

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
MAY 16, 2017 AGENDA**

Subject:	Type:	Submitted By:
APPROVE AGREEMENT - US CELLULAR	◆ RESOLUTION ORDINANCE RECEIVE/FILE	JEREMY KINSEY POLICE CAPTAIN

SYNOPSIS

A resolution has been prepared authorizing the Mayor to execute a memorandum of lease and agreement with US Cellular, Chicago, Illinois.

FISCAL IMPACT

None

RECOMMENDATION

Approval.

BACKGROUND

The Police Department has recently transferred our primary cellular carrier for department issued cellular phones and cellular data sims for our in-cruiser Mobile Data Computers (MDC) to US Cellular. Previously, our cell phones and cellular data sims were provided by two separate carriers.

After research and meeting with cellular provider companies, it was determined that it would be more prudent and cost effective to put both the cell phone and data sim service under one provider. After meeting with US Cellular, it was determined they were the best wireless communications provider for our systems and for customer service. Additionally by switching to the one provider, the Police Department was able to increase the number of cellular lines to meet current needs with a modest savings compared to what was being spent under two separate cellular providers.

With the change to US Cellular, they have agreed to install an in-building cellular reception repeater inside the Police Station to increase our cellular range within the building, which would eliminate cellular reception issues. There is no cost associated with this lease agreement.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AUTHORIZING THE EXECUTION OF A 5-YEAR AGREEMENT WITH US CELLULAR FOR THE INSTALLATION OF WIRELESS COMMUNICATIONS EQUIPMENT.

WHEREAS, US Cellular currently provides services for law enforcement agencies and municipal governments throughout the US and is currently the wireless communications provider for the La Vista Police Department;

WHEREAS, Installation of a wireless telecommunications repeater and related equipment is needed inside the La Vista Police Station;

WHEREAS, the City Council of the City of La Vista has determined that the need exists to provide innovative and efficient services to the citizens of La Vista, and

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of La Vista, Nebraska, that the Mayor and City Clerk be, and hereby are, authorized to execute a 5 year contract with US Cellular, Chicago, Illinois.

PASSED AND APPROVED THIS 16TH DAY OF MAY, 2017.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Mandy Garrod, CMC
Deputy City Clerk

IN-BUILDING LEASE AND AGREEMENT

This In-Building Lease and Agreement (the "In-Building Agreement") by and between the City of LaVista (Police Department), located at 7701 S 96th St, La Vista, NE 68128 ("Landlord"), and USCOC of Greater Iowa, LLC ("Tenant"), Attention: Real Estate Lease Administration, 8410 West Bryn Mawr Avenue, Chicago, Illinois 60631. In this In-Building Agreement, the parties are sometimes collectively referred to as the "Parties" and singly as a "Party".

Whereas, simultaneously with entering into this In-Building Agreement, the Parties may have executed a Business Customer Service Agreement; pursuant to which Tenant shall provide and sell, and Landlord shall lease and use, certain wireless telecommunications services ("Service") and related equipment ("Equipment"); and

Whereas, Landlord owns and uses as its business location that certain office building located at 7701 S 96th St, Sarpy County, La Vista, NE 68128 (the "Building"); and

Whereas, Landlord wishes to obtain, and Tenant wishes to provide, improved wireless communication service in the Building; and

Whereas, Tenant is able to provide improved in-building wireless communication service by installing certain wireless telecommunications repeater(s) and related equipment (the "In-Building System") within the Building.

Now, therefore, in consideration of mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. System Design, Approval and Installation. Tenant, at its expense, shall design and install the In-Building System, subject to Landlord's approval, which approval shall not be unreasonably withheld, conditioned or delayed.

2. Demise of Premises. Landlord hereby lets and demises unto Tenant, and Tenant hereby accepts from Landlord the following described premises located within the Building:

- a. Space in the building for up to six (6) antennas and the In-Building System at locations determined upon mutual agreement of the Parties.
- b. Space on the roof of the Building for certain In-Building System components, including but not limited to one (1) donor antenna, as specified in Exhibit A.

- c. Space in the Building to extend and connect telecommunications lines for signal carriage within the In-Building System, as more fully set forth in Exhibit A.
- d. Space in the building to extend and connect electric utility service lines between the In-Building System and utility company service connection points.
- e. The approximate size, shape and description of the in-building equipment, antenna and telecommunications lines shall be included as Exhibit A to this In-Building Agreement.

3. Grant of Easement; Non-Interference with Business Operations. To effect the purposes of this In-Building Agreement, Landlord hereby grants to Tenant a non-exclusive Easement appurtenant to the Building to enter the Building and so much of Landlord's business premises as Tenant, in its discretion, deems reasonably necessary; during normal business hours; for the purpose of installing and maintaining the In-Building System; provided, however, that Tenant shall not unreasonably interfere with Landlord's business operations. If, in Tenant's opinion, installation and/or maintenance of the In-Building System is reasonably likely to interfere with Landlord's business operations, then Tenant shall provide Landlord with reasonable advance notice of the anticipated interference, and obtain Landlord's prior consent; provided, further, that Landlord's consent shall not be unreasonably withheld, conditioned, or delayed.

4. Use of the Building. Tenant shall be entitled to non-exclusive use of the Building to install, operate, modify as necessary and maintain its In-Building System, together with any and all necessary lines, anchors, connections, devices, and equipment for the transmission, reception, encryption, and translation of voice and data signals by means of radio frequency energy.

5. Term and Termination. The initial lease term will be five (5) years (the "Initial Term"), commencing on the full execution of this Agreement. This Agreement automatically renew for up to three (3) additional terms of five (5) years each, unless Tenant notifies Landlord that it will not renew the Agreement prior to the expiration of the term then present at the time of such notice.

6. Option to Terminate. In the event that Tenant determines, in its reasonable opinion, that the In-Building System is no longer necessary for the provision of Service to Landlord, then Tenant shall have the right to terminate this In-Building Agreement and to remove the In-Building System, provided that such removal shall not unreasonably interfere with Landlord's business operations; and, further, that if interference is reasonably anticipated, then the provisions of Section 3, above, shall apply.

7. Utilities. At Landlord's expense, Tenant shall be entitled to connect to and receive unmetered electricity for the In-Building System from a suitable electric service outlet.

8. Repairs. Tenant, at its expense, shall be responsible for all repairs to the In-Building System and Tenant, at its expense and in its discretion, may replace and substitute the In-Building System components in order to achieve the purposes of this Agreement.

9. Mutual Indemnification. Tenant shall indemnify and hold Landlord harmless from and against any loss, damage, or injury caused by, or on behalf of, or through the fault of the Tenant, or in any way resulting from Tenant's presence upon Landlord's business premises. Landlord shall indemnify and hold Tenant harmless from and against any loss, damage, or injury caused by, or on behalf of, or through the fault of the Landlord. Nothing in this Article shall require a party to indemnify the other party against such other party's own willful or negligent misconduct.

10. Limitation of Liability. Tenant's liability regarding Landlord's use of the In-Building System or related equipment, or any failure of or inability to use the Service or Equipment, is limited to the charges Landlord incurs for the applicable Service or Equipment during the affected period. This means Tenant is not liable for any incidental, indirect or consequential damages (including, without limitation, lost profits or lost business opportunities), punitive or exemplary damages, or attorneys' fees.

11. Disclaimer of Warranties. Tenant makes no warranty regarding the In-Building System, including but not limited to its equipment or software components; and Tenant disclaims any implied warranty, including any warranties of merchantability, non-infringement or fitness for a particular purpose. Tenant is not responsible for circumstances beyond its control, including without limitation, acts or omissions of others, atmospheric conditions, or acts of God. Tenant does not manufacture the In-Building System, including but not limited to its equipment or software components, and Landlord's only warranties and representations with respect to equipment or software are those provided by the manufacturers, if any (with respect to which Tenant has no liability whatsoever).

TENANT SHALL HAVE NO LIABILITY TO LANDLORD OR ANY END USER FOR ANY INTELLECTUAL PROPERTY INFRINGEMENT OR MISAPPROPRIATION WITH RESPECT TO ANY ELEMENT OF THE IN-BUILDING SYSTEM. IN ADDITION, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, TENANT SPECIFICALLY DISCLAIMS THE SUITABILITY OF THE IN-BUILDING SYSTEM FOR USE IN MISSION CRITICAL APPLICATIONS OR IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL SAFE CONTROLS, INCLUDING WITHOUT LIMITATION, OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL AND LIFE SUPPORT OR WEAPONS SYSTEMS.

12. Insurance. Tenant shall continuously maintain in full force and effect its customary policy of commercial general liability insurance with limits of no less than One Million Dollars.

13. Assignment of In-Building Agreement by Tenant. Tenant's interest under this In-Building Agreement may be freely assigned in connection with the transfer of Tenant's FCC authorization to operate a commercial mobile radio base station at the Site, so that the name and identity of the holder of Tenant's interest hereunder can be consistent with the name and identity of the holder of said FCC authorization. Any other assignment of this In-Building Agreement by Tenant shall require Landlord's prior written consent, which shall not unreasonably be withheld, conditioned or delayed.

14. Removal of In-Building System. Landlord agrees and acknowledges that the In-Building System is Tenant's personal property and shall never be considered fixtures to Building or Landlord's business premises. Tenant shall at all times be authorized to remove Tenant's In-Building System from the Building. Within thirty (30) days after any termination of the In-Building Agreement, Tenant shall remove all of its equipment from the Building and restore the Building to its original condition, reasonable wear and tear excepted. Landlord acknowledges that if, at any time, Landlord discontinues being a U. S. Cellular customer; then Tenant will terminate this In-Building Agreement and remove Tenant's equipment from Landlord's Building.

15. Binding Effect. All of the covenants, conditions, and provisions of this In-Building Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

16. Modifications. This In-Building Agreement may not be modified, except in writing, by the parties' duly authorized representatives, or their successors, who executed this In-Building Agreement.

[END OF AGREEMENT – SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed or have caused this Agreement to be so executed by them and their duly authorized Officers, effective as of the day and year first above written.

ATTEST:

USCOC OF GREATER IOWA, LLC
(TENANT)

Vice-President

ATTEST

CITY OF LA VISTA, NEBRASKA

(SEAL)

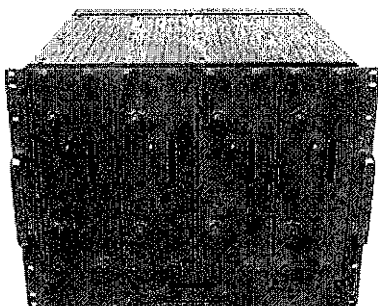
City Clerk

(Mayor)

Attachment A
List of Equipment

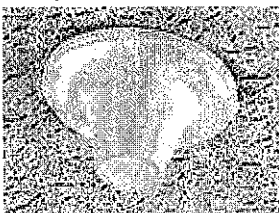
Amplifier

1 ADRF SDR30C Repeater



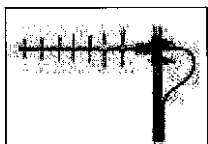
Indoor antennas

Up to 6 Omni In-Bldg. Antennas as needed



Outdoor donor antenna

1-Yagi Antenna



Cabling

1/2" Coax Cable

