

City of Columbia

701 East Broadway, Columbia, Missouri 65201



Agenda Item Number: B 364-14

Department Source: Law

To: City Council

From: City Manager & Staff

Council Meeting Date: November 17, 2014

Re: Amendment to PCS Antenna Agreement with New Cingular Wireless PCS, LLC relating to the Lease of Property and Space on the Shepard Water Tower (1160 Cinnamon Hill Lane)

Documents Included With This Agenda Item

Council memo, Resolution/Ordinance, Exhibits to Resolution/Ordinance

Supporting documentation includes: None

Executive Summary

Staff has prepared an ordinance for Council consideration that would authorize the City Manager to sign an amendment to the PCS antenna agreement with New Cingular Wireless PCS, LLC ("New Cingular") to extend the term of the lease for the location of various personal communications system (PCS) equipment and the attachment of PCS antennas on the water tower structure.

Discussion

The City and New Cingular are currently parties to a PCS antenna agreement that allows New Cingular to lease space for personal communications system (PCS) equipment and the attachment of PCS antennas on the water tower structure located at 1160 Cinnamon Hill Lane. The amendment to the original lease provides for three (3) additional successive renewal terms of five (5) years. The first additional renewal term shall commence on September 7, 2015, and New Cingular will pay an annual fee of \$25,920.00 to lease the water tower property. Annual rent shall increase by 20% upon the exercise of each successive five (5) year renewal term.

Fiscal Impact

Short-Term Impact: Beginning September 7, 2015, New Cingular will pay an annual rental fee of \$25,920 for the first five (5) years of the agreement.

Long-Term Impact: The annual rental fee shall increase by 20% upon the renewal of each successive five (5) year term.

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Vision, Strategic & Comprehensive Plan Impact

Vision Impact: Community Facilities and Services

Strategic Plan Impact: Not Applicable

Comprehensive Plan Impact: Mobility, Connectivity, and Accessibility

Suggested Council Action

Passage of the ordinance authorizing execution of the PCS Antenna Agreement with New Cingular.

Legislative History

Ordinance No. 016584 authorized a PCS antenna agreement with TeleCorp Realty, L.L.C. on September 5, 2000.



Department Approved



City Manager Approved

Introduced by _____

First Reading _____

Second Reading _____

Ordinance No. _____

Council Bill No. B 364-14

AN ORDINANCE

authorizing an amendment to the PCS Antenna Agreement and a Memorandum of Lease with New Cingular Wireless PCS, LLC relating to the lease of property and space on the Shepard water tower located at 1160 Cinnamon Hill Lane; 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 an amendment to the PCS antenna agreement with New Cingular Wireless PCS, LLC relating to the lease of property and space on the Shepard water tower located at 1160 Cinnamon Hill Lane. The form and content of the agreement shall be substantially in the same form as set forth in "Exhibit A" attached hereto.

SECTION 2. The City Manager is hereby authorized to execute a Memorandum of Lease with New Cingular Wireless PCS, LLC relating to the lease of property and space on the Shepard water tower located at 1160 Cinnamon Hill Lane. The form and content of the Memorandum of Lease shall be substantially in the same form as set forth in "Exhibit B" attached hereto.

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

PASSED this _____ day of _____, 2014.

ATTEST:

City Clerk

Mayor and Presiding Officer

APPROVED AS TO FORM:

City Counselor

AMENDMENT TO PCS ANTENNA AGREEMENT SHEPARD WATER TOWER

THIS AMENDMENT AGREEMENT is entered into this ____ day of _____, 2014, between the City of Columbia, Missouri, a municipal corporation (hereinafter "City") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, (hereinafter "Tenant").

WHEREAS, the City owns a water tower (the "Tower") situated upon a tract of land at 1160 Cinnamon Hill Lane known as "Shepard" tower within the City limits of Columbia; and

WHEREAS, City and Tenant (as successor in interest to Telecorp Realty, LLC) are parties to a certain PCS Antenna Agreement Shepard Water Tower, dated September 7, 2000 (the "Original Lease") pursuant to which Tenant has installed and operates a Communication Facility (as hereinafter defined).

WHEREAS, Tenant and City desire to amend the Original Lease pursuant to the terms and conditions set forth herein; and

WHEREAS, this Amendment Agreement and the covenants and conditions contained herein shall amend the Original Lease, dated September 7, 2000, between City and Tenant's predecessor, Telecorp Realty, LLC.

NOW, THEREFORE, in consideration of the premises, the mutual promises, covenants and conditions herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following amendments to the Original Lease:

1. Section 8 Term of the Original Lease shall be amended to provide:

In addition to the renewal terms in the Original Lease, the Original Lease is hereby amended to include three (3) additional successive terms of five (5) years (each an "additional renewal term"). Each additional renewal term shall be deemed automatically extended unless either party notifies the other of its intention not to renew the Agreement at least six (6) months prior to the commencement of the preceding additional renewal term. The first additional renewal term shall commence on September 7, 2015, upon the expiration of the renewal term expiring on September 6, 2015.

2. Section 9 Rent of the Original Lease is hereby amended to provide:

On the additional renewal term commencement date, and each fifth (5th) anniversary of such date thereafter the rent due to City from Tenant shall increase by twenty percent (20%). All escalations currently provided in the Agreement arising prior to the additional renewal term shall be unaffected by the Section. Beginning on September 7, 2015 the rent shall be Twenty Five Thousand Nine Hundred Twenty dollars (\$25,920) for the first five (5) year term and subject to the twenty percent (20%) increase for each successive five (5) year term.

3. Section 11 Notice of the Original Lease is hereby amended to provide:

For Notice to Tenant:
New Cingular Wireless PCS, LLC
Attn: Network Real Estate Admin.
Cell Site: COL013F (MO)
Fixed Asset No: 10076789
575 Morosgo Drive, 13-F West Tower
Atlanta, GA 30324

For Notice to City:
City of Columbia, Missouri
ATTN: Water and Light Director
P.O. Box 6015
Columbia, MO 65205-6015

With a required copy sent to:
New Cingular Wireless PCS, LLC
Attn: AT&T Legal Department
Cell Site: COL013F (MO)
Fixed Asset No: 10076789
208 S. Akard Street
Dallas, TX 75202-4206

All notices must be in writing and are effective when deposited in the U.S. Mail certified and postage prepaid, or when sent overnight delivery to the address set forth in lease.

4. Section 22 Governing Law of the Original Lease is hereby amended to provide:

This Agreement shall be construed in accordance with the laws of Missouri and venue shall be in the Circuit Court of Boone County or the Western Districts Court of Missouri.

5. This Lease and all extensions and renewals thereof shall be deemed to meet the commercial lease safe harbor of the U.S. Bankruptcy Code. In the event the Tenant

files for bankruptcy relief, Tenant shall within thirty (30) days of filing for relief either affirm the lease and bring all payments current or reject the lease and remove all its equipment and tower within sixty (60) days.

6. In order to allow Tenant to record a memorandum of the lease with the County Recorder, the City will sign a memorandum of lease provided by Tenant, provided Tenant shall sign a release of that memorandum when the lease is terminated to record.

7. Nothing in this Amendment Agreement and extensions and renewals thereof shall be deemed a waiver by City of all applicable sovereign, governmental or official immunities as provided by federal or state laws.

8. During the term of this Agreement and all extensions and renewals thereof, to the fullest extent not prohibited by law, Tenant shall indemnify and hold harmless the City of Columbia, its directors, officers, agents, and employees from and against all claims, damages, losses, and expenses (including but not limited to attorney's fees) for bodily injury and/or property damage arising by reason of any act or failure to act, negligent or otherwise, of Tenant, of any subcontractor (meaning anyone, including but not limited to consultants having a contract with Tenant or a subcontractor for part of the services), of anyone directly or indirectly employed by Tenant or by any subcontractor, or of anyone for whose acts the Tenant or its subcontractor may be liable, in connection with providing these services. This provision does not, however, require Tenant to indemnify, hold harmless, or defend the City of Columbia from City's own negligence.

9. Except as specifically set forth in this Amendment Agreement, the Original Lease terms and provisions otherwise unmodified remains in full force and effect and is hereby ratified and affirmed. In the event of any inconsistencies between the Original Lease Agreement and this Amendment Agreement, the Amendment Agreement shall take precedence.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment Agreement to be executed in their respective names by their respective duly authorized representatives as of the date first above written.

CITY OF COLUMBIA, MISSOURI

By: _____
Mike Matthes, City Manager

ATTEST:

By: _____
Sheela Amin, City Clerk

APPROVED AS TO FORM:

By: _____
Nancy Thompson, City Counselor

STATE OF MISSOURI)
) ss
COUNTY OF BOONE)

On this day of _____, 2014, before me appeared Mike Matthes, to me personally known, who, being by me 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 in Columbia, Boone County, Missouri, the day and year first above written.

Notary Public

My commission expires:

NEW CINGULAR WIRELESS PCS,
LLC:
BY: AT&T Mobility Corporation, its
Manager

BY: Michael Bridwell
Print Name: MICHAEL BRIDWELL
Title: Area Mgr - Const & Eng

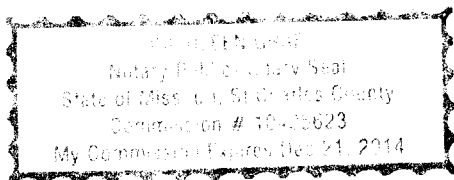
ATTEST: (if corporation)

STATE OF Missouri)
) ss.
COUNTY OF St Charles)

On this 12th day of October, 2014, before me, a notary public, appeared Michael Bridwell, to me personally known, who being by me duly sworn did say that they are the Area Mgr - Const & Eng of AT&T Mobility Corporation, the Manager of New Cingular Wireless PCS, LLC, a Delaware limited liability company, incorporated in the State of Missouri, and that this instrument was signed on behalf of said limited liability company and further acknowledged that they executed the same as their free act and deed for the purpose therein stated and that they have been duly granted the authority by said limited liability company to execute the same.

Michael Bridwell
Notary Public

My commission expires: 12/21/2014



Prepared by:

*Black Dot Wireless
27271 Las Ramblas, Suite 300
Mission Viejo, CA 92691*

Return to:

AT&T Mobility
575 Morosgo Drive NE
ATTN: Lease Administration – Suite 13F West Tower
Atlanta, GA 30324

Re: Cell Site: COL013F (MO)
Fixed Asset Number: 10076789
State: Missouri
County: Boone

**MEMORANDUM
OF
LEASE**

This Memorandum of Lease is entered into on this ____ day of _____, 2014, by and between City of Columbia, a _____, having a mailing address at _____ (hereinafter referred to as "**Landlord**") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 575 Morosgo Drive NE, Suite 13-F West Tower, Atlanta, GA 30324 (hereinafter referred to as "**Tenant**").

1. Landlord and Tenant entered into a certain PCS Antenna Agreement Shepard Water Tower on the September 7, 2000, as amended by that certain Amendment PCS Antenna Agreement Shepard Water Tower dated _____, 2014 (hereinafter, collectively the "**Agreement**") for the purpose of installing, operating and maintaining a communications facility and other improvements at Landlord's real property located in the City of Columbia, County of Boone, commonly known as 1160 Cinnamon Hill Lane, Columbia, MO. All of the foregoing are set forth in the Agreement.

2. The Agreement commenced and has been in effect since September 7, 2000 and the parties agree to continue the Agreement with three (3) additional successive terms of five (5) years each commencing on September 7, 2015, unless either party notifies the other of its intention not to renew the Agreement at least six (6) months prior to commencement of the preceding additional renewal term.
3. The space on the tower being leased to Tenant is located on a portion of the land described in **Exhibit 1** annexed hereto.
4. This Memorandum of Lease is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Agreement, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum of Lease and the provisions of the Agreement, the provisions of the Agreement shall control. The Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease as of the day and year first above written.

CITY OF COLUMBIA, MISSOURI

By: _____
Mike Matthes, City Manager

ATTEST:

By: _____
Sheela Amin, City Clerk

APPROVED AS TO FORM:

By: _____
Nancy Thompson, City Counselor

STATE OF MISSOURI)
) ss
COUNTY OF BOONE)

On this day of _____, 2014, before me appeared Mike Matthes, to me personally known, who, being by me 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 in Columbia, Boone County, Missouri, the day and year first above written.

Notary Public

My commission expires:

NEW CINGULAR WIRELESS PCS, LLC:
BY: AT&T Mobility Corporation, its
Manager

BY: Michael Bridwell
Print Name: MICHAEL BRIDWELL
Title: Area Mgr - Const & Eng

ATTEST: (if corporation)

STATE OF Missouri)
COUNTY OF St Charles) ss.

On this 24 day of October, 2014, before me, a notary public, appeared Michael Bridwell, to me personally known, who being by me duly sworn did say that they are the Area Mgr - Const & Eng of AT&T Mobility Corporation, the Manager of New Cingular Wireless PCS, LLC, a Delaware limited liability company, incorporated in the State of Missouri, and that this instrument was signed on behalf of said limited liability company and further acknowledged that they executed the same as their free act and deed for the purpose therein stated and that they have been duly granted the authority by said limited liability company to execute the same.

Michael Bridwell
Notary Public

My commission expires: 10/1/2014

Exhibit 1 to Memorandum of Lease

Legal Description

The space leased to Tenant is on that certain Tower owned by Landlord which is located on a portion of the property described and/or depicted as follows:

A tract of land, part of the West half of the East Half of Section 17, Township 48 North, Range 12 West, described as follows: Beginning at the southeast corner of the Survey of a 4.55 acre church site, recorded in Book 347 at Page 75 of the Records of Boone County, Missouri; thence North 0003' West for 250 feet along the east line of said church site; thence east for 250 feet; thence South 0003' east for 250 feet; thence West 250 feet to the point of beginning; comprising 1.43 acres more or less.