

**ORDINANCE NO. 10-05**

**AN AMENDED ORDINANCE AUTHORIZING THE MAYOR  
AND VILLAGE FISCAL OFFICER TO ENTER  
INTO A CONTRACT WITH ALLTEL OHIO  
LIMITED PARTNERSHIP FOR THE  
CONSTRUCTION OF A CELL TOWER AT THE  
SPENCER VILLAGE WASTE WATER TREATMENT PLANT  
LOCATION AND DECLARING AN EMERGENCY**

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Spencer, Ohio, three-fourths (3/4) of its members concurring herein as follows:

1. That the Mayor and Village Fiscal Officer are hereby authorized to enter into a contract with Alltel Ohio Limited Partnership for the construction of a cell tower at the Spencer Village Waste Water Treatment Plant location pursuant to the terms of the written contract attached hereto and incorporated herein as "Exhibit A"; and

5. That this Ordinance is hereby determined to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety of said Village and for the particular reason that it is immediately necessary to enter into a contract to commence work on the cell tower as soon as practical during the current building season, and that this Ordinance shall be in full force and effect from and after its passage.

PASSED: July 19, 2005

ATTEST:


  
\_\_\_\_\_  
TOMMY RAMEY, Mayor

  
\_\_\_\_\_  
RHONDA R. RIFFLE, Village Fiscal Officer

CERTIFICATE

The undersigned, Rhonda R. Riffle, Village Fiscal Officer, hereby certifies that the foregoing is a true and exact copy of Ordinance No. 10-05 duly passed by Council for the Village of Spencer, Ohio, on the 19<sup>th</sup> day of July, 2005.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Spencer, Ohio, on this 19<sup>th</sup> day of July, 2005.

  
RHONDA R. RIFFLE  
Village Fiscal Officer

**COMMUNICATIONS SITE  
OPTION AND LAND LEASE AGREEMENT**

**THIS COMMUNICATIONS SITE OPTION AND LAND LEASE AGREEMENT** ("Lease") is entered into this 22 day of June, 2005, by and between Spencer Village ("Owner") and ALLTEL Ohio Limited Partnership ("Tenant").

1. Option to Lease. (a) For the sum of One Hundred and No/100 Dollars (\$100.00) (the "Option Fee"), to be paid to Owner by Tenant upon execution of this agreement, and other good and valuable consideration, Owner hereby grants to Tenant the exclusive and irrevocable option to lease the Premises as defined below. The initial term of this Option shall be for six (6) months from the date the Option is executed by Owner until 5:00 p.m. (EST) on 12/30/05 (the "Initial Term"). (the "Initial Option Period"), on the terms and conditions set forth below ("the Option"). The Option may be extended for an additional 6 month period upon written notification to Owner by Tenant accompanied by the payment of an additional option fee of One Hundred and No/100 Dollars (\$100.00) (the "Extension Fee"), delivered to Owner prior to the expiration of the applicable option period. Should Tenant tender, and Owner accept, the Extension Fee after the expiration of the Initial Term or Extended Term of this Option, the Option shall be reinstated and the Renewal Extended Term of the Option shall commence upon Owner's acceptance of the Extension Fee.

(b) During the Option Period, Tenant shall obtain, at its option, a title report or commitment for a leasehold title policy from a title insurance company of Tenant's choice which must show no defects or restrictions of title or any liens or encumbrances which may adversely affect Tenant's use of the Premises or Tenant's ability to obtain leasehold financing. Tenant may, at its option and sole expense, record in the real estate records of the county in which the property is located a memorandum of option agreement documenting this Option to Lease between the Parties.

(c) Remedies; Liquidated Damages; Specific Performance. (a) In the event Tenant fails or refuses to perform any of Tenant's covenants, duties, agreements or obligations under this Agreement or is otherwise in default under this Option (and Owner has performed, in all material respects, all covenants, duties, agreements or obligations of the Owner hereunder upon which such covenant, duty, agreement or obligation of Tenant is dependent), and such failure or breach remains uncured in excess of fifteen (15) days after written notice thereof from Owner to Tenant, the sole and exclusive right and remedy of Owner shall be to terminate this Option by giving written notice thereof to Tenant, in which event, Owner shall retain the Option Fee and the Extension Fee, if any, paid to the Owner pursuant to paragraph 1(a) as damages for such failure or refusal by Tenant, and this Option except as expressly set forth herein to the contrary, shall be of no further force or effect, and neither Owner nor Tenant shall have any further rights, liabilities, duties or obligations hereunder, except as expressly set forth herein to the contrary. Owner's retention of said sums is intended not as a penalty, but as liquidated damages. Tenant hereby waives and releases any right to (and hereby covenants that Tenant shall not) sue Owner or seek or claim a refund of said sums (or any part thereof) on the grounds that it is an unreasonable amount and exceeds the Owner's actual damages or that its retention by the Owner constitutes a penalty and not an agreed reasonable liquidated damages amount. Owner hereby expressly waives any other remedies it may have including specific performance and damages for breach of contract.

(d) In the event Owner defaults in the performance of any of its obligations under this Agreement and fails to cure such default within 15 days after written notice of such default is provided by Tenant, then Tenant shall be entitled to pursue any and all remedies afforded by law or in equity including but not limited to the right to have this Option specifically enforced against the Owner.

(e) Entry Prior to Closing. Owner hereby grants to Tenant, its officers, agents, employees and independent contractors the right and privilege to enter upon the Property or the Easement at any time during the option period, to perform or cause to be performed tests to determine the suitability of the Property for Tenant's purposes, including borings of the soil, environmental audits, engineering studies and to conduct a survey of the Property or the Easement. Tenant shall not unreasonably interfere with Owner's use of the Property or the Easement in conducting these activities and shall repair damages, if any, to the Property caused by the testing.

2. Leased Property. Subject to the following terms and conditions, Owner leases to Tenant the property described in attached Exhibit "A" ("Premises"). Owner also grants to Tenant a non-exclusive easement during the term of this Lease for ingress, egress and regress and for the installation and transmission of utilities on property described on attached Exhibit "B" ("Easement"). Upon completion of the survey in accordance with Section 1(e) above, the description of the Premises and the description of the Easement in the survey shall be substituted for its respective description in Exhibit "A" and Exhibit "B", and in the event of any conflict, the description in the survey shall control as the description of the Premises or of the Easement.

3. Use. Tenant shall use the Premises for the purpose of constructing, installing, maintaining, improving and operating, at Tenant's expense, a communications facility, including towers, antennae, buildings and incidental uses (collectively the "Communications Facility"). Owner agrees to cooperate with Tenant in obtaining, at Tenant's expense, all licenses and permits required for Tenant's use of the Premises ("Governmental Approvals").

4. Initial Term. Tenant may exercise its Option to Lease by notifying Owner in writing of the date Tenant begins construction of its Communication Facility upon the Property (the "Commencement Date"). The initial term of this Lease shall be five (5) years, beginning on the Commencement Date and terminating at midnight on June 20, 2000, ("Initial Term").

5. Renewal Term(s). Tenant shall have the right to extend this Lease for five (5) additional terms of five (5) years each (a "Renewal Term") on the same terms and conditions as set forth in this Lease except that the Rent shall increase as specified in paragraph 6. This Lease shall automatically be renewed for each successive Renewal Term unless Tenant notifies Owner of Tenant's intention not to renew the Lease at least 60 days prior to expiration of the then current term.

6. Rent.

(a) Beginning on the Commencement Date, Tenant shall pay Owner the sum of Nine Hundred and No/100 Dollars (\$900.00) per month as rental ("Rent"). Rent shall be payable on the first day of each month in advance at Owner's notice address or as otherwise specified below and shall be prorated for any partial month at the commencement or termination of this Lease, based upon the number of days in that month.

(b) In the event of termination for any reason other than nonpayment of Rent, all prepaid Rent shall be refunded to Tenant.

(c) In the event that Tenant elects to renew this Lease as provided in paragraph 5, Rent shall increase by an amount equal to fifteen percent (15%) over the Rent to be paid by

Tenant during the immediately preceding Term or Renewal Term. If the Commencement Date falls on any day other than the first of the month, Rent escalation shall be applied on the first day of the month following the applicable anniversary of the Commencement Date. Tenant shall pay Owner Rent during each Renewal Term ("RT") according to the following schedule:

First RT \$1,035.00 per month      Fourth RT \$1,574.11 per month  
Second RT \$1,190.25 per month      Fifth RT \$1,810.22 per month  
Third RT \$1,368.79 per month

(d) As additional compensation, Tenant agrees to reserve tower space and space with Tenant's equipment shelter as shown on Exhibit "C" for the Owner for municipal use. Any Owner attachment shall not interfere with Tenant's use as provided elsewhere in this Agreement.

7. Owner's Representations and Warranties. Owner represents and warrants to the best of Owner's knowledge that (i) Tenant's intended use of the Premises is not prohibited by any covenant, restriction, easement, subdivision rule or other contract which would prohibit Tenant's intended use of the Premises; and (ii) there are no easements, licenses, rights of use or other encumbrances on the Premises which will interfere with Tenant's intended use of the Premises.

8. Conditions Subsequent. In the event that Tenant's intended use of the Premises is actually or constructively prohibited or the Premises are, in Tenant's opinion, unacceptable to Tenant then this Lease shall terminate and be of no further force or effect.

9. Interference. Owner shall not use, nor shall Owner permit its tenants, licensees, invitees or agents to use any portion of the Premises or Easement or adjoining or proximate property of Owner in any way which interferes with the operations of Tenant. Tenant may enforce this provision at law or in equity, or may terminate this Lease immediately upon notice to Owner.

10. Improvements; Utilities; Access.

(a) The Communications Facility placed on the Premises shall remain the exclusive property of the Tenant. Tenant shall remove all Communications Facilities, including footings to a depth of 36", and any improvements made to the Property by Tenant at the termination or expiration of this Agreement and restore the Property to its condition prior to the Commencement Date of this Agreement, reasonable wear and tear excepted.

(b) Owner represents that utilities adequate for Tenant's intended use of the Premises are presently available. Further, from time to time, Tenant shall have the right to install utilities, at Tenant's expense, and/or to improve present utilities on the Premises (including but not limited to the installation of emergency power generators). Tenant shall have the right to permanently place utilities on (or to bring utilities across or under) the Premises and the Easement in order to service the Communications Facility throughout the term or any Renewal Term of this Agreement. Owner shall, upon Tenant's request, execute a separate written easement in a form which may be filed of record evidencing this right.

(c) Tenant shall have access to the Premises and the Communications Facility at all times, 24 hours each day, through the access drive presently existing on the Easement. Owner shall maintain the access drive in good condition throughout the term of this Lease or any Renewal Term. Tenant may, at its own expense, construct a suitable private access drive to the Premises and the Communications Facility within the Easement. To the degree additional access is required across other property owned by Owner, Owner shall execute an easement evidencing this right and agrees to maintain said access so that no interference is caused to Tenant by other Tenants, licensees, invitees or agents of the Owner.

11. Termination. Except as otherwise provided, this Lease may be terminated, without any penalty or further liability, immediately upon written notice or as otherwise provided below, as follows:

(a) By either party upon a default of any covenant or term of this Lease by the other party which default is not cured within 60 days of receipt of written notice of default (without, however, limiting any other rights available to the parties pursuant to any other provisions of this Lease);

(b) By Tenant if it is unable to obtain or maintain any license, permit or other Governmental Approval necessary to the construction and operation of the Communications Facility or Tenant's business or intended use of the Premises;

(c) By Tenant if the Premises or Communications Facility is damaged so as to hinder the effective use of the Communications Facility in Tenant's judgment or in the event that interference, whether or not from Owner's activities or any other source, to transmissions or signals from the Communications Facility, in Tenant's judgment, may not be adequately corrected or eliminated by Tenant;

(d) By Tenant upon six months written notice to Owner, if, in Tenant's reasonable judgment, network design or technology changes render the Communications Facility obsolete or unnecessary.

12. Subleases and Licenses. Tenant at its sole discretion shall have the right to sublease or license the Premises or any portion to others for the purpose of radio transmission and communication service. Owner shall be entitled to additional rent of ten percent (10%) per month of any subsequent sublessee revenue, on the premises. However, if the sublease is to a public safety entity (such as sheriff, fire department, 9-1-1- agency) such additional rent shall not apply. Tenant's sublessee(s) shall be entitled to rights of ingress and egress to the Premises and Easement and the right to install utilities on the Premises and Easement as if said sublessee were Tenant under this Lease.

13. Taxes. Tenant shall pay any personal property taxes assessed on, or any portion of such taxes attributable to, the Communications Facility. Owner shall pay when due all real property taxes and all other fees and assessments attributable to the Premises.

14. Public Liability and Property Damage Insurance. Tenant shall, at Tenant's expense, purchase and maintain in full force and effect throughout the term of this Lease, including any renewals or extensions, such public liability and property damage policies as Tenant may deem necessary. Such policy or policies may be through a blanket policy covering other locations, will provide not less than a combined single limit of \$1,000,000 and will name Owner as additional insured.

15. Condemnation. If a condemning authority takes, or acquires by deed in lieu of condemnation, all of the Premises, or a portion sufficient to render the Premises, in the opinion of Tenant, unsuitable for the use which Tenant was then making of the Premises, this Lease shall terminate as of the date the title vests in the condemning authority. Owner and Tenant shall share in the condemnation proceeds in proportion to the values of their respective interests in the Premises (which for Tenant shall include, where applicable, the value of its Communications Facility, moving expenses, prepaid rent and business dislocation expenses). Should Tenant elect not to terminate this Lease, the rent due during the remainder of the Lease term shall be reduced in proportion to the area taken, effective on the date physical possession is taken by the condemning authority.

16. Environmental Matters.

(a) Owner's Obligations. Owner represents that, to the best of Owner's

knowledge, no Hazardous Materials are presently located on the Premises or Easement, and Owner agrees that it will provide, at no cost or expense to Tenant, for the removal of any Hazardous Materials if, after the Commencement Date of this Lease, Hazardous Materials are brought onto the Premises or Easement by Owner, its agents, servants, employees, licensees, invitees or contractors. If after Tenant takes possession of the Premises Hazardous Materials are discovered to exist on, under or beneath the Premises, Tenant may terminate this Lease and Tenant shall owe no further duties, obligations or liability to Owner.

(b) Tenant's Obligations. Tenant shall comply with all laws, ordinances, rules, orders or regulations applicable to Hazardous Materials. Tenant shall not use the Premises or the Easement for treatment, storage, transportation to or from, use or disposal of Hazardous Materials (other than petroleum products necessary for the operation of an emergency electrical generator to serve the Communications Facility). Tenant shall be responsible for any expense incident to the abatement or compliance with the requirements of any federal, state or local statutory or regulatory requirements caused, directly or indirectly, by the activities of the Tenant or Tenant's agents, employees or contractors.

As used in this Lease, "Hazardous Materials" shall mean any and all polychlorinated byphenyls, petroleum products, asbestos, urea formaldehyde and other hazardous or toxic materials, wastes or substances, any pollutants, and/or contaminants, or any other similar substances or materials which are defined or identified as such in or regulated by any federal, state or local laws, rules or regulations (whether now existing or hereinafter enacted) pertaining to environmental regulations, contamination, cleanup or any judicial or administrative interpretation of such laws, rules or regulations or any substance that after release into the environment and upon exposure, ingestion, inhalation or assimilation, either directly from the environment or directly through food chains will or may reasonably be anticipated to cause death, disease, behavior abnormalities, cancer or genetic abnormalities.

17. Hold Harmless. Owner agrees to defend, indemnify and hold harmless Tenant from and against any and all claims, costs (including reasonable attorneys fees) and liabilities arising from Owner's use or occupancy of the Premises, or from Owner's performance or failure to perform under this Lease, or from any defect in the title to the Premises, or from the presence of any Hazardous Materials on the Premises prior to the Commencement date, or thereafter if brought onto the Premises by Owner or Owner's agents, employees, licensees, invitees or contractors.

18. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, by certified mail, return receipt requested, or by overnight service having a record of receipt to the addresses indicated below:

If to Owner, to:

Spencer Village  
109 N. Main St.  
P.O. Box 336  
Spencer, OH 44275  
Attn: Mayor  
Phone: 330.648.2259  
34-1151741 Tax Identification No.

Hand Delivery Address (if different):  
\_\_\_\_\_

If to Tenant, to:

ALLTEL Ohio Limited Partnership  
c/o ALLTEL Communications, Inc.  
P.O. Box 2177  
Little Rock, AR 72203-2177  
Attn: Property Management Dept.

Hand Delivery Address:

ALLTEL Ohio Limited Partnership  
c/o ALLTEL Communications, Inc.  
Building 2, Floor 2A  
One Allied Drive  
Little Rock, AR 72202  
Attn: Property Management Dept.

19. Title and Quiet Enjoyment. Owner warrants it has the full right, power and authority to execute this Lease and that it has good and unencumbered title to the Premises free and clear of any liens, encumbrances or mortgages. Owner further warrants that Tenant shall have the quiet enjoyment of the Premises during the term of this Lease. Owner shall defend, protect, indemnify and hold harmless Tenant against any interference with Tenant's use and quiet enjoyment of the Premises or breach of this paragraph 19.

20. Assignment. Tenant may assign this Lease provided Tenant promptly notifies Owner of such assignment and the assignment is subject to the provisions of this Lease. Further, Tenant may, upon notice to Owner, mortgage or grant a security interest in this Lease and the Communications Facility, and may assign this Lease and the Communications Facility to any such mortgagees or holders of security interests including their successors and assigns (hereinafter collectively referred to as "Mortgagees"). In such event, Owner shall execute such consent to leasehold financing as may reasonably be required by Mortgagees. Owner agrees to notify Tenant and Tenant's Mortgagees simultaneously of any default by Tenant and to give Mortgagees the same right to cure any default as Tenant.

21. Successors and Assigns. This Lease shall run with the Premises and shall be binding upon and inure to the benefit of the parties, their respective heirs, successors, personal representatives and assigns.

22. Waiver of Owner's Lien. Owner hereby waives any and all lien rights it may have, statutory or otherwise, in and to the Communications Facility or any portion thereof, regardless of whether or not same is deemed real or personal property under applicable laws.

23. Holding Over. In the event Tenant remains in possession of the Premises after the expiration of the Initial Term or a Renewal Term without executing a new Lease, Tenant shall occupy the Premises month-to-month, subject to all of the terms and conditions of this Lease insofar as consistent with such a tenancy.

24. Estoppel. Each party agrees to furnish to the other, within 10 days after request, such truthful estoppel information as the other may reasonably request.

25. Right of First Refusal. Tenant shall have and Owner hereby gives and grants to Tenant, the right, at Tenant's option, to purchase the Premises or a portion of the Premises, prior



to Owner selling the Premises, or any portion of the Premises, to another ("First Refusal Option"). Prior to any sale of the Premises or any portion thereof during the term or any Renewal Term of this Lease, Owner shall give Tenant written notice, including a copy of the fully executed offer received ("First Refusal Notice"). Tenant may choose to exercise its First Refusal Option by giving Owner notice of its intention to purchase the Premises (or the portion under offer) within 30 days of receipt of the First Refusal Notice. Tenant's purchase of the Premises under its First Refusal Option shall be on the same terms and conditions as the offer included with the First Refusal Notice, with the exception that, if the offer proposes a property exchange, Tenant may substitute a cash equivalent for the consideration to be given, and Tenant shall not be required to purchase property other than the Premises and may prorate the purchase price of any offer for the Premises and additional property based upon the square footage or acreage of the Premises compared to the total area to be purchased under the offer. If Tenant does not exercise its First Refusal Option by giving notice as set forth above, then the First Refusal Option shall expire and Owner may proceed to sell the Premises upon the terms set forth in the offer included with the First Refusal Notice, provided the sale closes within six months of the date of that offer and provided the sale shall be subject to the terms of this Lease.

26. Waiver of Liability. Neither Owner nor Tenant shall be responsible or liable to the other party for any loss or damage arising from any claim to the extent attributable to any acts or omissions of other licensees or tower users occupying the communications facility or vandalism or for any structural or power failures or destruction or damage to the communications facility except to the extent caused by the negligence or willful misconduct of such party. Notwithstanding anything to the contrary in this agreement, in no event shall Owner or Tenant be liable to the other for, and Owner and Tenant each hereby waive the right to recover, incidental, consequential (including lost profits, loss of use or loss of business opportunity), punitive, exemplary and similar damages.

27. Miscellaneous.

(a) The prevailing party in any litigation arising under this Lease shall be entitled to its reasonable attorney's fees and court costs, including appeals, if any.

(b) This Lease constitutes the entire agreement and understanding of Owner and Tenant, and supersedes all offers, negotiations and other agreements. Any amendments to said Lease must be in writing and executed by Owner and Tenant.

(c) If either Owner or Tenant is represented by a real estate broker or agent in this transaction, that party shall be fully responsible for any fees or commission due such broker or agent and shall hold harmless the other party from any such claims arising from execution of this Agreement.

(d) Owner agrees to cooperate with Tenant in executing any documents necessary to protect Tenant's rights under this Lease or Tenant's use of the Premises. Tenant may record this Lease or a Memorandum of Lease executed by all parties and the cost of any recording fees shall be paid by Tenant.

(e) This Lease shall be construed in accordance with the laws of the state in which the Premises are located.

(f) If any term of this Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect.

(g) Each of the undersigned warrants that he or she has the full right, power, and authority to execute this Lease on behalf of the party indicated.

IN WITNESS WHEREOF, Owner and Tenant have executed this Agreement effective as of the day and year first above written.

Witness(es):

[Signature]

OWNER: Spencer Village

By:

[Signature]  
Tommy Ramey

Title: Mayor

TENANT: ALLTEL Ohio Limited Partnership by its  
General Partner ALLTEL Communications Co.  
of Petersburg, Inc.

Witness(es)

\_\_\_\_\_  
\_\_\_\_\_

By:

Title:

STATE OF

Ohio

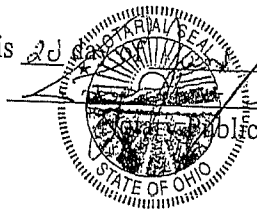
### ACKNOWLEDGMENTS

COUNTY OF

Medina

I, [Signature], a Notary Public of the County and State aforesaid, certify that Tommy Ramey personally appeared before me this day and acknowledged that he is Mayor of Spencer Village and that by authority duly given and as the act of the said Municipality, the foregoing instrument was signed in its name.

WITNESS my hand and notarial seal this



GREGORY A. HUBER  
Notary Public, State of Ohio  
My Commission Has  
No Expiration Date

My Commission Expires:

SEAL

STATE OF

COUNTY OF

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_ personally appeared before me this day and acknowledged that he/she is \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation, and that by authority duly given and as the act of the said corporation, the foregoing instrument was signed in its name..

WITNESS my hand and notarial seal this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:

SEAL

EXHIBIT "A"

LEGAL DESCRIPTION  
OF PROPERTY

The property referred to herein as Premises is located within the parent parcel described as follows:

The premises are located generally as indicated in the sketch attached hereto as Exhibit B. Owner and Tenant agree that upon Tenant's exercise of its option to Lease, Tenant will replace this Exhibit "A" with a revised Exhibit "A" which shall be a surveyed metes and bounds legal description of the Premises, and which shall specifically identify the length and dimension of the Premises upon which Tenant may construct, operate and maintain its Communications Facilities.



EXHIBIT "C"

OWNER'S ANTENNAE AND RADIO EQUIPMENT