

Introduced by _____

First Reading _____

Second Reading _____

Ordinance No. _____

Council Bill No. B 336-13

AN ORDINANCE

authorizing a PCS Antenna Agreement and Memorandum of Agreement with T-Mobile USA Tower LLC relating to the lease of property at Fire Station No. 5 (1400 Ballenger Place); and fixing the time when this ordinance shall become effective.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. The City Manager is hereby authorized to execute a PCS Antenna Agreement with T-Mobile USA Tower LLC relating to the lease of property at Fire Station No. 5 (1400 Ballenger Place). The form and content of the agreement shall be substantially in the same form as set forth in "Attachment A" attached hereto.

SECTION 2. The City Manager is hereby authorized to execute a Memorandum of Agreement with T-Mobile USA Tower LLC relating to the lease of property at Fire Station No. 5 (1400 Ballenger Place). The form and content of the agreement shall be substantially in the same form as set forth in "Attachment B" attached hereto.

SECTION 3. This ordinance shall be in full force and effect from and after its passage.

PASSED this _____ day of _____, 2013.

ATTEST:

City Clerk

Mayor and Presiding Officer

APPROVED AS TO FORM:

City Counselor

PCS ANTENNA AGREEMENT

(Amending and Restating Certain Terms of June 7, 2000 Agreement)

THIS AGREEMENT (“**Agreement**”) is entered into this ____ day of _____, 2013 (“**Effective Date**”), between the City of Columbia, Missouri, a municipal corporation (hereinafter “**City**”), and T-Mobile USA Tower LLC, a Delaware limited liability company, by CCTMO LLC, a Delaware limited liability company, its attorney in fact (hereinafter “**Lessee**”).

WHEREAS, Lessee desires to operate a personal communications system (PCS), antenna mast and antennas upon the site of City’s Fire Station No. 5; and

WHEREAS, the parties and their predecessors or assignors are currently operating under a PCS Antenna Agreement dated June 7, 2000, and the parties desire to amend and restate certain terms and provisions of that lease agreement.

NOW, THEREFORE, the parties agree as follows:

City owns a tract of land located at 1400 Ballenger Place, Columbia, Missouri (more particularly described in **Exhibit A**, attached hereto and incorporated herein by reference) upon which is located Columbia Fire Department Station No. 5 (the “**Site**”). Also located on the Site are various antennas, radio receivers and repeaters owned by City which are used for emergency service dispatching, emergency siren activation, and general governmental communications. City agrees to lease Lessee up to 900 square feet of the Site for the location of a 190-foot self-support lattice antenna mast (“**Antenna Mast**”) and equipment cabinets (the ground space for the Antenna Mast and equipment cabinets may not be contiguous on the property) (the premises leased to Lessee herein is referred to as the “**Leased Premises**” and described on **Exhibit B** attached hereto and incorporated herein), together with the right of access to Lessee’s equipment and for rights of use and access for electric and telephone lines to serve that equipment, in accordance with the terms of this Agreement as an accommodation to Lessee.

1. NON-EXCLUSIVE USE OF THE LEASED PREMISES

The Leased Premises may be used on a non-exclusive basis by Lessee for telecommunication uses, including, without limitation, the installation, operation, maintenance, repair, or replacement of the Antenna Mast and equipment cabinets supported on a concrete pad (the “**Equipment Cabinets**”). The Antenna Mast and/or Equipment Cabinets shall house and contain the equipment described in **Exhibit C**, attached hereto (hereinafter collectively referred to as the “**Communications Equipment**”), and subsequent updates and modifications to said equipment existing as of the date of this Agreement. The Antenna Mast, Equipment Cabinets and Communications Equipment are sometimes hereinafter collectively referred to as “**Equipment.**” All above-ground Equipment, fixtures and appurtenances erected, located, placed or constructed by Lessee upon the Leased Premises shall remain the personal property of Lessee regardless of the manner or mode of attachment and may be removed by Lessee at its sole option at any time during the initial term, any renewal term or after termination or expiration of this Agreement, unless otherwise stated in this Agreement.

Lessee understands and agrees that City owns and maintains the Site primarily as a municipal fire station to base and deploy emergency response equipment and personnel for the benefit of the residents of City. Further, Lessee understands and agrees that City has located emergency and general communications equipment at the Site to serve and protect the residents of the City and that Lessee's lease of the Leased Premises is as an accommodation to Lessee and is not an agreement by City to create a transferable business interest in City property for the benefit of Lessee or to subordinate City's use of the Site to Lessee. Lessee's use of the property and access to utilities and its Equipment is contractual only. Lessee understands and agrees this Agreement does not grant Lessee any easement rights over City property.

2. CONSTRUCTION ON LEASED PREMISES

All construction, installation, mounting or erection of Lessee's Equipment, cables or antennas must have the prior approval of City. Lessee will provide City with initial detailed engineering plans locating the proposed Antenna Mast and all associated Equipment, wire cable runs, and conforming to the requirements of the Public Works Department. No installation or construction work on the Leased Premises by Lessee shall proceed until the plans are approved and a permit is issued by the Public Works Department. Lessee shall be responsible to City for any damage to the Site or any equipment on the Site caused by Lessee, its employees, contractors or agents. Lessee shall ensure the damage to the Site is repaired, the Site restored and any damaged property is repaired or replaced, to the satisfaction of the property's owner. At the conclusion of construction and installation of the Antenna Mast and Equipment, Lessee will restore the ground around the station to its original contour, removing all ruts and reseeding or resodding or repouring any surface; and replace any trees or landscaping to the satisfaction of City. Notwithstanding any other section of this Agreement, failure to repair or restore damaged land or property within thirty (30) days of such damage may be considered by City as a material breach of this Agreement.

3. OWNERSHIP OF EQUIPMENT AND ACCESS TO THE EQUIPMENT

The Antenna Mast, Equipment, fixtures, appurtenances, and improvements erected, located, placed or constructed by Lessee, with the exception of walls erected as view blocks, upon the Leased Premises shall remain the personal property of Lessee and may be removed by Lessee at its sole option at any time. Lessee shall have access to its Equipment at any time at no charge to Lessee; provided, however, such access shall at no time interfere with the continual operation of the fire station or the 24 hours/7 days a week emergency response from the station.

Lessee understands and agrees that while this Agreement grants Lessee the right of access to the Equipment 24 hours a day, the Site is manned 24 hours a day with firefighters and equipment coming and going at random times. Lessee agrees on behalf of its own employees and contractors that before arriving at the Leased Premises for routine or emergency maintenance, Lessee's employees or contractors will contact the Columbia Fire Department ("Department") at one of the following numbers to advise the Department that its employees or contractors will be on the Leased Premises:

- (1) Fire Administration at 874-7391, if no answer then,
- (2) On duty Division Chief at 874-7450, if no answer then,

(3) Emergency operations fire dispatcher 874-7469.

Lessee agrees that leaving a voice mail message or similar communication is not sufficient notice under this paragraph.

4. MULTIPLE USE POLICY

It is the policy of the City to require multiple use of PCS towers located on City property. As a part of the consideration from Lessee to the City to enter into this Agreement, Lessee agrees that the Antenna Mast will be capable of supporting the antennas of at least one other telecommunications provider. Lessee shall, when requested, negotiate agreements with the other provider to locate the provider's antennas and equipment on or within its Antenna Mast and Equipment Cabinets at reasonable rates. Lessee may not sublet any other portion of the Leased Premises to other providers. Other PCS providers may negotiate with the City to lease ground space for their telecommunications equipment.

5. INTERFERENCE

Lessee and any PCS provider subsequently locating Equipment at Columbia Fire Department Station No. 5 shall be subject to the concept of "last on." This means that any new user of the Site shall be technically and financially responsible to resolve and cure any interference problems suffered by existing users caused by the last on's use of the Site.

6. ANTENNA MAST

This Agreement shall entitle Lessee to erect a hollow Antenna Mast designed to be used as a flag pole, not exceeding 190 feet tall, upon the Leased Premises. Lessor acknowledges and agrees that, as of the Effective Date, the existing tower complies with the foregoing height restriction. The Antenna Mast shall accommodate all expected antennas within the mast and no antennas or antenna elements shall be located outside of the mast. The City shall have the right to use the Antenna Mast as a flagpole.

7. EQUIPMENT AND UNDERGROUND CABLES

This Agreement entitles Lessee to install underground communication cables and wave guide from the Antenna Mast to Equipment Cabinets which are to be located on the Leased Premise. See **Exhibit "C."** Equipment Cabinets so located shall be surrounded or enclosed by a fence constructed of chain-link materials or other quality materials and workmanship. Lessee shall be responsible to City for all installation and construction on the Leased Premises performed by Lessee or its contractors. In the event such construction or improvements on the Leased Premises result in any damage to the Site or any equipment on the Site, Lessee shall ensure the damage to the Site is repaired, the Site restored and any damaged property is repaired or replaced to the satisfaction of the property's owner.

8. TERM

The term of this Agreement is five (5) years from the date of June 7, 2015. This Agreement shall automatically renew for two additional five (5) year term unless this Agreement

is allowed to end by either party giving the other notice of its intent to allow this Agreement to end, which notice shall be provided at least six (6) months prior to the expiration of the then-current five (5) year term.

9. RENT

For the use of the Leased Premises, Lessee shall pay City Twenty-One Thousand Six Hundred Dollars (\$21,600.00) annually. The first installment of rent shall be paid on June 7, 2015. Thereafter, rent shall be due each year by the first (1st) day of June and may be paid by electronic funds transfer. The annual rent shall increase by twenty percent (20%) for each renewal term of this Agreement.

10. CITY'S USE OF THE SITE

Lessee's use of the Leased Premises shall not interfere with City's current or future use of the Site for a fire station nor shall it interfere with City's emergency or general governmental operations. In the event Lessee's use does interfere with City's current or future use of the Site for a fire station or with City's emergency or general governmental operations, City shall give Lessee written notice of such interference and Lessee shall have thirty (30) days from the date of such interference an opportunity to end the interference. City's obligation to give Lessee notice of such interference and an opportunity to end the interference shall not preclude City from taking those steps it deems necessary to protect its fire station and emergency or general governmental operations from such interference. If, after thirty (30) days, Lessee is unable or for any reason does not cure the interference, City may terminate this Agreement.

11. TERMINATION

(A) Except as otherwise provided herein, this Agreement may be terminated, without penalty or further liability as follows:

- (1) by either party, upon written notice to the other, upon a default of any covenant or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default; or
- (2) by Lessee, upon written notice to City, if Lessee is unable to obtain or maintain (or decides in its sole discretion that it is unlikely to obtain or maintain without undue cost or time), any license, permit or governmental approval necessary to the construction and/or operation of the Equipment and the Leased Premises; or
- (3) by Lessee, if Lessee discovers that interference, system redundancy or other technical factors show the Leased Premises is unsuitable as a telecommunications tower site; or
- (4) by either City or Lessee, upon written notice, if the Leased Premises or Equipment are destroyed, removed or damaged and rendered unsuitable for normal use;
- (5) during the renewal terms, City may also terminate this Agreement at any time by giving Lessee twelve (12) months prior written notice of City's intent to do so; or
- (6) by Lessee, at any time by providing twelve (12) months prior written notice to City of Lessee's intent to do so.

(B) Upon termination of this Agreement as set out above in subparagraphs (1), (2), (4) and (5), City will return that prorated portion of the prepaid rent represented by those months Lessee will not be present on the Leased Premises.

(C) Upon termination of this Agreement, whether by expiration, cancellation, forfeiture or otherwise, Lessee shall have the right to remove from the Leased Premises all above-ground Equipment and improvements installed, placed or erected on the Leased Premises by Lessee unless as otherwise stated in this Agreement, and the parties agree that the Antenna Mast or any part thereof may be removed without damage to the Site and that such mast shall not become a part of the realty. Lessee shall have ninety (90) days after termination of this Agreement within which to dismantle and remove the Antenna Mast and other improvements it has made and, upon removal, Lessee shall restore the Leased Premises to its original contour and to reseed or resod any disturbed soil. If Lessee fails to remove the Antenna Mast, its Equipment and other improvements within the ninety (90) day period, the Antenna Mast, Equipment and improvements shall become the property of City and City may remove the Equipment and the Antenna Mast. Any costs of removal of improvements shall be borne by Lessee; any costs to restore the land shall be borne by Lessee. This provision shall survive the end of term or termination of this Agreement.

12. TESTS

Lessee, at its sole cost and expense may, prior to construction of improvements on the Leased Premises, conduct such surveys, tests and inspections, as Lessee considers reasonably necessary or desirable in connection with the intended use of the Leased Premises, provided those tests do not injure the Site or interfere with City's use or emergency responses from the Site.

City, to the best of its knowledge, states that the Site is in compliance with the applicable environmental laws, rules and regulations. If any test or inspection at the Site by Lessee leads Lessee to believe that a violation of any environmental law, rule or regulation has occurred or is occurring, or if Lessee receives an adverse Site survey or Site engineering report, Lessee may terminate this Agreement without further obligation to City.

13. UTILITIES

Payments under this Agreement shall not include electric or telephone utility service. Lessee shall have the right to arrange for its own electric and telephone service and shall directly pay the utility provider for that service.

14. COMPLIANCE WITH LAWS

Lessee shall install and operate its Equipment and use the Leased Premises in a manner which complies with all the laws, regulations and rules of all federal, state and municipal agencies governing the installation, operation and use of the Leased Premises.

15. MAINTENANCE

Lessee shall keep its Equipment and installations located on the Leased Premises in good condition at all times.

Upon proper notice as set out in this Agreement, Lessee may, at its expense, make such improvements to its Equipment as Lessee deems necessary for the operation of a wireless communications system. Improvements outside of Lessee's Equipment structure shall be subject to City's prior approval in the same manner as the original construction, installation, mounting or erection of its Equipment.

Lessee shall be responsible to City for all construction on the Leased Premises performed by Lessee or its contractors. In the event such construction or improvements on the Leased Premises result in any damage to the Site or any Equipment on the Site, Lessee shall ensure the damage to the Site is repaired, the Site restored and any damaged property is repaired or replaced to the satisfaction of the property's owner.

Failure to repair or restore damaged land or property within thirty (30) days of such damage may be considered by City as a material breach of this Agreement.

Upon proper notice as set out in this Agreement, City shall allow Lessee, its employees, agents or contractors' access to the Equipment and installations at all times without charge, provided Lessee's access does not interfere with the City's use of the Site as a fire station and does not interfere with the City's emergency or normal governmental operations.

16. INSURANCE/INDEMNIFICATION

Lessee will procure and maintain a public liability insurance policy with limits of \$1,000,000 for bodily injury, \$1,000,000 for property damage, \$2,000,000 aggregate with a certificate of insurance to be furnished to City within thirty (30) days of the Effective Date, such policy to provide that cancellation will not occur without at least thirty (30) days prior written notice to City, except in the case of nonpayment of premium.

Notwithstanding the foregoing, Lessee warrants and represents that the liability insurance required to be maintained by Lessee shall not be canceled or terminated for any reason, including nonpayment of premium, without at least thirty (30) days prior written notice to City.

Lessee shall fully indemnify City against any loss, cost or expense which may be sustained or incurred by City as a result of the installation, operation or removal of the Equipment or Antenna Mast, or antennas. City and City's officers, agents or employees shall not be liable to Lessee for any loss or damages or claims arising out of personal injuries or property damage on the Site except those that are allowed by law and are the result of the acts or omissions of City or its officer's agents or employees.

17. ASSIGNMENT

Lessee will not assign or transfer this Agreement or sublet all or any portion of the Leased Premises or its right to construct the Antenna Mast on the Leased Premises without the

prior written consent of City. In considering whether to give its permission to an assignment, City may consider the assets and reputation of the potential assignee and whether the assignee can fulfill the conditions of this Agreement, and whether such an assignment would be injurious to the Site or interfere with City operations or be in the best interest of City. No consent shall be required for an assignment or other transfer to a parent, subsidiary of, or an entity controlled by Lessee, under common control with Lessee, controlling Lessee or is merged or consolidated with Lessee. A proposed assignment to any entity which purchases from Lessee the Antenna Mast and related improvements pursuant to a sale and lease-back of the Antenna Mast shall be subject to the prior consent of City with the same conditions as set out above. In the event of an assignment of this Agreement, City shall provide Lessee, and if the holder of any security interest has identified itself in writing to City, the holder of a security interest, written notice in the event of any default under the terms of this Agreement by Lessee's assignee. Lessee or the holder of a security interest shall have the right, but not the obligation, to cure the default by Lessee's assignee during the period which is thirty (30) days after the date of receipt of said notice of default.

18. NOTICE

All notices must be in writing and are effective when deposited in the U.S. Mail certified and postage prepaid, or when sent via overnight delivery, to the address set forth below or as otherwise provided by law.

For Notice to Lessee:

T-Mobile USA Tower LLC
12920 SE 38th Street
Bellevue, WA 98006
Attn: Lease Compliance

For Notice to City:

City of Columbia
City Manager's Office
ATTN: Tony St. Romaine
P.O. Box 6015
Columbia, MO 65205-6015

With a copy to:

CCTMO LLC
c/o Crown Castle USA Inc.
Blake Hawk, General Counsel
Attention: Legal Department – Real Estate
2000 Corporate Drive
Canonsburg, Pennsylvania 15317

Upon any assignment or transfer of this Agreement, Lessee and the assignee or transferee shall immediately, upon the effective date of the assignment or transfer, notify City of the assignment or transfer and provide City with the names and addresses of all parties and individuals who shall receive notice from City as may be required by this Agreement.

Failure to provide City with such information shall be a breach of this Agreement.

19. TAXES

Lessee will be responsible for payment of all personal property and other taxes assessed upon and arising from its use of the Equipment, mast and antennas at City's Site.

20. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and understanding of the parties. No modification, amendment or waiver of any provisions of this Agreement, or any of the rights or obligations arising hereunder, shall be valid unless in writing and executed by both parties.

21. GOVERNING LAW/JURISDICTION

This Agreement shall be construed in accordance with the laws of Missouri. Should any part of this Agreement be litigated, venue shall be proper only in the Circuit Court of Boone County, Missouri or the United States District Court for Western Missouri. If any term of this Agreement is found by a court of competent jurisdiction to be void or invalid, such finding shall not affect the remaining terms of this Agreement, which shall remain in effect.

22. CITY'S AUTHORITY AND RIGHT TO LEASE

City represents that (i) City owns the land and premises which is the subject of this Agreement free from liens, mortgages or restrictions or other encumbrances and City has the sufficient right, title and interest in said land and premises to enter into this Agreement and to grant Lessee the rights hereunder; (ii) City has not entered into any agreement with any third party which would require such party's consent hereto or preclude or limit City's performance of its obligations under this Agreement; (iii) City has full right and authority to execute this Agreement and that the execution and performance of this Agreement will not violate any laws, ordinances, covenants, or the provisions of any other agreement; and (iv) provided that Lessee is not in default, City shall provide to Lessee quiet and peaceful enjoyment and possession of the Site.

23. SAFE HARBOR

This Agreement shall be deemed to meet the commercial lease safe harbor of the Bankruptcy Code. In the event Lessee files for bankruptcy relief, Lessee shall, within thirty (30) days of filing for relief, either affirm the lease and bring all payments current or reject the lease and remove the Antenna Mast and all Equipment within sixty (60) days.

24. UNIFORM WIRELESS COMMUNICATIONS INFRASTRUCTURE DEPLOYMENT ACT

The parties agree that notwithstanding the requirements of House Bill 331 Uniform Wireless Communications Infrastructure Deployment Act (the "Act") to the contrary, any and all modifications of the Antenna Mast and Equipment located outside of the Equipment Cabinets shall require the prior approval of the City, regardless of whether any such proposed modifications are substantial or non-substantial pursuant to the terms of the Act. The City shall not unreasonably withhold, deny, condition or delay any modifications requested by Lessee.

25. NON-WAIVER OF SOVEREIGN IMMUNITY

Nothing in this Agreement shall be deemed to be a waiver of sovereign immunity or public official immunity by City.

SIGNATURE PAGES TO FOLLOW

CITY OF COLUMBIA, MISSOURI

By: _____
Mike Matthes, City Manager

ATTEST:

Sheela Amin, City Clerk

APPROVED AS TO FORM:

City Counselor

STATE OF MISSOURI)
) ss
COUNTY OF BOONE)

On this ____ day of _____, 2013, before me appeared **Mike Matthes**, to me personally known, who, being duly sworn, did say that he is the City Manager of the **City of Columbia, Missouri**, and that the seal affixed to the foregoing instrument is the corporate seal of the City and that this instrument was signed and sealed on behalf of the City by authority of its City Council and the City Manager acknowledged this instrument to be the free act and deed of the City.

IN TESTIMONY WHEREOF, I have hereunto set by hand and affixed my official seal, at my office Columbia, Boone County, Missouri, the day and year first above written.

Notary Public

My commission expires:

T-Mobile USA Tower LLC,
a Delaware limited liability company

By: CCTMO LLC,
a Delaware limited liability company,
its attorney in fact

By: *[Signature]*
Print Name: Lisa A. Sedgwick
Title: RET Manager

10-3-13

STATE OF TEXAS)
) ss.
COUNTY OF HARRIS)

On this 3rd day of October, 2013, before me, a notary public, appeared Lisa A Sedgwick, to me personally known, who being by me duly sworn did say that he/she is the RET Manager of CCTMO LLC, a Delaware limited liability company, the attorney in fact for T-Mobile USA Tower LLC, a Delaware limited liability company, and that this instrument was signed on behalf of said limited liability company and further acknowledged that he / she executed the same as her / his free act and deed for the purpose therein stated and that she / he has been duly granted the authority by said company to execute the same.

In testimony whereof, I have hereunder set my hand and affixed my official seal.

Carolyn T Moores
Notary Public

My commission expires:

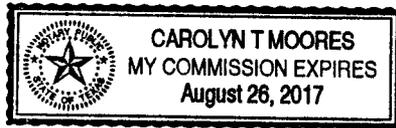


EXHIBIT A

The Property is described and/or depicted as follows:

Site Address: **1400 Ballenger Place**
Columbia, MO 65201

A tract of land in the Southeast Quarter (SE 1/4) of Section Four (4), Township Forty-eight (48) North, Range Twelve (12) West described as follows: Beginning at (1) being the Southwest corner of a survey recorded in Book 314, Page 333 of the Boone County Records; thence South 7° 05' West, 665.95 feet to a point (2); thence North 89° 23' West, 486.3 feet to an iron (3); thence with a 13.46 curve a distance of 265.02 feet to a R/W marker (4); thence North 28° 02' East, 159.9 feet to a R/W marker (5); thence North 13° 59' East, 102.9 feet to a R/W marker (6); thence North 27° 58' East, 615.7 feet to a R/W marker (7); thence with a 1.976 curve a distance of 88.52 feet to an iron (8); thence South 7° 05' West, 142.60 feet to the Northwest corner of said survey recorded in Book 314, Page 333, as aforesaid and thence South 7° 05' West, 250 feet to the point of beginning and containing 4.97 acres, more or less, all according to a Survey made by Richard B. Winner on August 28, 1970.

EXHIBIT B

The Premises is more particularly described as follows:

Lease Area

A LEASE AREA IN THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 48 NORTH, RANGE 12 WEST, FIFTH PRINCIPAL MERIDIAN, CITY OF COLUMBIA, BOONE COUNTY, MISSOURI AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF A SURVEY RECORDED IN DEED BOOK 314 PAGE 333 OF THE BOONE COUNTY, MISSOURI, RECORDS;

THENCE SOUTH 07 DEGREES 05 MINUTES 00 SECONDS 532.34 FEET;

THENCE NORTH 73 DEGREES 51 MINUTES 42 SECONDS WEST 91.33 FEET;

THENCE SOUTH 50 DEGREES 34 MINUTES 22 SECONDS WEST 25.72 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 50 DEGREES 34 MINUTES 22 SECONDS WEST 30.00 FEET;

THENCE NORTH 39 DEGREES 25 MINUTES 38 SECONDS WEST 30.00 FEET;

THENCE NORTH 50 DEGREES 34 MINUTES 22 SECONDS EAST 30.00 FEET;

THENCE SOUTH 39 DEGREES 25 MINUTES 38 SECONDS EAST 30.00 FEET TO THE POINT OF BEGINNING;

Access and Utility Easement

AN EASEMENT IN THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 48 NORTH, RANGE 12 WEST, FIFTH PRINCIPAL MERIDIAN, CITY OF COLUMBIA, BOONE COUNTY, MISSOURI AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF A SURVEY RECORDED IN DEED BOOK 314 PAGE 333 OF THE BOONE COUNTY, MISSOURI, RECORDS;

THENCE SOUTH 07 DEGREES 05 MINUTES 00 SECONDS WEST 532.34 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 73 DEGREES 51 MINUTES 42 SECONDS WEST 91.33 FEET;

THENCE SOUTH 50 DEGREES 34 MINUTES 22 SECONDS WEST 25.72 FEET;

THENCE NORTH 39 DEGREES 25 MINUTES 38 SECONDS WEST 20.00 FEET;

THENCE NORTH 50 DEGREES 34 MINUTES 22 SECONDS EAST 36.26 FEET;

THENCE SOUTH 73 DEGREES 51 MINUTES 42 SECONDS EAST 98.58 FEET;

THENCE SOUTH 07 DEGREES 05 MINUTES 00 SECONDS WEST 20.25 FEET TO THE POINT OF BEGINNING;

Prepared out of State.
Return to:
Crown Castle
1220 Augusta, Suite 500
Houston, TX 77057

Cross Reference Book 1689, Page 926

Section 4, Township 48 North, Range 12 West

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (“Memorandum”) is entered into by and between **CITY OF COLUMBIA, MISSOURI**, a Missouri municipal corporation, having a principal place of business at 701 E. Broadway, P.O. Box 6015, Columbia, MO 65205 (“City” to be indexed as grantor) and **T-MOBILE USA TOWER LLC**, a Delaware limited liability company, by and through CCTMO LLC, a Delaware limited liability company, its Attorney-in-Fact, with an office at 2000 Corporate Drive, Canonsburg, PA 15317 (“Lessee” to be indexed as grantee).

WHEREAS, Lessee desires to operate a personal communications system (PCS), antenna mast and antennas upon the site of City’s Fire Station No. 5; and

WHEREAS, the parties and their predecessors or assignors are currently operating under a PCS Antenna Agreement dated June 7, 2000, a memorandum of which is recorded in Book 1689, Page 926 in the Boone County Recorder of Deeds Office; and

WHEREAS, City and Lessee entered into PCS Site Agreement (Amending and Restating Certain Terms of June 7 , 2007 Agreement) of even date herewith (“Agreement”) and pursuant to the terms of, and for that consideration recited in, the Agreement, the parties wish to provide this Memorandum as notice thereof, as follows.

1. The term of the Agreement is five (5) years from June 7, 2015, the date of execution of the Agreement by the City. The Agreement shall automatically renew for two (2) additional five (5)-year terms unless the Agreement is allowed to end by either party giving the other notice of its intent to allow the Agreement to end at least six (6) months prior to the expiration of then current term.

2. The Property which is the subject of the Agreement is located at 1400 Ballenger Place, in Columbia, Boone County, Missouri, and is legally described in Exhibit A annexed hereto. The portion of the Property being leased to Lessee (the “Premises”) is described in Exhibit B annexed to the Agreement.

3. This Memorandum contains only selected provisions of the Agreement, and reference is made to the full text of the Agreement for its full terms and conditions, which are incorporated herein by this reference. Except as otherwise provided in the Agreement and this Memorandum, the terms and conditions of the Agreement remain in full force and effect. This instrument may be executed in any number of counterparts, each of which shall be deemed an original and which together shall constitute one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement as of the dates written below.

CITY OF COLUMBIA, MISSOURI

By: _____
Mike Matthes, City Manager

ATTEST:

Sheela Amin, City Clerk

APPROVED AS TO FORM:

City Counselor

STATE OF MISSOURI)
) ss
COUNTY OF BOONE)

On this ____ day of _____, 2013, before me appeared **Mike Matthes**, to me personally known, who, being duly sworn, did say that he is the City Manager of the **City of Columbia, Missouri**, and that the seal affixed to the foregoing instrument is the corporate seal of the City and that this instrument was signed and sealed on behalf of the City by authority of its City Council and the City Manager acknowledged this instrument to be the free act and deed of the City.

IN TESTIMONY WHEREOF, I have hereunto set by hand and affixed my official seal, at my office Columbia, Boone County, Missouri, the day and year first above written.

Notary Public

My commission expires:

EXHIBIT A

The Property is described and/or depicted as follows:

Site Address: **1400 Ballenger Place**
Columbia, MO 65201

A tract of land in the Southeast Quarter (SE 1/4) of Section Four (4), Township Forty-eight (48) North, Range Twelve (12) West described as follows: Beginning at (1) being the Southwest corner of a survey recorded in Book 314, Page 333 of the Boone County Records; thence South 7° 05' West, 665.95 feet to a point (2); thence North 89° 23' West, 486.3 feet to an iron (3); thence with a 13.46 curve a distance of 265.02 feet to a R/W marker (4); thence North 28° 02' East, 159.9 feet to a R/W marker (5); thence North 13° 59' East, 102.9 feet to a R/W marker (6); thence North 27° 58' East, 615.7 feet to a R/W marker; (7); thence with a 1.976 curve a distance of 88.52 feet to an iron (8); thence South 7° 05' West, 142.60 feet to the Northwest corner of said survey recorded in Book 314, Page 333, as aforesaid and thence South 7° 05' West, 250 feet to the point of beginning and containing 4.97 acres, more or less, all according to a Survey made by Richard B. Winner on August 28, 1970.

EXHIBIT B

The Premises is more particularly described as follows:

Lease Area

A LEASE AREA IN THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 48 NORTH, RANGE 12 WEST, FIFTH PRINCIPAL MERIDIAN, CITY OF COLUMBIA, BOONE COUNTY, MISSOURI AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF A SURVEY RECORDED IN DEED BOOK 314 PAGE 333 OF THE BOONE COUNTY, MISSOURI, RECORDS;

THENCE SOUTH 07 DEGREES 05 MINUTES 00 SECONDS 532.34 FEET;

THENCE NORTH 73 DEGREES 51 MINUTES 42 SECONDS WEST 91.33 FEET;

THENCE SOUTH 50 DEGREES 34 MINUTES 22 SECONDS WEST 25.72 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 50 DEGREES 34 MINUTES 22 SECONDS WEST 30.00 FEET;

THENCE NORTH 39 DEGREES 25 MINUTES 38 SECONDS WEST 30.00 FEET;

THENCE NORTH 50 DEGREES 34 MINUTES 22 SECONDS EAST 30.00 FEET;

THENCE SOUTH 39 DEGREES 25 MINUTES 38 SECONDS EAST 30.00 FEET TO THE POINT OF BEGINNING;

Access and Utility Easement

AN EASEMENT IN THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 48 NORTH, RANGE 12 WEST, FIFTH PRINCIPAL MERIDIAN, CITY OF COLUMBIA, BOONE COUNTY, MISSOURI AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF A SURVEY RECORDED IN DEED BOOK 314 PAGE 333 OF THE BOONE COUNTY, MISSOURI, RECORDS;

THENCE SOUTH 07 DEGREES 05 MINUTES 00 SECONDS WEST 532.34 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 73 DEGREES 51 MINUTES 42 SECONDS WEST 91.33 FEET;

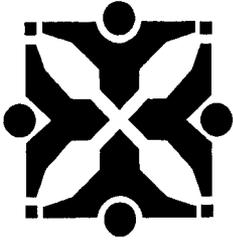
THENCE SOUTH 50 DEGREES 34 MINUTES 22 SECONDS WEST 25.72 FEET;

THENCE NORTH 39 DEGREES 25 MINUTES 38 SECONDS WEST 20.00 FEET;

THENCE NORTH 50 DEGREES 34 MINUTES 22 SECONDS EAST 36.26 FEET;

THENCE SOUTH 73 DEGREES 51 MINUTES 42 SECONDS EAST 98.58 FEET;

THENCE SOUTH 07 DEGREES 05 MINUTES 00 SECONDS WEST 20.25 FEET TO THE POINT OF BEGINNING;



Source: Law

A handwritten signature in black ink, appearing to be 'LAW'.

Agenda Item No:

To: City Council

From: City Manager and Staff

Handwritten initials in black ink, appearing to be 'MM'.

Council Meeting Date: Nov 4, 2013

Re: PCS Antenna Agreement and Memorandum of Agreement with T-Mobile USA Tower LLC relating to the Lease of Property at Columbia Fire Station No. 5 (1400 Ballenger Place)

EXECUTIVE SUMMARY:

Staff has prepared an ordinance for Council consideration that would authorize the City Manager to sign a PCS Antenna Agreement and Memorandum of Agreement with T-Mobile USA Tower LLC ("T-Mobile"). The PCS Antenna Agreement with T-Mobile amends and restates certain terms of an agreement dated June 7, 2000 that authorizes the lease of up to 900 square feet of land at Fire Station No. 5 (1400 Ballenger Place) to locate various personal communications system (PCS) equipment and a 190-foot self-support lattice antenna mast.

DISCUSSION:

T-Mobile has requested permission to amend and restate an agreement dated June 7, 2000 relating to the lease of up to 900 square feet of ground at Fire Station No. 5 (1400 Ballenger Place) to locate equipment, cabinets and a 190-foot self-support lattice antenna mast for the purpose of operating a personal communications system (PCS). The term of the proposed agreement is five (5) years beginning on June 7, 2015 with two (2) additional five (5) year renewal options. T-Mobile will pay an annual fee of \$21,600 to lease the Fire Station property. This fee is consistent with amounts charged for PCS towers at other City locations. Annual rent shall increase by 20% upon the exercise of each five (5) year renewal term.

FISCAL IMPACT:

T-Mobile will pay an annual rental fee of \$21,600 for the first five (5) years of the agreement. The annual rental fee shall increase by 20% upon the renewal of each five (5) year term.

VISION IMPACT:

<http://www.gocolumbiamo.com/Council/Meetings/visionimpact.php>

None.

SUGGESTED COUNCIL ACTIONS:

Passage of the ordinance authorizing execution of the PCS Antenna Agreement and Memorandum of Agreement with T-Mobile.

FISCAL and VISION NOTES:					
City Fiscal Impact Enter all that apply		Program Impact		Mandates	
City's current net FY cost	\$0.00	New Program/ Agency?	No	Federal or State mandated?	No
Amount of funds already appropriated	\$0.00	Duplicates/Expands an existing program?	No	Vision Implementation impact	
Amount of budget amendment needed	\$0.00	Fiscal Impact on any local political subdivision?	No	Enter all that apply: Refer to Web site	
Estimated 2 year net costs:		Resources Required		Vision Impact?	No
One Time	\$0.00	Requires add'l FTE Personnel?	No	Primary Vision, Strategy and/or Goal Item #	
Operating/ Ongoing	\$0.00	Requires add'l facilities?	No	Secondary Vision, Strategy and/or Goal Item #	
		Requires add'l capital equipment?	No	Fiscal year implementation Task #	