

City of Columbia

701 East Broadway, Columbia, Missouri 65201



Agenda Item Number: B 13-15

Department Source: Law

To: City Council

From: City Manager & Staff

Council Meeting Date: January 5, 2015

Re: Amendment to PCS Tower Agreement with SBA 2012 TC Assets, LLC relating to the Lease of City-owned Property Located at 1808 Parkside Drive

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 tower agreement with SBA 2012 TC Assets, LLC, LLC ("SBA") to extend the term of the lease for the location of various personal communications system (PCS) equipment and antenna tower on City-owned property located at 1808 Parkside Drive.

Discussion

The City and SBA are currently parties to a PCS tower agreement that allows SBA to lease space for personal communications system (PCS) equipment and antenna tower on City-owned property located at 1808 Parkside Drive. The amendment to the original lease provides for two (2) additional successive renewal terms of five (5) years. The first additional renewal term shall commence on January 11, 2021, and SBA will pay an annual fee of \$25,920.00 to lease ground space. Annual rent shall increase by 20% upon the exercise of each successive five (5) year renewal term.

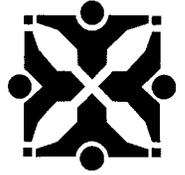
Fiscal Impact

Short-Term Impact: Beginning January 11, 2021, SBA will pay an annual rental fee of \$25,920 for the first five (5) years of the agreement. SBA will also pay City the sum of \$10,000.00 in full upfront in exchange for a longer advance notice provision. If City does not choose to renew an option, it will give twelve (12) months advance notice (was six months) and eighteen (18) months advance notice to terminate in general.

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

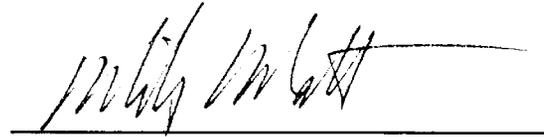
Suggested Council Action

Passage of the ordinance authorizing execution of the PCS Tower Agreement with SBA.

Legislative History

Ordinance No. 018846 authorized a PCS tower agreement with Alamosa Missouri Properties, LLC on January 3, 2006.


Department Approved


City Manager Approved

Introduced by _____

First Reading _____

Second Reading _____

Ordinance No. _____

Council Bill No. B 13-15

AN ORDINANCE

authorizing an amendment to the PCS tower agreement with SBA 2012 TC Assets, LLC relating to the lease of City-owned property located at 1808 Parkside Drive; 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 tower agreement with SBA 2012 TC Assets, LLC relating to the lease of City-owned property located at 1808 Parkside Drive. The form and content of the agreement shall be substantially in the same form as set forth in "Attachment A" attached hereto.

SECTION 2. This ordinance shall be in full force and effect from and after its passage.

PASSED this _____ day of _____, 2015.

ATTEST:

City Clerk

Mayor and Presiding Officer

APPROVED AS TO FORM:

City Counselor

Prepared by: Karen Mello
After recording return to: Khreshmore Spence
SBA Network Services, LLC
5900 Broken Sound Parkway, NW. 3rd Floor
Boca Raton, FL 33487-2797
Ph: 1-800-487-7483 ext. 7795

Parcel ID: 16-301-00-00-001.01 01

AMENDMENT TO PCS TOWER AGREEMENT PARKSIDE DRIVE

THIS AMENDMENT TO PCS TOWER AGREEMENT PARKSIDE DRIVE ("Amendment") is executed this _____ day of _____, 2014, by and between **CITY OF COLUMBIA, MISSOURI, a Missouri municipal corporation**, having an address at P.O. Box 6015, Columbia, MO 65205-6015 ("Grantor" hereinafter referred to as "City") and **SBA 2012 TC ASSETS, LLC, a Delaware limited liability company**, having a principal office located at 5900 Broken Sound Parkway, NW, Boca Raton, Florida 33487-2797 ("Grantee" hereinafter referred to as "Lessee").

WHEREAS, City and Alamosa Missouri Properties, L.L.C., a Missouri limited liability company entered into that certain PCS Tower Agreement Parkside Drive, dated January 11, 2006, as evidenced by that certain Memorandum of Lease recorded May 15, 2014, as Instrument #2014008221, in Book 4300, Page 98 and ultimately assigned to Lessee f/k/a TowerCo Assets, LLC, a Delaware limited liability company, successor by merger to Tower Entity 18 LLC, a Delaware limited liability company, as evidenced by that certain Assignment and Assumption of Lease recorded December 4, 2008, as Instrument #2008026339, in Book 3399, Page 73, both recordings of the Recorder of Deeds of Boone County, Missouri (collectively, "Agreement") for Lessee's use of a portion of the real property (hereinafter referred to as "Leased Premises") located at 1808 Parkside Drive, Columbia, MO 65201 (herein after referred to as "Parent Parcel"), being more particularly described in the attached Exhibit "A"; and

WHEREAS, City and Lessee desire and intend to amend and supplement the Agreement as provided herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto covenant, agree and bind themselves to the following modifications to the Agreement:

1. **Section 8. TERM**, of the Agreement is hereby amended as follows:

In addition to the Renewal Terms as referenced in the Agreement, the Agreement is hereby amended to include two (2) additional successive terms of five (5) years (each an "Additional Renewal Term"). Each Additional Renewal Term shall be deemed automatically extended, unless Lessee notifies City of its intention not to renew the Agreement at least six (6) months prior to the commencement of the succeeding Additional Renewal Term or Lessor notifies Lessee of its intent not to do so at least one (1) year prior to the expiration of the current Additional Renewal Term. The first Additional Renewal Term shall commence on January 11, 2021 ("Additional Renewal Term Commencement Date"), upon the expiration of the Renewal Term expiring on January 10, 2021.

2. **Section 9. RENT**, of the Agreement is hereby amended as follows:

On the Additional Renewal Term Commencement Date, and each fifth (5th) anniversary of such date thereafter, City's rent shall increase by twenty percent (20%). All escalations currently provided in the Agreement arising prior to the Additional Renewal Term Commencement Date shall be unaffected by this Section.

3. **Section 11. NOTICE**, of the Agreement is hereby amended as follows:

If to City:

City of Columbia, Missouri
P.O. Box 6015
Columbia, MO 65205-6015

If to Lessee:

SBA 2012 TC Assets, LLC
Attn: Site Administration
5900 Broken Sound Parkway, NW
Boca Raton, FL 33487-2797
Re: MO47086-A/Columbia Quarry - St06rw197

4. The second paragraph of Section 12. **TERMINATION**, of the Agreement is hereby deleted in its entirety and replaced as follows:

The City may terminate the Agreement upon eighteen (18) months written notice

to Lessee which notice may not be delivered prior to January 11, 2021, except in the case of default by Lessee.

5. Upon full execution of this Amendment, in addition to the rent described in Section 9, Lessee shall pay to the Lessor a one-time payment of Ten Thousand and no/100 Dollars (\$10,000.00).
6. Capitalized terms not defined in this Amendment will have the meaning ascribed to such terms in the Agreement.
7. This Amendment will be governed by and construed and enforced in accordance with the jurisdiction of the Boone County, Missouri Circuit Court or the Western District of Missouri Federal Court system in which the Parent Parcel is located without regard to principles of conflicts of law.
8. Except as specifically set forth in this Amendment, the Agreement is otherwise unmodified and remains in full force and effect and is hereby ratified and reaffirmed. In the event of any inconsistencies between the Agreement and this Amendment, the terms of this Amendment shall take precedence.
9. City represents and warrants to Lessee that the City is the sole owner in fee simple title to the Leased Premises and easements and the City's interest under the Agreement and that consent or approval of no other person is necessary for the City to enter into this Amendment.
10. This Amendment may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same Agreement.
11. Nothing in the Agreement shall be deemed to be a waiver of neither sovereign immunity nor public official immunity by the City.
12. The 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 either affirm the Agreement and bring all payments current or reject the Agreement and remove all towers and equipment within the period allows by applicable law.
13. Lessee shall have the right to record this Amendment.

The remainder of this page intentionally left blank.

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

WITNESSES:

CITY:

CITY OF COLUMBIA, MISSOURI, a Missouri municipal corporation

Print Name: _____

Approved as to form
[Signature]
Print Name: *Nancy Thompson*

By: _____

Print Name: _____

Title: _____

STATE OF MISSOURI
COUNTY OF _____

On this ___ day of _____ in the 2014, before me, _____, a Notary Public in _____ and for said state, personally appeared _____, as _____, of City of Columbia, Missouri, a Missouri municipal corporation, known to me to be the person who executed the within Amendment in behalf of said corporation and acknowledged to me that he executed the same for the purposes therein stated.

In Witness Whereof, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Public

(NOTARY SEAL)

WITNESSES:

Karen Mello
Print Name: Karen Mello

Cassidy Ino Connette
Print Name: Cassidy Ino Connette

LESSEE:

SBA 2012 TC ASSETS, LLC, a Delaware limited liability company

By: [Signature]
Alyssa Houlihan
Vice President, Site Leasing

**STATE OF FLORIDA
COUNTY OF PALM BEACH**

The foregoing instrument was acknowledged before me on the 10th day of December, 2014, by Alyssa Houlihan, Vice President, Site Leasing of SBA 2012 TC Assets, LLC, a Delaware limited liability company, on behalf of the company and who is personally known to me.



(NOTARY SEAL)

Carolina Auster
Notary Public

Print Name: CAROLINA F AUSTER
My Commission Expires: SEP 23, 2018

EXHIBIT "A"

Legal description to be incorporated upon receipt of final survey.

SITUATE IN THE COUNTY OF BOONE, AND STATE OF MISSOURI:

PARCEL NO. 1:

ALL THAT TRACT OF LAND DESCRIBED IN THE SURVEY RECORDED IN BOOK 396, PAGE 9 OF THE BOONE COUNTY RECORDS BEING IN THE WEST HALF OF SECTION 2, ALL IN TOWNSHIP 48 NORTH, RANGE 13 WEST IN BOONE COUNTY, MISSOURI;

EXCEPT THAT PORTION OF SAID TRACT MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF THE ROAD RIGHT OF WAY RECORDED IN BOOK 237, PAGE 604; THENCE FOLLOWING THE LINES OF SAID ROAD RIGHT OF WAY N. 1°-08' E. 224.1 FEET TO THE 1/4 SECTION LINE; THENCE N. 84°-32" W., ALONG THE 1/4 SECTION LINE, 80 FEET; THENCE S. 1°-08' W. 196.2 FEET TO THE NORTHERLY RIGHT OF WAY OF OLD STATE ROUTE E; THENCE ALONG SAID NORTHERLY RIGHT OF WAY, N. 65°-50' W. 86.9 FEET; THENCE N. 62°-58' W. 100.1 FEET; THENCE N. 65°-50' W. 64 FEET TO THE CENTER OF A BRANCH; THENCE FOLLOWING SAID BRANCH N. 56°-25' E. 119 FEET, N. 70°-43' E. 224.8 FEET TO THE WEST PROPERTY LINE OF N. R. GARRETT; THENCE NORTH 13.4 FEET; THENCE EAST TO A POINT 800 FEET WEST OF THE CENTER OF SECTION 2, TOWNSHIP 48, RANGE 13; THENCE SOUTH TO THE NORTH LINE OF SEXTON ROAD; THENCE NORTHWESTERLY ALONG THE NORTH LINE OF SEXTON ROAD TO THE POINT OF BEGINNING; AND

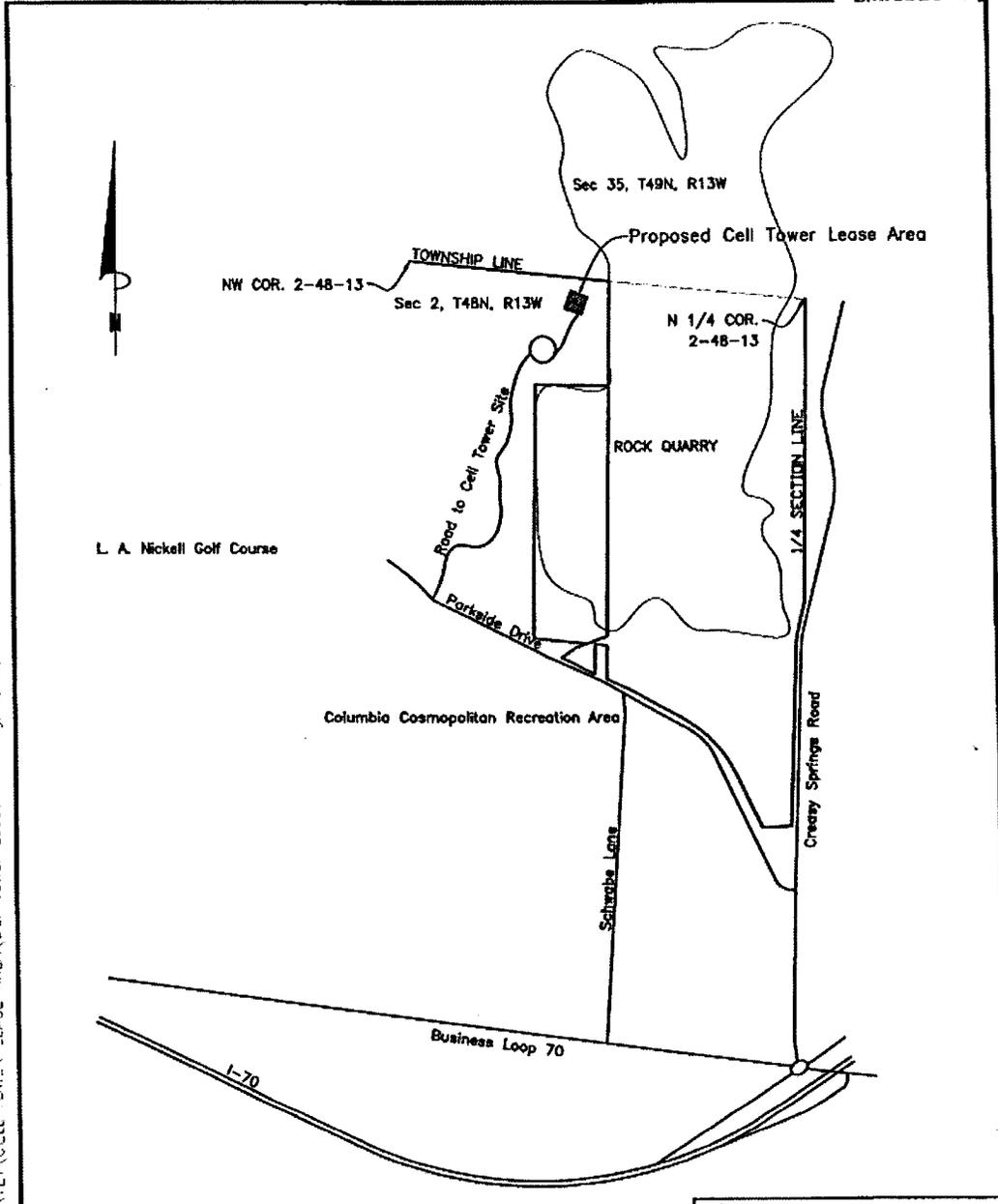
EXCEPT THAT PORTION OF SAID TRACT SHOWN IN THE SURVEY RECORDED AT BOOK 396, PAGE 9 MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF THE MISSOURI UTILITIES TRACT IN THE SOUTHEAST PORTION OF SAID SURVEY; THENCE N. 83°-40' E. 43.8 FEET TO THE WEST LINE OF SAID SURVEY; THENCE S. 1°-31' W., ALONG SAID WEST LINE 231.6 FEET; THENCE S. 87°-08' W. ALONG AN OLD FENCE LINE 282.1 FEET TO THE EASTERLY RIGHT OF WAY OF OLD STATE ROUTE E; THENCE FOLLOWING THE EASTERLY AND NORTHERLY RIGHT OF WAY OF OLD STATE ROUTE E TO A POINT WHICH IS DUE WEST OF THE BEGINNING POINT; THENCE EAST TO THE POINT OF BEGINNING; AND

EXCEPT A TRACT OF LAND OF APPROXIMATELY SIXTEEN (16) ACRES IN THE WEST HALF (W 1/2) OF SECTION 2, TOWNSHIP 49, RANGE 13, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A POINT 72 FEET NORTH OF THE CENTER OF SAID SECTION 2; THENCE SOUTH 72 FEET TO THE CENTER OF SECTION 2; THENCE SOUTH ALONG THE QUARTER SECTION LINE 794 FEET TO THE NORTHEAST (NE) CORNER OF A SMALL TRACT OF LAND OWNED BY MISSOURI UTILITIES COMPANY; THENCE NORTH 88°-05' WEST 43.8 FEET; THENCE SOUTH 1°-04' WEST 46.3 FEET TO THE SOUTHWEST CORNER OF SAID MISSOURI UTILITIES TRACT; THENCE WEST TO THE EAST LINE OF SEXTON ROAD; THENCE IN A NORTHWESTERLY DIRECTION ALONG THE NORTH AND EAST LINE OF SEXTON ROAD TO A POINT WHICH IS DIRECTLY SOUTH OF A POINT 800 FEET WEST OF THE CENTER OF SECTION; THENCE NORTH TO THE NORTH LINE OF THE SOUTHWEST QUARTER (SW 1/4) OF SECTION 2; THENCE NORTH 72 FEET; THENCE EAST 800 FEET TO THE POINT OF BEGINNING, AND CONTAINING APPROXIMATELY 16 ACRES, ALL AS SHOWN BY THE SURVEY RECORDED AT BOOK 396, PAGE 9 OF THE BOONE COUNTY RECORDS.

PARCEL NO. 2:

ALL OF THE WEST SIDE OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 2, TOWNSHIP 48, RANGE 13, BEING THE NORTH HALF OF SURVEY NO. 3260 AS SHOWN BY THE RECORDS OF BOONE COUNTY, MISSOURI.

R:\CY\CELL TOWER LEASE AREA\Cel Tower Lease Area.dwg, 9/15/2005 3:01:35 PM, b:\adams



A small parcel of land in the northeast part of the land described in the warranty deed in Book 232 at page 415 and shown by Boone County Survey No. 3260, both of the Boone County Records; situate in the west half of the fractional northwest quarter of Section 2, Township 48 North, Range 13 West in the City of Columbia, Boone County, Missouri; said parcel being described as follows:

Starting on the township line at a corner of the survey recorded in Book 396 at page 9 shown thereon as being S.84°25'E., 1,354.5 feet from the northwest corner of said Section 2; thence along the township line, N.84°25'W., 138.6 feet; thence S.20°10'W., 115.7 feet to the POINT OF BEGINNING; thence continuing S.20°10'W., 60.0 feet; thence N.69°50'W., 60.0 feet; thence N.20°10'E., 60.0 feet; thence S.69°50'E., 60.0 feet to the POINT OF BEGINNING and containing 3600 square feet.

