIS MAP IS NOT TO BE USED FOR NAVIGATION