RESOLUTION 2015-27

Agenda Item

TO: Mayor and City Council

FROM: Mark S. Gaugh, City Manager

DATE: December 21, 2015

RE: Mediacom Resolution

Issues

The City has an agreement with Mediacom for its use of City-owned poles and rights-of-way. The agreement spells out that Mediacom is to pay an amount of $48,000 for the year upfront, and then submit tax payments it makes as a credit to that amount. However, there was an error on Mediacom's side of that part of the agreement, and they submitted payments that did not cover the entire amount due.

The attached agreement makes the City whole for the payments that were not submitted correctly. They are also reimbursing the City for the extra costs incurred for the process required to reconcile the payments due. The total amount currently due is $14,241.83. It will be paid to the City by the end of December, 2015.

Recommendation

Staff recommends that the Council approve the Resolution.

Resolution 2015-27

A RESOLUTION FOR THE CITY OF CAMERON, CLINTON AND DeKALB COUNTIES, MISSOURI AUTHORIZING THE CITY MANAGER OF THE CITY OF CAMERON, MISSOURI TO EXECUTE A SETTLEMENT AND MUTUAL RELEASE WITH MEDIACOM

WHEREAS, the City has asserted that MCC Missouri ("Mediacom") failed to make a forty eight thousand dollar ($48,000.00) payment in January of 2014 and again in 2015 as required by Article I, Section 7 of that certain Agreement for Non-Exclusive Use of City Utility Poles, by and between the City and Mediacom, dated June 3, 2013, for payment of Linear Foot Charges for 2014 and 2015 ("Flat Fee Non-payment"); and

WHEREAS, Mediacom seeks credit for certain payments it claims it did make and asserts that the Flat Fee Non-Payment was inadvertent; and

WHEREAS, the City and Mediacom desire to settle, release and discharge the other from claims, demands, or causes of action relating only to the Flat Fee Non-payment or the amount of any credit thereto upon payment of a certain amount which is composed of an amount attributable to principal, interest and City's costs and attorney fees.

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 Manager is hereby authorized to execute the Settlement and Mutual Release Agreement with Mediacom substantially in the form as attached hereto and incorporated herein as **Exhibit A** on behalf of the City.

Section 2: 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 December 2015.

_____
Mayor Dennis M. Clark

ATTEST:

_____
City Clerk/Finance Clerk

EXHIBIT A

SETTLEMENT AND MUTUAL RELEASE AGREEMENT

This Settlement and Mutual Release Agreement (the "Agreement") by and between MCC Missouri LLC, a Delaware limited liability company ("Mediacom") with its principal office located at One Mediacom Way, Mediacom Park, NY 10918 and the City of Cameron, MO (the "City"), with an address of 205 North Main Street Cameron, MO 64429. Mediacom and City are at times collectively referred to hereinafter as the "Parties."

WHEREAS, the City has asserted that Mediacom failed to make a forty eight thousand dollar ($48,000.00) payment in January of 2014 and again in 2015 as required by Article I, Section 7 of that certain Agreement for Non-Exclusive Use of City Utility Poles, by and between the City and Mediacom, dated June 3, 2013, for payment of Linear Foot Charges for 2014 and 2015 ("Flat Fee Non-payment"); and

WHEREAS, Mediacom seeks credit for certain payments it claims it did make and asserts that the Flat Fee Non-Payment was inadvertent;

NOW WHEREFORE in consideration of the mutual covenants and commitments made herein, and the circumstances set forth above, the parties agree as follows:

1. Mediacom agrees to deliver to the City an unconditional payment of fourteen thousand two hundred and forty one dollars and eighty three cents ($14,241.83) ("Settlement Payment") not later than December 31, 2015 to satisfy the Flat Fee Non-payment.

2. Upon timely receipt of the Settlement Payment by City, Mediacom and City shall be deemed to have each released and discharged the other, including all subsidiaries, principals, officers, agents, attorneys, servants, employees (both permanent and temporary), successors or assigns and/or representatives of each, from any and all claims, demands, or causes of action relating only to the Flat Fee Non-payment or the amount of any credit thereto; provided this release shall not extend to relieve Mediacom from any obligation or claim as to the sufficiency of or non-payment of any other obligation to the City, including but not limited to any obligation as to payment of or compliance with any required tax, pole use charge, franchise fee, property tax or other City tax or fee, other than the Flat Fee Non-Payment.

3. The undersigned hereto declare and represent that by execution of this Agreement, they have relied wholly upon their judgment, belief and knowledge of the sole claim described herein, and that each has had the opportunity to consult with legal counsel of their own choosing concerning whether it is advisable to enter into this Agreement.

4. The undersigned hereto each represents and warrants to the other party that there has been no transfer, assignment or gift of all or part of the sole claim described herein,

and that each holds all of the right, title and interest thereto. Thus, each of the undersigned below represents and warrants that he has the full and complete authority to execute this Agreement.

5. This Agreement contains the entire agreement between the Parties hereto and is intended as a full and final expression of their settlement and release of claims, and this Agreement shall not be construed in favor of or against either party, but shall be construed equally to both Parties.

6. If any provision of this Agreement shall be deemed invalid, the invalidity shall not affect the other provisions of this Agreement.

7. This Agreement shall be governed by and construed under the laws of the State of Missouri. The parties hereto agree that any action at law, suit in equity, or other judicial proceeding arising out of this Assignment shall be instituted only in in federal court of the Eastern District of Missouri and waive any and all objections to the application of Missouri law and to the foregoing selection of the forum.

8. This Agreement shall be effective on the date of the last executed signature below.

The Parties acknowledge that they have read and understood the contents of this Agreement and sign the same of their own free will.

MCC Missouri LLC	**City of Cameron, MO**
_____	_____
_____	_____
Regional Vice President	
Date: _____	Date: _____