



## **STUDY SESSION AGENDA**

### **1. Call Study Session To Order**

### **2. Public Participation**

This is an opportunity for the public to provide public comment to the Presiding Officer. Those wishing to speak are required to sign in prior to commencement of the meeting and must address the Council from the seat and table provided. The public comments must comply with Ordinance 2014-02 and be limited to 5 minutes or less.

### **3. Discussion On Sales Agreement And License Agreement For Use Of Right Of Way (Fiber System)**

Documents:

[2016-71 MEMO.PDF](#)

[2016-71.PDF](#)

### **4. City Council Study Session Adjournment**



## CITY COUNCIL MEETING MEMORANDUM

<b>ITEM:</b> Resolution 2016-75 IMLRMA Annual Renewal	<b>DEPARTMENT:</b> City Administration
<b>AGENDA SECTION:</b> New Business	<b>SUBMITTED BY:</b> Maura Metcalf, HR/Accounting Manager
<b>ATTACHMENTS:</b> ( ) ORDINANCE (X) RESOLUTION ( ) OTHER SUPPORTING DOCUMENTS	<b>DATE:</b> November 9, 2016

### **BACKGROUND:**

This resolution renews the city liability and worker's compensation coverage for calendar year 2017. The \$182,532.24 premium reflects a 1% increase and takes advantage of the min/max program and a 1% early pay discount.

### **RECOMMENDED ACTION:**

It is recommended that the City Council discuss and vote on this resolution.



**After recording return to:**

**City of Monticello, Illinois  
210 North Hamilton  
Monticello, Illinois 61856**

CCG  
206 N. Randolph St.  
Suite 200  
Champaign, IL 61824

**SALES AGREEMENT AND LICENSE AGREEMENT FOR USE OF RIGHT-OF-WAY**

**Campus Communications Group, Inc.**

THIS AGREEMENT is made and entered into by and between the City of Monticello ("City") and the other members of the Joint Fiber Optic Network Committee ("JFON"), consisting of Piatt County ("County"), Board of Education of Monticello Community Unit School District #25 ("District #25") and Allerton Public Library District ("Library"), as current owners of a certain fiber optic Telecommunications Facility ("Facility"), on the one hand, and Campus Communications Group, Inc. ("CCG"), as purchaser of the Facility on the other hand (each a "Party" and collectively the "Parties"). This Agreement is effective on the last date signed by a Party to this Agreement. The Parties agree as follows:

1. **Right-of-Way.** City, as the authority with jurisdiction over the use of the public right of way, requires, and CCG has provided, maps depicting the mutually agreed upon and dedicated routes for the Facility. The maps for the agreed routes are attached as Exhibit A. For the sake of clarity, CCG will also provide narrative summaries—to be approved by the City—that describe the mapped routes and CCG will do so in accordance with City's permit approval process. The narrative summaries will be attached as Exhibit B
2. **Grant of License.** The City hereby grants CCG a limited license to maintain, construct and expand the Facility in accordance with the maps and descriptions set forth in Exhibits A and B. The Facility will be comprised of the existing fiber optic infrastructure owned by JFON and all appurtenant equipment necessary to operate the Facility
  - a. The license granted under this Agreement is wholly dependent upon CCG fully and faithfully performing and complying with all the terms, conditions, and covenants contained in this Agreement. This License is subject to the rights of any public utility or other person or entity currently having rights, license, Licenses or easements in and about the right-of-way;
  - b. The license granted under this Agreement is immediately revocable at the option of the City in the event that CCG fails to perform or comply with any term, condition, or covenant set forth in this Agreement, provided that CCG will have a period in which to cure any such failure as set forth in this Agreement;
    - i. Should revocation occur as noted in §21(b) above, JFON will have first right of purchase for any and all elements of the installed Facility. Upon request by JFON, CCG shall provide all requested documentation relevant to asset value,



minus any equipment depreciation, prior to JFON exercising or waiver its right of first refusal. The stated value of the Facility will include the market value analysis. Any irreconcilable dispute over the value of the Facility under this subparagraph will be decided under the Commercial Arbitration Rules of the American Arbitration Association.

- c. The license granted under this Agreement may not be transferred or assigned by CCG without the prior written consent of the City;
- d. The license granted under this Agreement does not convey any right, title, or interest in any right-of-way, but is deemed a license only to use and occupy. The license shall not be construed as any warranty of title or fitness for a particular purpose;
- e. The License granted under this Agreement is non-exclusive and at all times is subordinate to the City's and the public's use of said right-of-way for purposes normally associated with such a public right-of-way. Accordingly, the Company shall, at its sole cost, relocate or remove any portion of the Facility upon the written direction of the City's Director of Public Works ("Director") if necessary to accommodate repair, maintenance or construction of the City utilities or improvements to the right-of-way. CCG will assume locating, identifying and managing of the Facility .
- f. Piatt County and JFON will provide CCG free access to the site and location of the current Headend of the fiber optic network (the locations generally described as the Piatt County Nursing Home is the present location of the Headend). In exchange for the continued use of the Headend space without payment of rent, and for the other considerations and mutual promises contained herein, CCG will provide fiber optic broadband service to the City, the County, District #25, and Library at all locations served by the Facility on the effective date of this Agreement—said locations being set forth for each Party on Schedule 1 attached hereto as Exhibit C--and do so without any subscription or other charge. Further:
  - i. CCG will provide or replace, as necessary, modems and other equipment at each location for access to the Facility by each Party;
  - ii. Bandwidth provided by CCG will be set to no less than 500 Mbps;
  - iii. The City and County will provide access for equipment and electronics for CCG and said access will include electrical power outlets and use and heating and air conditioning;
  - iv. The City will provide CCG with a list of potential contractors and disposal sites for spoils from trenching operations and other construction activities of CCG but all costs of disposal shall be that of CCG exclusively;
  - v. The City will provide access to metered water service for directional boring and other construction activities; however, the City shall invoice CCG and CCG shall pay for water access and use at standard City rates.
- g. CCG will agree to the initial, trial installation of fiber to four separate geographic areas listed on Schedule 2, attached hereto as Exhibit D. These areas include residential homes and a downtown business district (estimated to include 498 homes). CCG will retain the right to pursue other locations and fiber installation throughout the City. Any determined areas will be subject to the permit process noted herein;





- a. In addition to the above, CCG will also be fully responsible for all 811 (JULIE) locates and for maintenance and repair of the JFONC fibers previously installed, as needed.
7. **Right-of-Way Repair.** After doing any work, CCG at its sole cost and expense shall promptly repair and restore to the extent practicable any right-of-way disturbed by CCG, including, without limitation, all sidewalks, parkways or pavements to the condition in which they existed before performance of the work.
  - a. If any such sidewalk, parkway or pavement becomes uneven, unsettled or otherwise requires repairing because of such disturbance by CCG, then CCG, as soon as climatic conditions reasonably permit, shall promptly and no more than fifteen (15) days from receipt of notice from the City to do so, cause such sidewalk, parkway or pavement to be repaired or restored to the condition in which it existed before said sidewalk, parkway or pavement was disturbed by CCG. Such restoration shall be completed within ten (10) calendar days after the date of commencement of such restoration work. If CCG fails to commence and complete the restoration work in the manner and within the time periods prescribed herein, the City has the right, but no obligation to perform such work. CCG shall promptly reimburse any costs and expenses the City incurs under the authority granted by this paragraph.
  - b. If such right-of-way or improvement cannot be so repaired, replaced or restored, the Company shall compensate the City for the cost or reasonable value of such improvements in an amount estimated by the City's engineer.
  - c. All excavations in lawns or grass parkways shall be immediately backfilled, tamped, and then restored within a reasonable time thereafter to the original condition with seed or mulch in accordance with the applicable provisions of this agreement. In the event any shrubs, bushes or trees existing within the right-of-way are disturbed by reason of the construction, maintenance or repair of the Facility, the Company shall repair or replace such shrubs, bushes or trees as the case may warrant as determined by the Director.
  - d. CCG shall keep all structures constructed pursuant to this Agreement in a reasonably safe condition at all times and shall maintain such traffic control and protection during the construction, repair or renewal work performed hereunder as will reasonably avoid danger to life, limb and property.
  - e. CCG shall promptly repair and restore at its own expense all damage it causes to any other utility, including, but not limited to, storm and sanitary sewers and their services, street lighting, traffic signals, field titles or facilities from any other utility company.
8. **Lapse and Termination.** The license shall be limited solely to the construction, maintenance and use of the Facility. Upon cessation of such use for greater than three (3) months, for any reason other than restoration, maintenance replacement and repair, as determined by the designated City representative and signatory of this Agreement (or similarly situated personnel), this Agreement will immediately and automatically lapse and terminate. If the City believes CCG is no longer using the Facility or that it otherwise has been abandoned, the City shall notify CCG in writing that the City is asserting its right to declare this Agreement lapsed and terminated. Such notice shall state that CCG has thirty (30) days in which to reassert its rights under this Agreement and demonstrate that it has not, in fact, abandoned use of the license granted by this Agreement. If CCG demonstrates within the thirty (30) day period that it has not abandoned the Facility, this Agreement shall remain in force and effect according to its terms. If CCG does not demonstrate within the thirty (30) day period of the notice that it has not abandoned the Facility, this Agreement shall be deemed lapsed, terminated and no longer in effect (except that part which relates to removal of the Facility, restoration of the work area and indemnification, each of which shall survive this Agreement). Any additional use other than that specifically named herein,



without the further express written consent of the City, shall be construed as a violation of respective City ordinances and municipal laws.

- a. **Grace Period.** Notice of lapse and termination shall include a *Grace Period* for reinstatement, if desired by CCG. Said Grace Period shall expire, in its entirety, within one year of Termination under §8 above.

9. **Facility Removal or Relocation.** In the event of the existence of one or more of the following, the City reserves the right to request CCG to remove facilities (and/or relocate) at its own expense. CCG, however, will retain the option, if the cost of removal or relocation exceeds \$ 20,000.00, to abandon their facilities at the designated removal location:

- a. An emergency that presents imminent peril to person or property;
- b. Non-compliance with any term, provision or covenant in this Agreement that is not cured within the time period provided herein, following notice of such non-compliance tendered to CCG;
- c. The duly authorized agent for the City, in good faith, deems the procedure in §7 (*Right-of-Way Repair*) impracticable in light of circumstances which may exist;
- d. Termination of this Agreement, for any reason;
- e. Abandonment of the Facility (or Facilities) use in accordance with the provisions in §8 (*Lapse and Termination*) of this Agreement;
- f. Expiration of this Agreement, in the absence of any renewal as noted in §11.
- g. Should CCG fail in any way to make timely payment to the City for such costs and expense, the Contractor agrees to pay, in addition to any amount so owed, actual attorneys' fees and court costs incurred in the collection of such amount.

10. **Insurance and Indemnity.** To the extent permitted by law, and except for gross negligence or willful and wanton misconduct by the City, CCG shall hold and save the City and County and their officers, agents and employees, harmless from any and all liability and expense, including, but not limited to, judgments, costs and damages, and attorney's fees arising out of the existence, installation, removal, relocation, alteration, repair, maintenance, restoration and any other aspect of the Facility as described herein or the use of the storage area or the Headend space; and also hold the City harmless from any and all damages to the Facility on account of the location, construction, alteration, repair or maintenance of any public street, sidewalk, right-of-way, bridge, underpass, subway, tunnel, vault, sewer, water main, conduit, pipe, pole and all aspects of any other utility or public facility.

a. CCG shall procure and keep in force, to the satisfaction of the City, at all times during the performance of any construction work referred to above, Workers Compensation and Employer's Liability Insurance, Commercial General Liability Insurance, and Automobile Insurance in at least the type and amounts as follows:

- 1. Workers' Compensation:
  - a. State: Statutory
  - b. Applicable Federal (e.g., Longshoremen's): Statutory
  - c. Employer's Liability
 

\$500,000.00	Per Accident
\$500,000.00	Disease, Policy Limit
\$500,000.00	Disease, Each Employee
- 2. Commercial General Liability:
  - 1. \$2,000,000.00 General Aggregate
  - 2. \$1,000,000.00 Products Completed Operations Aggregate
  - 3. \$1,000,000.00 Personal and Advertising Injury
  - 4. \$1,000,000.00 Each Occurrence
  - 5. \$ 50,000.00 Fire Damage (any one fire)
  - 6. \$ 5,000.00 Medical Expense (any one person)



3. Business Automobile Liability (including owned, non-owned and hired vehicles):
  - a. Bodily Injury:
    - \$1,000,000.00 Per Person
    - \$1,000,000.00 Per Accident
  - b. Property Damage:
    - \$1,000,000.00 Per Occurrence
4. Umbrella Excess Liability:
  - \$2,000,000.00 over Primary Insurance

b. CCG shall have all policies of insurance purchased or maintained in fulfillment hereof name the City and County as additional insureds thereunder and the CCG shall provide Certificates of Insurance and Policy Endorsements evidencing the coverages and the addition of the City and County as an insured. No such policy of insurance shall have a deductible or self-insurance retention amount in excess of \$5,000.00 per occurrence. All insurance shall be written on an "occurrence" basis rather than a "claims-made" basis. Failure of the City or County to demand any certificate, endorsement or other evidence of full compliance with these insurance requirements or failure to identify a deficiency from evidence that is provided shall not be construed as a waiver of CCG's obligation to maintain such insurance. To the extent permitted by law, and except for gross negligence or willful and wanton misconduct by the City, CCG shall indemnify and hold the City harmless from any and all damages and claims arising out of damage to the Facility caused in whole or in part by the City, its officers, employees and agents or by any other person(s), whether or not they have a permit from the City and whether or not they are associated with the City in any direct or indirect manner.

c. CCG waives all claims, except for gross negligence or willful and wanton misconduct by the City, its officers, employees and agents, against the City, whether arising directly, by subrogation, assignment or otherwise, for any and all damages, direct or indirect, resulting from damage to the Facility structures done, in whole or in part, by the City or by any other person(s) whether or not they have a permit from the City and whether or not they are associated with the City in any direct or indirect manner. As part of this provision, CCG shall, at its own expense, defend all suits and does agree to indemnify and save harmless, except for gross negligence or willful and wanton misconduct by the City, its officers, employees and agents, the City from and against any and all claims and liabilities of whatever nature arising from the granting of authority herein to CCG or imposed upon or assumed by it, or by reason of or in connection with any damage to life, limb or property as a result of any of the installed Facility constructed under or by virtue of this Agreement, and shall save and keep harmless the City from any and all damages, judgments, costs and expenses of every kind, that may arise by reason thereof.

d. Notice in writing shall be promptly given to CCG of any claim or suit against the City which, by the terms hereof, CCG shall be obligated to indemnify and defend, or against which CCG has hereby agreed to save and keep harmless the City. The City shall furnish to CCG all information in its possession relating to said claim or suit, and cooperate with said CCG in the defense of any said claim or suit. CCG agrees to provide notice in writing to the City Attorney of the City of any claim or suit against CCG and/or its officers or employees which may directly affect the Facility or directly or indirectly affect this Agreement or the property referred to herein, whether or not the City has been made a defendant or respondent to the legal action. The City may, if it so desires, assist in defending any such claim or suit. CCG further agrees that it will pay the costs incurred by the City for the necessary defense of any suit against the City resulting from this Agreement other than disputes between the City and Company arising from this Agreement or where indemnification would not be required under the terms of this Agreement. CCG will not rely upon governmental immunity afforded to the City. Except where this Agreement requires the



City to indemnify CCG, the indemnification and waiver provided in this Section shall be enforceable solely by the City and shall not operate as an indemnification or waiver as to any third party.

11. **Term; Termination.** The initial term of this Agreement shall be twenty (20) years from the date of the execution. Upon expiration of this initial term or any renewal term, this Agreement shall automatically renew for a subsequent term of five (5) years, unless, no fewer than ninety (90) days prior to the then scheduled expiration of the current term or any renewal term, either party provides written notice to the other party of the intent not to renew. Either party may terminate this Agreement for cause by giving written notice to the other party prior to the proposed termination. Such notice of termination shall specify the reason or reasons for such termination and shall specifically state that such termination shall become effective thirty (30) calendar days after the date thereof in the event the reason or reasons for such notice of termination are not fully and completely cured.

- a. CCG acknowledges and City agrees that the current agreement between the JFON of Monticello and Metro Communications will expire within eighteen (18) months. Further, City agrees and covenants to move transfer all elements of ownership rights to all bandwidth facilities, procured by the City under the Metro agreement, to CCG at the end of the aforementioned 18-month period.

12. **Fees. Conditions.** The City and CCG have agreed to the following fees and conditions:

- a. In consideration of the mutually beneficial marketing of services, CCG hereby agrees to become a contributor and supporter of the athletic programs in Monticello school(s) in the sum of \$2500 annually.
- b. In a separate Purchase Order document, CCG will pay City, as agent for JFON, a one-time payment of One Hundred and Fifty Thousand dollars (\$150,000.00) for the purchase of existing fiber infrastructure from JFON. Prior to closing in such purchase, CCG shall have a forty-five (45) day due diligence period during which time CCG may survey the existing City fiber infrastructure. The infrastructure includes 72 strands of fiber. CCG, subsequent to payment of this amount, will own 60 strands and both conduits and the City will retain ownership of 12 strands. If CCG, upon review of due diligence summary, determines that the infrastructure is not of standard quality or the installed fiber is less than presented, then CCG will advise JFON and the Parties agree to re-negotiate this sum or terminate this Agreement. Both JFON and CCG agree that the JFON Parties have not made any oral or written representation or warranty regarding the quality of the existing fiber infrastructure and CCG is making the purchase based solely on its own investigation and determination of the quality and fitness of such property.

13. **Entire Agreement.** This Agreement and any written exhibits or addenda to it constitute the entire Agreement between the parties, and may be changed, modified or amended only by mutual written agreement executed by them.

14. **Notices.** All notices required under this Agreement must be in writing. Notices must be personally hand delivered or mailed by certified U.S. mail, return receipt requested, addressed to the respective party as shown below, or to any changed address either party may have fixed by notice. Notice will be deemed effective upon actual receipt of the notice or, if certified mail delivery is not accomplished, notice will be deemed given on the date of the mailing. An electronic Notice is acceptable, if followed up with an original via regular U.S. Mail.

To the City:

\_\_\_\_\_  
City of Monticello, Illinois  
210 North Hamilton  
Monticello, Illinois 61856



To CCG: Michael O'Linc, President  
Campus Communications Group, Inc.  
206 N. Randolph St., Suite 200  
P.O. Box 25 (61824)  
Champaign, Illinois 61820  
Phone: 217-353-3021  
Phone: 217-353-3013  
Fax: 217-389-1429  
[pswisher@pavlovmedia.com](mailto:pswisher@pavlovmedia.com)  
[dheavner@pavlovmedia.com](mailto:dheavner@pavlovmedia.com)

Either party may designate by written notice a different address or addressee to which notices can be sent.

15. **Non-waiver.** CCG will not be excused from complying with any of the terms and conditions of this Agreement by any failure of the City upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.
16. **Governing Law.** This Agreement will be construed in accordance with the laws of the State in which the City resides and by local municipal ordinances. Each party acknowledges that this Agreement is the product of good faith negotiations by and between the parties hereto and, as such, neither party may seek to have this Agreement strictly construed against the other party as drafter of this Agreement by reason of the principles of evidence or contract law.
17. **Amendment.** This Agreement may be amended only by a writing which is fully and duly executed by the parties hereto.
18. **Due Authorization.** Each party acknowledges that the individual who has executed this Agreement has full authority to do so.
19. **Recording.** If required, this Agreement will be recorded in the Office of the Recorder of Deeds for Piatt County, Illinois.
20. **Execution by counterpart.** This Agreement may be executed in counterparts, each of which will, for all purposes, be deemed to be an original and will together constitute one and the same instrument.

[Signatures on the following page]



IN WITNESS WHEREOF, the parties have executed this Agreement by the respective, duly authorized agents, on the dates as noted below:

**City of Monticello**

\_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
[Printed Name]

\_\_\_\_\_  
[Title]

**ATTEST:**

\_\_\_\_\_

\_\_\_\_\_  
[Name and Title]

**County of Piatt**

\_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
[Printed Name]

\_\_\_\_\_  
[Title]

**ATTEST:**

\_\_\_\_\_

\_\_\_\_\_  
[Name and Title]

**Board of Education, Monticello Community Unit District #25**

\_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
[Printed Name]

\_\_\_\_\_  
[Title]

**ATTEST:**

\_\_\_\_\_

\_\_\_\_\_  
[Name and Title]



**Allerton Public Library District**

\_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
[Printed Name]

\_\_\_\_\_  
[Title]

**ATTEST:**

\_\_\_\_\_

\_\_\_\_\_  
[Name and Title]

**Campus Communications Group, Inc.:**

\_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Michael O'Linc

\_\_\_\_\_  
President

**ATTEST:**

\_\_\_\_\_

\_\_\_\_\_  
[Name and Title]

<b>Attachments:</b>	<b>Exhibit A</b>	<b>Segment Maps (4 Pages)</b>
	<b>Exhibit B</b>	<b>CCG Route Narratives and Installation Specifics (___Pages)</b>
	<b>Exhibit C</b>	<b>Schedule of Facilities</b>
	<b>Exhibit D</b>	<b>Schedule of Geographic Regions for Service</b>

Exhibit B will be provided by CCG to the City of Monticello within sixty (60) days of mutual execution of this Agreement.

4824-4537-4522, v. 1

**“Exhibit A”  
Maps and Routes  
Ordinance 2016-71  
Sales Agreement and License Agreement for Use of Right-of-Way**

**4 Maps Attached**



W Marion St

W Lafayette St

S Charter St

W Lafayette St

S State St

S Independence St

S Hamilton St

S Buchanan St

W Main St

E Main St

E Main St

S Charter St

S State St

W Washington St

N Charter St

N State St

N Independence St

N Hamilton St

E Livingston St

N Buchanan St

E Wash

Washington St

W Livingston St

105

4

4

4

114



Image courtesy of Bruce Hamilton, Architectural Corporation, 2016, HFE 5-2016





Image courtesy of USGS Earth Explorer. Imagery captured on 2/21/2014. Downloaded on 2/21/2014. 110

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"Exhibit B"  
Narrative Summaries  
Ordinance 2016-71  
Sales Agreement and License Agreement for Use of Right-of-Way

The CCG Route Narratives and Installation Specifics will be provided by CCG to the City of Monticello within sixty (60) days of mutual execution of this Agreement.

“Exhibit C”

Schedule of Facilities

Ordinance 2016-71

Sales Agreement and License Agreement for Use of Right-of-Way

The locations to be included for fiber optic broadband service and maintenance as mentioned in Section 2(f) of this agreement are listed as:

City of Monticello-

- Monticello Municipal Building, 210 N. Hamilton Street
- Monticello Livingston Center, 224 E. Livingston Street
- Monticello Water Department, 212 N. Hamilton Street
- Monticello Police/Fire Station, 209 N. Hamilton Street
- Monticello Public Works Facility, 303 W. Railroad Street
- Ducky Lift Station, 1753 N. State Street
- Bear Park Lift Station, 375 W. Burnside

Monticello Community Unit School District #25-

- Lincoln Elementary School, 700 N. Buchanan Street
- Monticello Middle School, 2015 E. Washington Street
- Washington Elementary School, 2 Sage Drive
- Monticello High School, 1 Sage Drive

Piatt County Government-

- Piatt County Courthouse, 101 W. Washington Street
- Piatt County Office Building, 1111 N. State Street
- Piatt County Nursing Home, 1111 N. State Street
- Piatt County Maple Pointe Assisted Living Facility, 1000 N. Union
- Piatt County Mental Health, 1921 N. Market Street
- Piatt County Transportation, 1921A N. Market Street
- Piatt County Safety Building, 1216 Raymond Road

Allerton Public Library District-

- Allerton Public Library, 4000 Green Apple Lane

"Exhibit D"  
Schedule of Geographic Regions of Service  
Ordinance 2016-71  
Sales Agreement and License Agreement for Use of Right-of-Way

Geographical areas to be served through first installation of fiber include the general areas of:

Downtown Business District

Chimneys Subdivision

Appletree /Turtle Creek/ Turtle Pointe/ Evergreens Subdivisions

Ridgepointe/Foxfield Subdivisions

Chimneys Subdivisions

Jefferson Grove Subdivision