

City of Columbia

701 East Broadway, Columbia, Missouri 65201



Agenda Item Number: B 101-15

Department Source: Law

To: City Council

From: City Manager & Staff

Council Meeting Date: April 20, 2015

Re: Amendment to PCS Antenna Co-Location Agreement with T-Mobile Central LLC relating to the Lease of Property on Chapel Hill Road (Fire Station No. 6)

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 co-location agreement with T-Mobile Central LLC ("T-Mobile"), as successor in interest to Omnipoint Communications C Operations, L.L.C., 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 3112 Chapel Hill Road (Fire Station No. 6).

Discussion

The City and T-Mobile are currently parties to a PCS tower agreement that allows T-Mobile to lease space for personal communications system (PCS) equipment and antenna tower on City-owned property located at 3112 Chapel Hill Road (Fire Station No. 6). 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 May 16, 2015, and T-Mobile will pay an annual fee of \$17,280.00 for the lease. Annual rent shall increase by 20% upon the exercise of each successive five (5) year renewal term. The City has the right to not renew at each five (5) year interval upon six (6) months prior notice.

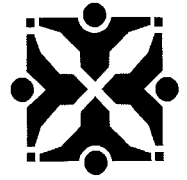
Fiscal Impact

Short-Term Impact: Beginning May 16, 2015, T-Mobile will pay an annual rental fee of \$17,280.00 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

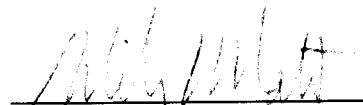
Passage of the ordinance authorizing execution of the amendment to the PCS antenna co-location agreement with T-Mobile.

Legislative History

Ordinance No. 016463 authorized a PCS tower agreement with Omnipoint Communications C Operations, L.L.C. on May 16, 2000.



Department Approved



City Manager Approved

Introduced by _____

First Reading _____

Second Reading _____

Ordinance No. _____

Council Bill No. B 101-15

AN ORDINANCE

authorizing an amendment to the PCS antenna co-location agreement and a memorandum of lease with T-Mobile Central LLC relating to the lease of property on Chapel Hill Road (Fire Station No. 6); 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 co-location agreement with T-Mobile Central LLC relating to the lease of property on Chapel Hill Road (Fire Station No. 6). 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 T-Mobile Central LLC relating to the lease of property on Chapel Hill Road (Fire Station No. 6). 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 _____, 2015.

ATTEST:

City Clerk

Mayor and Presiding Officer

APPROVED AS TO FORM:

City Counselor

AMENDMENT TO PCS ANTENNA CO-LOCATION AGREEMENT COLUMBIA FIRE DEPARTMENT STATION NO. 6

THIS AMENDMENT to PCS Antenna Co-Location Agreement Columbia Fire Department Station No. 6 ("Amendment") is executed this _____ day of _____, 2015 by and between City of Columbia, Missouri, a Missouri Municipal Corporation, having an address of P.O. Box 6015 Columbia, Missouri 65205 ("City") and T-Mobile Central LLC, a Delaware limited liability company, as successor in interest to Omnipoint Communications C Operations, L.L.C (Lessee").

WHEREAS, City and Lessee are parties to a certain PSC Antenna Co-Location Agreement Columbia Fire Department Station No. 6 dated May 16, 2000 ("Agreement"), for Lessee's use of a portion of real estate (hereinafter referred to as "Leased Premises") located at 3112 Chapel Hill Road, Columbia, Missouri, and

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

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

1. The term of the Agreement is hereby extended for five (5) years, from May 16, 2015 through May 15, 2020. Thereafter, the term of the Agreement shall automatically renew for two (2) additional five (5) year terms (each, a "Renewal Term") unless either party allows the Agreement to end by providing at least six (6) months before the expiration of the then current term.
2. On May 16, 2015, the annual rent will be increased to Seventeen Thousand Two Hundred Eighty Dollars (\$17,280.00). During the term of the Agreement, as extended pursuant to this Amendment, annual rent installments shall be paid by May 16th of each year and may be paid by electronic funds transfer. The annual rent shall increase by twenty percent (20%) upon the commencement of each Renewal Term.
3. Section 14 (Insurance) of the Agreement is deleted in its entirety and replaced with the following:

"Lessee will procure and maintain a commercial general liability insurance policy with a limit of not less than one million dollars (\$1,000,000.00) for each occurrence, and two million dollars (\$2,000,000.00) general aggregate, and an excess liability insurance

policy with a limit of five million dollars (\$5,000,000.00). Coverage shall be provided shall be an insurance company authorized to do business in the State of Missouri with an A.M. Best minimum rating of at least A-VII.”

4. The parties’ notice addresses in Section 16 of the Agreement are hereby amended as follows:

If to City:

City Manager’s Office
Attn: Tony St. Romaine
P.O. Box 6015
Columbia, MO 65205-6015

If to Lessee:

T-Mobile Central LLC
12920 SE 38th Street
Bellevue, WA 98006
Attn: Lease Compliance/MO-08-242

5. Venue for any litigation involving the Agreement will be in Boone County, Missouri Circuit Court or the U.S. District Court for the Western District of Missouri.

6. 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 affirmed. In the event of any inconsistencies between the Agreement and this Amendment, the terms of this Amendment shall take precedence.

7. 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.

8. 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.

9. Nothing in the Agreement shall be deemed to be a waiver of neither sovereign immunity nor public official immunity by the City.

10. 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.

11. Lessee shall have the right to record this Amendment.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment 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 _____, 2015, 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:

T-MOBILE CENTRAL LLC:

BY: Mary Moan

Title: Market Manager

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

On this 8 day of April, 2015, before me, a notary public, appeared Mary Moan to me personally known, who being by me duly sworn did say that s/he is the Market Manager of T-Mobile Central LLC, a Delaware limited liability company, and that this instrument was signed on behalf of said limited liability company and further acknowledged that they executed the same as her/his free act and deed for the purpose therein stated and that s/he has been duly granted the authority by said limited liability company to execute the same.

Kathleen A. Torode
Notary Public

My commission expires:



MEMORANDUM OF LEASE

Name and Return Address T-Mobile USA, Inc. 12920 SE 38 th Street Bellevue, WA 98006 Attn: Lease Compliance/Site #MO08242D
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Document Date: March 13, 2015

Grantor (City) Name & Address: City of Columbia, Missouri
PO Box 6015
Columbia, MO 65205

Grantee (Lessee) Name and Address: T-Mobile Central LLC
12920 SE 38th St.
Bellevue, WA 98006

Legal Description: See Exhibit A

T-Mobile Reference: MO08242D

**Memorandum
of
Lease**

APN: 1651400000030001

MEMORANDUM OF LEASE

An Amendment to PCS Antenna CoLocation Agreement Columbia Fire Department No. 6 (the "Amendment") by and between City of Columbia, Missouri, a Missouri Municipal Corporation ("City") and T-Mobile Central LLC, a Delaware limited liability company ("Lessor") was made regarding a portion of the following property (as more particularly described in the Agreement, the "Premises"):

See Attached **Exhibit A** incorporated herein for all purposes.

Without limiting the terms and conditions of the Agreement, City and Lessor hereby acknowledge the following:

1. Capitalized terms used, but not otherwise defined herein, shall have the meanings ascribed to such terms in the Agreement.
2. The initial term of the Agreement is for 5 years. Lessor shall have the right to extend the Lease for Two (2) additional and successive five-year terms.
3. This memorandum is not a complete summary of the Lease. It is being executed and recorded solely to give public record notice of the existence of the Lease with respect to the Premises. Provisions in this memorandum shall not be used in interpreting the Lease provisions and in the event of conflict between this memorandum and the said unrecorded Lease, the unrecorded Lease shall control.
4. This memorandum may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto were upon the same instrument.

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum effective as of the date of the last party to sign.

CITY: City of Columbia

By: _____

Printed Name: Mike Matthes

Title: City Manager

Date: _____

LESSOR: T-Mobile Central LLC

By: Mary Moran

Printed Name: Mary Moran

Title: Market Manager

Date: 4-8-2015

[Notary block for City]

[City Notary block for a Corporation, Partnership, or Limited Liability Company]

[illegible]

This instrument was acknowledged before me on _____ By
Mike Matthes, City Manager of City of Columbia, Missouri, a Missouri Municipal
Corporation, on behalf of said City of Columbia Missouri.

Dated: _____

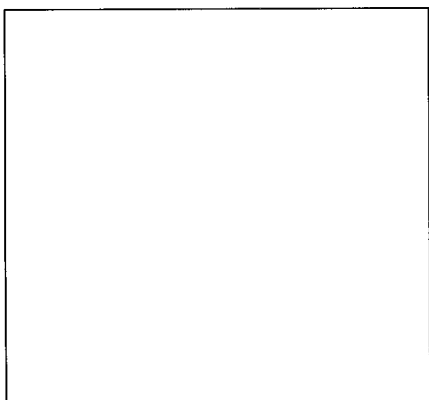
Notary Public
Print Name _____
My commission expires _____

[Notary block for Lessor]

STATE OF _____)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the _____ of T-Mobile Central LLC., a Delaware limited liability company to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



Notary Public
Print Name _____
My commission expires _____

(Use this space for notary stamp/seal)

Memorandum of Lease - Exhibit A
Legal Description

The Property is legally described as follows:

A TRACT OF LAND CONTAINING 1.4 ACRES, MORE OR LESS, LOCATED IN THE NORTHEAST QUARTER (NE ¼) OF SECTION TWENTY - ONE (21), TOWNSHIP FORTY - EIGHT (48) NORTH, RANGE THIRTEEN (13) WEST, OF THE FIFTH (5TH) PRINCIPAL MERIDIAN, IN THE CITY OF COLUMBIA, BOONE COUNTY, MISSOURI, AS SHOWN AND DESCRIBED BY THE SURVEY THEREOF RECORDED FEBRUARY 23, 1972 AS DOCUMENT NO. 1366 IN BOOK 400, PAGE 67, DEED RECORDS OF BOONE COUNTY, MISSOURI.