

NOTICE AND AGENDA

Notice is hereby given that the City Council of the City of Santaquin will hold a City Council Meeting on Wednesday, July 7, 2010, in the Council Chambers, 45 West 100 South, at 7:00 pm.

AGENDA

1. **ROLL CALL**
2. **PLEDGE OF ALLEGIANCE**
3. **INVOCATION/INSPIRATIONAL THOUGHT**
4. **CONSENT AGENDA**
 - a. Minutes
 1. June 30, 2010
 - b. Bills
 1. \$7174.72
5. **FORUM, BID OPENINGS, AWARDS, AND APPOINTMENTS**

Public Forum is held to a 30-minute maximum with each speaker given no more than 5 minutes each. If more than 6 Speakers, time will be adjusted accordingly to meet the 30 minute requirement
6. **FORMAL PUBLIC HEARINGS**
7. **UNFINISHED BUSINESS**
8. **BUSINESS LICENSES**
9. **REPORTS OF OFFICERS, STAFF, BOARDS, AND COMMITTEES**
10. **NEW BUSINESS**
 - a. Ratification of adoption of Resolution 06-01-2010 FY 2009/2010 Adjusted Budget
 - b. Discussion and possible action with regard to the Cell Tower
11. **INTRODUCTIONS AND ADOPTION OF ORDINANCES AND RESOLUTIONS (Roll Call Vote)**
 - a. Resolution 07-01-2010, "A Resolution of Santaquin City adopting the Municipal Wastewater Planning Program Annual Report"
 - b. Resolution 07-02-2010 "A Resolution of Santaquin City to participate in the Utah County CDBG Program"
 - c. Resolution 07-03-2010 "A Resolution of Santaquin City authorizing the purchase of a 2010 Public Works Vehicle"
12. **PETITIONS AND COMMUNICATIONS**
13. **REPORTS BY MAYOR AND COUNCIL MEMBERS**
 - a. Mayor DeGraffenried
 - b. Council Members
14. **EXECUTIVE SESSION** (May be called to discuss the character, professional competence, or physical or mental health of an individual)
15. **EXECUTIVE SESSION** (May be called to discuss the pending or reasonably imminent litigation, and/or purchase, exchange, or lease of real property)
16. **ADJOURNMENT**

If you are planning to attend this Public Meeting and, due to a disability, need assistance in understanding or participating in the meeting, please notify the City ten or more hours in advance and we will, within reason, provide what assistance may be required.

CERTIFICATE OF MAILING

The undersigned duly appointed City Recorder for the municipality of Santaquin City hereby certifies that a copy of the foregoing Notice and Agenda was faxed to the Payson Chronicle, Payson, UT, 84651.

BY: 
Susan B. Farnsworth, City Recorder

POSTED:
CITY CENTER
POST OFFICE
ZIONS BANK

® Amendment to the agenda

**MINUTES OF A COUNCIL MEETING
HELD IN THE COUNCIL CHAMBERS
JULY 7, 2010**

The meeting was called to order by Mayor James E. DeGraffenried at 7:05 pm. Council Members attending: Filip Askerlund, Martin Green, James Linford, Rick Steele and Brent Vincent.

Others present: City Manager Ben Reeves, City Planner Dennis Marker, Director of Public Safety Dennis Howard, and Legal Counsel Brett Rich.

PLEDGE OF ALLEGIANCE

Council Member Vincent led the Pledge of Allegiance.

INVOCATION/INSPIRATIONAL THOUGHT

Council Member Green offered an Invocation.

CONSENT AGENDA

Minutes

June 30, 2010

Bills

\$7,174.72

Council member Linford moved to approve the Consent Agenda. Council Member Vincent seconded the motion. Council Members Askerlund, Green, Linford, Steele and Vincent voted in the affirmative.

FORUM, BID OPENINGS, AWARDS, AND APPOINTMENTS

Nothing

FORMAL PUBLIC HEARINGS

Nothing

UNFINISHED BUSINESS

Nothing

BUSINESS LICENSES

It was reported that there was one approved new business license in the name of Apple Blossom Daycare.

REPORTS OF OFFICERS, STAFF, BOARDS, AND COMMITTEES

Nothing

NEW BUSINESS

Ratification of adoption of Resolution 06-01-2010 FY 2009/2010 Adjusted Budget

Council Member Green moved to ratify passing of Resolution 06-01-2010 "FY 2009/2010 Adjusted Budget" during the last Council Meeting. Council Member Askerlund seconded the motion. Council Members Askerlund, Green, Linford, Steele and Vincent voted in the affirmative.

Discussion and possible action with regard to the Cell Tower

A discussion was held with regard to a proposal presented by TowerCo for a buyout of the current cell tower contract in the amount of \$73,431.87. Mayor DeGraffenried asked City Manager Reeves to make a counter offer in the amount of \$86,000. (See attachment "A" for the informational memorandum)

Council Member Linford moved to decline the original offer submitted by TowerCo in the amount of \$73,431.87 and the counter offer submitted by Santaquin City in the amount of \$86,000. Council Member Green seconded the motion. Council Member Askerlund asked if there was any amount the Council would be willing to accept. Council Member Linford would like the full amount that would be paid over the term of the contract. On the flip side of the issue, TowerCo would have an option to relocate the tower altogether. Council Members Askerlund, Green, Linford, Steele and Vincent voted in the affirmative.

INTRODUCTIONS AND ADOPTION OF ORDINANCES AND RESOLUTIONS (Roll Call Vote)

Resolution 07-01-2010, "A Resolution of Santaquin City adopting the Municipal Wastewater Planning Program Annual Report"

Council Member Linford moved to approve Resolution 07-01-2010, "A Resolution of Santaquin City adopting the Municipal Wastewater Planning Program Annual Report". Council Member Vincent seconded the motion. Council Members Askerlund, Green, Linford, Steele and Vincent voted in the affirmative through a roll call vote.

Resolution 07-02-2010 "A Resolution of Santaquin City to participate in the Utah County CDBG Program"

Council Member Green moved to approve Resolution 07-02-2010 "A Resolution of Santaquin City to participate in the Utah County CDBG Program". Council Member Steele seconded the motion. Council Members Askerlund, Green, Linford, Steele and Vincent voted in the affirmative through a roll call vote.

Resolution 07-03-2010 "A Resolution of Santaquin City authorizing the purchase of a 2010 Public Works Vehicle"

Council Member Green moved to approve Resolution 07-03-2010 "A Resolution of Santaquin City authorizing the purchase of a 2010 Public Works Vehicle". Council Member Vincent seconded the motion. Council Members Askerlund, Green, Linford, Steele and Vincent voted in the affirmative.

PETITIONS AND COMMUNICATIONS

Nothing

EXECUTIVE SESSION (May be called to discuss the character, professional competence, or physical or mental health of an individual)

Nothing

EXECUTIVE SESSION (May be called to discuss the pending or reasonably imminent litigation, and/or purchase, exchange, or lease of real property)

At 7:33 pm Council Member Linford moved to enter into an Executive Session with regard to pending or reasonably imminent litigation, and/or purchase, exchange, or lease of real property. Council Member Steele seconded the motion. Council Members Askerlund, Green, Linford, Steele and Vincent voted in the affirmative.

Those attending: Mayor DeGraffenried, Council Members Askerlund, Green, Linford, Steele, and Vincent, City Manager Reeves, City Recorder Farnsworth and Legal Counsel Rich.

The regular Council Meeting resumed at 8:03 pm.

REPORTS BY MAYOR AND COUNCIL MEMBERS

Mayor DeGraffenried

Council Members

Council Member Vincent reported Mike Daniels had called him with regard to soccer balls being kicked into his yard. It was determined the City has taken all the precautions they can to insure the balls be kept within the playing area.

Council Member Askerlund reported he would be delivering caramel apples to radio stations hoping for free advertizing for the celebration.

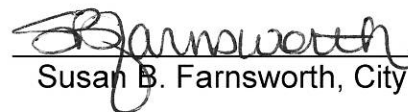
Council Member Askerlund reported the arena project is underway and should be completed by celebration time. He also reported they are struggling to find a route for the ATV Poker Run. As more information is available he will share it with the Mayor and Council Members.

ADJOURNMENT

At 8:12 pm Council Member Vincent moved to adjourn. Council Member Linford seconded the motion. Council Members Askerlund, Green, Linford, Steele and Vincent voted in the affirmative.

Approved on July 21, 2010.


James E. DeGraffenried, Mayor


Susan B. Farnsworth, City Recorder



Memorandum

To: Mayor & City Council
From: Benjamin Reeves
Date: July 1, 2010
Subject: Cell Tower Contract

Early last month, I received a letter/offer from TowerCo for a perpetual easement (buyout) of our current cell tower contract in the amount of \$73,431.87 (See Attachment A). Currently, the city is under a 5 year contract that was executed in 2002 that has the option to renew four additional 5 year terms. The original lease proceeds were \$6000 plus 4% increase annually. It is important to note that with increases, the amount collected this past year was approximately \$8500. Historically, the city has used those funds to pay the debt service for the park lights.

At first, I did not give this letter much thought until the council meeting in which the council instructed me to look into the cost of new bleachers for the rodeo grounds and/or shared use with our baseball fields. The next morning the Mayor, Susan, and Shannon were in my office and we did a little research and learned that the approximate payoff of the park lights is roughly \$12,000. We also learned that new five row bleachers with safety railing cost approximately \$2400 per unit.

With this limited information in hand, the Mayor asked that I counter offer with TowerCo in the amount of \$86,000, the increase being roughly the amount of our remaining debt service (See Attachment B). The Mayor wanted me to be explicitly clear in the letter that any final negotiation would need council approval.

Anyway, I am not sure that we truly expected to hear back from them, but yesterday, I received a package indicating that they would accept our \$86,000 counter offer (See Attachment C). As such, we bring it to you for your consideration.

If accepted, those funds could pay off the lights in the park and purchase 10 new bleachers while leaving approximately \$50,000 extra for other potential recreational enhancements or other municipal purposes. It is important to note that by approving this buyout, the city will lose its current revenue stream in the recreation department. This loss of revenue will not be felt as those funds have been used to pay a debt service which will no longer exist. However, the future benefits derived from that revenue stream would be lost by accepting this deal.

Truly, this is an opportunity cost decision between having a smaller yet immediate one-time influx of money that might fulfill a specific need or project vs. maintaining a revenue stream that could assist future budget years to cover operational expenses in the recreation department.



ATTACHMENT A

May 26, 2010

VIA EMAIL: sfarnsworth@santaquin.org

City of Santaquin
Attn: Ms. Susan Farnsworth
45 West 100 South
Santaquin, UT 84655

RE: TowerCo Site: UT2009 (Updated Proposal)

Dear Ms. Farnsworth:

This letter follows our recent proposal regarding the TowerCo Ground Rights Purchase Program. TowerCo's original proposal was in the amount of \$60,000.00. I have further researched the details of your lease agreement with TowerCo and the tower facility located on your property and I am pleased that we are able to increase our offer to you.

Specifically, I am able to increase our offer to **\$73,431.87** for a perpetual easement under the area defined as the leased space or leased premises in your lease agreement with TowerCo, together with non-exclusive easements for access and utilities that currently serve the tower facility related equipment.

This program allows you to take advantage of the time value of money and guarantee to you a specified amount for the use of your land for the location of the tower, regardless if: (a) options are renewed by TowerCo; and/or (b) there are changes to technology or the economy in the next 10 to 20 years. In addition, the conveyance of the easement is treated as a "capital gain" (please consult your tax advisor on this issue) and is currently taxed at fifteen percent (15%) (said tax is subject to increase at the end of 2010) rather than at ordinary income tax rates which are generally greater. Because each situation is unique, you should discuss the financial aspects and related tax implications with your personal advisor.

Please review this letter and feel free to contact me if there are any questions. I look forward to working with you.

Sincerely,

/s/

Jamie A. Ebling
Authorized Representative of TowerCo
1819 Main Street, Suite 1000
Sarasota, Florida 34231
866.319.0842 main
941.870.9207 fax
jebling@towerco.com



June 16, 2010

Jamie A. Ebling
Authorized Representative of TowerCo
1819 Main Street, Suite 1000
Sarasota, Florida 34231

Re: Response to Letter Dated May 26, 2010
TowerCo Site: UT2009

Jamie,

Thank you for your letter dated May 26th in which you offered to purchase a perpetual easement for the cell tower located in our community park for the amount of \$73,431.87.

Based on your letter, and at the request of our Mayor, the city has reviewed the existing contract in greater detail to determine our best course of action. While we appreciate your analysis of the time value of money and its potential tax implications, it is important to note that as a municipality we are a tax exempt organization. However, after our review, we have determined that it would be in our best interest to either:

- Counter offer in the amount of **\$86,000.00**; or
- Continue our relationship under the terms of our existing contract

It is important to note that any modification to our existing contract and/or final consideration of a purchase of a perpetual easement would need to be considered and formally approved by the Santaquin City Council.

Please let me know if you have any questions or if you are in need of additional information.

Respectfully,

Benjamin A. Reeves
Santaquin City Manager

June 28, 2010

City of Santaquin
Attn: Benjamin A. Reeves, City Manager
45 West 100 South
Santaquin, UT 84655

RE: Lease Agreement dated February 28, 2002 between City of Santaquin and TCO Assets, LLC (as amended and assigned, the "Lease")
Site ID: UT2009

Dear City Manager Reeves:

First and foremost we appreciate our relationship with you. Pursuant to your acceptance of our recent proposal I am enclosing a Binding Letter of Intent ("LOI") with applicable exhibits.

If possible I would like to receive the executed LOI back from you in the next two weeks so we can begin the due diligence process and close in a timely fashion. If the LOI is acceptable, please have the appropriate person(s) execute Page 2 then mail the executed LOI to my attention. I have enclosed a FEDEX return envelope for your convenience.

Furthermore, please confirm the following information in the LOI prior to signing: Sellers Legal Name, Seller Address, and Exhibits **(the Exhibits attached to the LOI have been pulled from your original ground lease and/or tower construction plans. TowerCo may obtain new surveys on the property and easement(s) leading to the property to confirm the actual descriptions. The new surveys may take the place of the Exhibits currently being attached to the LOI).**

Should you have any questions or comments, please feel free to contact me at 866-319-0842.



Sincerely,

TowerCo

Jamie A. Ebling
Authorized Representative
1819 Main Street, Ste. 1000
Sarasota, Florida 34236
jebling@towerco.com

(C) continued

June 28, 2010

Santaquin City
Attn: Benjamin A. Reeves, City Manager
45 West 100 South
Santaquin, Utah 84655

RE: Lease Agreement dated February 28, 2002 between City of Santaquin and TCO Assets, LLC (as amended and assigned, the "Lease")
Site ID: UT2009

Dear City Manager Reeves:

This binding letter agreement ("**Letter Agreement**") sets forth a proposal by TCO Assets Land, LLC, a Delaware limited liability company ("**Grantee**") to City of Santaquin, a municipal corporation and political subdivision of the State of Utah ("**Grantor**"), to acquire from Grantor certain easements and to take assignment of the Lease, all as more particularly set forth in this Letter Agreement.

NOW THEREFORE, for and in consideration of the covenants agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Grantor owns the real property subject to the Lease located in Utah County, Utah, more specifically described on Exhibit A attached hereto (the "**Property**").
2. Grantor shall sell and grant to Grantee and Grantee shall purchase from Grantor a perpetual exclusive easement in and to that portion of the Property described on Exhibit B and a perpetual non-exclusive easement for access and utilities in and to that portion of the Property described on Exhibit C (collectively, the "**Easements**"). Grantor shall further sell and assign to Grantee and Grantee shall accept and assume all of Grantor's right, title and interest in and to the Lease.
3. Grantee and Grantor will enter into a grant of easement (the "**Agreement**"), pursuant to which Grantee will acquire the Easements from Grantor and Grantor will assign its interest in the Lease to Grantee for a purchase price of Eighty Six Thousand and NO/100 Dollars (\$86,000.00) (the "**Purchase Price**") (the "**Acquisition**"). The Agreement shall be in recordable form in substantially the form attached as Exhibit D. Subject to the satisfaction of the contingencies described in Section 4 of this Letter Agreement to the Grantee's sole satisfaction, the parties hereby agree that the Acquisition shall occur on or before October 5, 2010.
4. Consummation of the Acquisition will be subject to:
 - a. the execution of the Agreement and related documents mutually acceptable in form and substance;
 - b. receipt by Grantee of a survey, obtained by Grantee at its sole cost, in form and substance satisfactory to Grantee; and,
 - c. receipt by Grantee of a title commitment, with respect to the Property, to be obtained by Grantee at its sole cost, stating that Grantor has good, indefeasible and marketable fee simple title to the Property, free and clear of all liens and encumbrances except such matters as may be acceptable to Grantee.
5. Upon satisfaction of the contingencies described in Section 4 of this Letter Agreement to the Grantee's sole satisfaction Grantee shall prepare the Agreement at its sole cost, and Grantor shall execute same.

6. During the period in which this Letter Agreement is in effect, Grantor shall not directly or indirectly solicit, initiate or encourage submission of proposals or offers relating to any acquisition or purchase of the Property.

7. Irrespective of whether the transactions contemplated by this Letter Agreement are consummated, Grantee and Grantor each will pay their own out-of-pocket expenses, including their own attorneys' fees, if any. In addition to the foregoing, unless otherwise provided in this Letter Agreement, Grantee agrees that it will pay all costs for administrative transactional fees and any recording fees for closing the Acquisition, and Grantor agrees to pay for transfer fees for the Agreement.

8. Grantor agrees that the information contained in this Letter Agreement and other information conveyed by Grantee to Grantor concerning the Acquisition, whether written or oral, constitutes confidential information that will not be disclosed without the prior written consent of Grantee.

9. The parties hereby agree that if either party to this Letter Agreement breaches by non-performance of its obligations as required herein, then the non-breaching party, in its sole discretion, may elect to pursue any and all available remedies at both law and/or equity, which remedies may include, without limitation, specific performance of this Letter Agreement and costs associated with the pursuit of such action, and/or monetary damages.

10. Grantor represents and warrants as of the date of this Letter Agreement that:

- a. Grantor is duly authorized and has the full power, right and authority to enter into this Letter Agreement and to perform all of its obligations under this Letter Agreement and to execute and deliver all documents required by this Letter Agreement;
- b. Grantor has no knowledge of any pending or threatened condemnation proceedings or other proceedings in the nature of eminent domain in connection with the Property;
- c. Grantor has no knowledge of any special or general assessment levied, pending or threatened against the Property;
- d. There is no litigation or proceedings pending, or to Grantor's knowledge threatened, against or relating to the Property; and,
- e. Grantor covenants that the foregoing representations and warranties will be true and correct as of the Closing. Grantor's representations, warranties and covenants shall survive the closing.
- f. Grantor shall cooperate with Grantee in satisfying any contingencies described in Section 4 or otherwise in this Letter Agreement.

If this Letter Agreement accurately sets forth our understanding regarding the foregoing, please so indicate by signing and returning to the undersigned the enclosed copy of this letter.

Grantor:
City of Santaquin

Grantee:
TowerCo Assets Land LLC, a Delaware Limited Liability Company

By: TowerCo Acquisition LLC, a Delaware limited liability company, its sole Member,

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____



CLOSED EXECUTIVE SESSION AFFIDAVIT

I, James E. DeGraffenried, Mayor of Santaquin City, do hereby certify that the Executive Session held on July 7, 2010 was called to discuss the pending or reasonably imminent litigation, and/or purchase, exchange, or lease of real property.


James DeGraffenried, Mayor

7-7-10
Date