Memorandum

To: City Commissioners

CC: Gary Bradley, Stephanie Richardson, Cindy Price

From: Chris Felix, IT Manager

Date: 10/08/2012

Re: Lease Agreement with Midwest Fertilizer

Commissioners,

Attached to this staff report is an agreement to lease tower space from Midwest Fertilizer.

Coffeyville Connection, the City's internet utility, has deployed over 200 access points across town. At this time, we have 100 active units. The remaining 100 are in areas of town that have no line of sight to our backhaul locations.

To help bring up the rest of them, we need a very tall tower location. The perfect spot is the grain elevator. We plan to install two (2) backhaul access points on top. These should cover both east and west sides of the grain elevator.

The attached lease agreement is for a two (2) year term with consecutive one (1) year terms after that at a cost of $6,000 per year.

I'd be happy to answer any questions you may have.

RESOLUTION NO. R-12-98

A RESOLUTION TO AUTHORIZE THE EXECUTION OF A TOWER/LAND LEASE AGREEMENT WITH MIDWEST FERTILIZER FOR SPACE ON THEIR GRAIN ELEVATOR 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 are hereby authorized and directed to execute a Tower/Land Lease Agreement with Midwest Fertilizer for space on their grain elevator for installation, operation and maintenance of wireless equipment for the Coffeyville Internet Utility.

ADOPTED THIS 9TH DAY OF OCTOBER 2012.

_____
David George, Mayor

ATTEST:

_____
Cindy Price, City Clerk

APPROVED AS TO FORM AND LEGALITY:

_____
Paul Kritz, City Attorney

LEASE AGREEMENT

This LEASE AGREEMENT ("Lease") is entered into this ____ day of _____, 2012, between Midwest Fertilizer ("MIDWEST"), and the City of Coffeyville, Kansas ("CITY").

In consideration of the terms and covenants contained in 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, MIDWEST leases to CITY and CITY leases from MIDWEST sufficient space on MIDWEST's grain elevator located at 128 E. 8th Street, Coffeyville Kansas (the "Elevator" or the "Leased Premises") 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 MIDWEST and CITY. This Lease may be renewed by CITY, at its option, for successive one (1) year terms, upon giving MIDWEST written notice of its intention to renew at least thirty (30) days prior to the expiration of the original or any renewal term.

3. Rent. The rent shall be $6,000 per year and shall be paid in monthly, quarterly or annual installments. After the initial term expires, rent shall be increased annually in an amount equal to one percent (1%) of the current rent amount.

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. MIDWEST 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. CITY is required to provide and maintain workers compensation insurance to employees that enter upon the Leased Premises and to indemnify Co-op from any and all liability with respect to CITY's employees, contractors and subcontractors.

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 Elevator, which facilities may include but not be limited to 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 MIDWEST, and no equipment or property shall be subsequently relocated without MIDWEST'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, upgrade, or replace the Internet Facilities from time to time with the prior notice to MIDWEST.

c. CITY, at all times during this Lease, shall have access to the Property in order to install, operate and maintain its Internet Facilities. CITY shall notify Midwest when it intends to enter upon the Elevator in order to allow MIDWEST to have an employee present. CITY shall request access to the Elevator at least twenty-four (24) hours in advance and MIDWEST's approval thereof shall not be unreasonably withheld or delayed.

d. 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.

e. MIDWEST shall have sole responsibility for the maintenance, repair, and security of the Elevator and related equipment and shall keep the same in good repair and condition during the Lease term, including the ladder(s) used by CITY personnel to gain access to the Internet Facilities.

6. Interference. CITY's installation, operation, and use of its Internet Facilities under this Lease shall not damage or interfere in any way with MIDWEST's grain elevator operations or related repair and maintenance activities. MIDWEST, 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. MIDWEST agrees to give reasonable advance notice (not less than thirty (30) days unless there are exigent circumstances) 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:

i) At any time, by mutual agreement of the parties;

ii). Upon a default of any covenant or term hereof by either party, which default is not cured within thirty (30) days of receipt of written notice of default from the other party;

iii) 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, in which case rent shall be prorated to the date the Internet Facilities are removed from the Elevator;

iv) By MIDWEST or CITY, if the Elevator is determined to be structurally unsound by a qualified engineer, in which case rent shall be prorated to the date the Internet Facilities are removed from the Elevator;

v) By MIDWEST, after expiration of the initial term, by giving CITY at least six (6) months written notice of termination.

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 Elevator within sixty (60) days after the date of termination, and shall restore the Elevator 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 MIDWEST.

8. Insurance. 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 MIDWEST 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.

9. Damage or Destruction of Property. If the Elevator or Internet Facilities are destroyed or damaged so as, in CITY's judgment, to render the site unusable as an Internet Facility site, CITY may elect to terminate this Lease upon thirty (30) days written notice to MIDWEST, and rent shall be prorated 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:	MIDWEST:
City Clerk	_____
P.O. Box 1629	_____
Coffeyville, KS 67337	_____

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.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

LESSOR:	LESSEE:
MIDWEST FERTILIZER	CITY OF COFFEYVILLE, KANSAS
By:_____	By:_____
Title:_____	David George, Mayor
Attest:	
_____	_____
Secretary	Cindy Price, City Clerk