RESOLUTION 2013-33

Agenda Item

TO: Mayor and City Council

FROM: Mark S. Gaugh, City Manager

DATE: October 21, 2013

RE: Resolution Terminating Pole Attachment Agreement

BACKGROUND

The City's agreement with GTE for pole attachments has expired. The City has a pole attachment agreement that compensates the City of use of its poles that will be sent to CenturyLink (GTE) for signatures. The agreement is more comprehensive than any previous expired agreements and allows for the City to receive fair rent for use of its poles. Our goal is to make sure we treat all users of our rights-of-way in a fair and equitable manner, consistent with our ordinances.

RECOMMENDATION

Staff recommends that the Council approve the resolution to terminate the pole attachment agreements between the City and General Telephone Company of Missouri and its successors and assigns.

Resolution 2013-33

AN RESOLUTION FOR THE CITY OF CAMERON, CLINTON AND DeKALB COUNTIES, MISSOURI TERMINATING POLE ATTACHMENT AGREEMENTS BETWEEN THE CITY AND GENERAL TELEPHONE COMPANY OF MISSOURI AND ITS SUCCESSORS AND ASSIGNS

WHEREAS, the City of Cameron (the "City") entered into a Pole Attachment Agreement with General Telephone Company of Missouri dated April 22, 1959 (the "1959 Agreement"); and

WHEREAS, the 1959 Agreement was amended by a letter agreement between the City and GTE North, Inc., dated March 1, 1991 (the "1991 Letter Agreement") (the "1959 Agreement and 1991 Letter Agreement are herein referred to collectively as the "Pole Agreements"); and

WHEREAS, the City has learned that Spectra Communications Group, LLC d/b/a CenturyLink ("CenturyLink") is currently using the City's poles without a pole attachment agreement with the City; and

WHEREAS, the City has an ordinance which requires all pole users to obtain a pole attachment agreement, and consistent with the City's current pole usage requirements, all prior, abandoned, or dormant agreements inconsistent with current requirements should be terminated, pursuant to their terms, so that the City may enter into a new, updated and lawful pole attachment agreement with all pole users consistent with the provisions and intent of current code requirements and to adequately protect the public;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CAMERON, CLINTON AND DeKALB COUNTIES MISSOURI, AS FOLLOWS:

Section 1: The City hereby terminates the Pole Agreements pursuant to Article X of the 1959 Agreement effective 30 days from the effective date of this ordinance, consistent with the 30-day termination provision in such Agreement, to the extent such agreements are still effective.

Section 2: Consistent with City ordinance, CenturyLink shall immediately make application for an agreement to use the City's poles if it seeks to continue such use, and if it does not so seek continued use, it shall remove its attachments from City-owned poles no later than 30 days from the effective date of this resolution, unless extended for up to 30-day periods by the City Manager for good cause upon written request of CenturyLink to the City. After the effective date of this resolution, CenturyLink shall make no new attachments to any City pole or facility until a pole attachment agreement approved after this date is mutually executed, unless for emergency purposes stated in writing and provided the application and fee required for obtaining an agreement has already been submitted to the City.

<u>Section 3</u>: The City Manager is hereby instructed to immediately provide a copy of this Resolution to CenturyLink and any other user of the City's poles discovered to be using such poles without an applicable pole attachment agreement between the City and such entity. The City Manager is also hereby directed to provide CenturyLink, and any other applicable user having no current valid agreement with the City for use of poles, an application for a pole attachment agreement as provided in City Ordinance # 5758. **If CenturyLink or other such user having no pole use agreement with the City, timely submits an application for a pole attachment agreement and required application fee within thirty days of notice of this Resolution**, the City Manager may extend such dates set forth in Section 2 of this Ordinance for good cause, provided that, for any interim use resulting from such extension, the user agrees in writing that it shall be subject to the same terms as the LICENSEE is subject to under the pole agreement approved by Resolution 2013-20, and accordingly the Pole Attachment Fee Rates set forth in City Ordinance #5758.

<u>Section 4</u>: This Resolution shall be in full force and effect from and after its passage and approval as provided by law.

Passed and approved by the City Council on this 21st day of October 2013.

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Mayor Dennis M. Clark

ATTEST:

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City Clerk/Finance Clerk