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CITY OF WHEATLAND

CITY COUNCIL MEETING STAFF REPORT

October 10, 2023

SUBJECT: Consideration and Adoption of Resolution Approving Second Amendment to Option and Structure Lease Agreement with New Cingular Wireless (AT&T)

PREPARED BY: Bill Zenoni, City Manager

Recommendation

Staff recommends that the Wheatland City Council consider adoption of a resolution approving the Second Amendment to the Option and Structure Lease Agreement with New Cingular Wireless (AT&T) for placing cellular equipment on City-owned property.

Background

The City Council, in November 2008, approved an agreement with New Cingular Wireless (AT&T) for placement of a cellular antenna on the City-owned water tower located at 208 4th Street. The agreement provided for the use of 324 square feet of ground space. The initial term of the agreement was five years with the option for two five-year extensions. The agreement provided for an initial monthly rent payment of \$1,300 with a 3 percent annual inflation index. In November 2018, the City Council approved an amendment to the 2008 Option and Structure Lease Agreement which adjusted the monthly lease payment and provided for four five-year renewals – thru November 2038. The City is currently receiving a monthly lease payment of \$1,688.26 from the amended agreement.

Discussion

City staff have been working with New Cingular Wireless (AT&T) for the past several months regarding a request for placement of an emergency generator at the base of the water tower. The proposed Second Amendment to the Option and Structure Lease Agreement with AT&T would add 80 square feet to the space utilized which would allow for the installation of an emergency generator and would increase the monthly lease payments to the City by \$416.80 (with a 3 percent annual adjustment).

Fiscal Impact

The proposed amendment will increase General Fund revenue by \$5,001.60 per year with an annual increase of 3 percent.

Attachment

1. Resolution
2. Second Amendment to Option and Structure Lease Agreement (Exhibit A)

**WHEATLAND CITY COUNCIL
RESOLUTION NO. 36-23**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHEATLAND
APPROVING SECOND AMENDMENT TO OPTION AND STRUCTURE LEASE
AGREEMENT WITH NEW CINGULAR WIRELESS (AT&T)**

WHEREAS, the City executed an agreement with New Cingular Wireless (AT&T) in November 2008 for the lease of 324 square feet of ground space for placement of cellular equipment on City-owned property located at 208 4th Street; and

WHEREAS, the City Council, on November 27, 2018 approved the First Amendment to the 2008 Option and Structure Lease; and

WHEREAS, New Cingular Wireless (AT&T) has requested, a Second Amendment to the 2008 Option and Structure Lease which will increase the leased area by 80 square feet and increase the monthly lease revenue paid to the City; and

WHEREAS, City staff have reviewed the lease amendment and concur that this action will be beneficial to the City of Wheatland.

NOW, THEREFORE, BE IT RESOLVED AND DETERMINED by the City Council of the City of Wheatland that the Second Amendment to the Option and Structure Lease Agreement with New Cingular Wireless (AT&T), attached as Exhibit A, is hereby approved and the City Manager is directed to execute the agreement.

* * * * *

PASSED AND ADOPTED by the City Council of City of Wheatland on this 10th day of October 2023, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED:

Mayor of the City of Wheatland

ATTEST:

Jessy Johnson, Acting City Clerk

Exhibit A

Market: RFSR
Cell Site Number: CVL00685
Cell Site Name: Wheatland
Fixed Asset Number: 10122790

SECOND AMENDMENT TO OPTION AND STRUCTURE LEASE AGREEMENT

THIS SECOND AMENDMENT TO OPTION AND STRUCTURE LEASE AGREEMENT dated as of the latter of the signature dates below, is by and between the City of Wheatland, a General law city, having a mailing address of 111 C Street, Wheatland, CA 95692 (“**Landlord**”) and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd NE, 3rd Floor, Atlanta, GA 30319 (“**Tenant**”).

WHEREAS, Landlord and Tenant entered into an Option and Structure Lease Agreement dated November 14, 2008, and First Amendment to Option and Structure Lease Agreement, whereby Landlord leased to Tenant certain Premises, therein described, that are a portion of the Property located at 208 4th Street, Wheatland, CA 95692 ("Agreement"); and

WHEREAS, Landlord and Tenant, in their mutual interest, wish to amend the Agreement as set forth below.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

- 1. New Premises Area.** Landlord agrees to increase the size of the Premises leased to Tenant to accommodate Tenant’s needs. Upon the execution of this **Second** Amendment, Landlord leases to Tenant the additional premises described on attached Exhibit 1-A (“New Premises Area”). Landlord’s execution of this **Second** Amendment will signify Landlord’s approval of Exhibit 1-A. The Premises under the Agreement prior to this **Second** Amendment in addition to the New Premises Area under this **Second** Amendment shall be the Premises under the Agreement.
- 2. Generator.** Tenant shall have the right to install, repair, maintain, modify, replace, remove, utilize and operate (including but not limited to operate as may be required by applicable law) equipment within the New Premises Area, including without limitation a concrete pad and generator thereon, including back-up power supply. Tenant shall have the right to access the New Premises Area, and any provisions in the Agreement governing access shall apply to such access. The generator shall remain the property of Tenant, and Tenant shall have the right to remove or modify it at any time.
- 3. Rent.** Commencing the first day of the month following commencement of installation within the New Premises Area (“Increase Commencement Date”), Rent shall be increased by four hundred sixteen and 80/100 Dollars (\$416.80) per month, subject to further adjustments, if any, as provided in the Agreement; provided that the

Exhibit A

first such increased payment shall not be due until sixty (60) days after such commencement date and provided further that, any partial month occurring after the Increase Commencement Date, the increased Rent amount shall be pro-rated.

4. **Other.** Landlord represents and warrants that, to its knowledge, no conditions exist within the New Premises Area or otherwise on the property where the Premises and New Premises Area are located that would adversely impact Tenant's permitting and/or installation of a generator within the New Premises Area. Landlord authorizes Tenant to prepare, execute and file all required applications to obtain any government approvals for Tenant's use of the New Premises Area under this Agreement and agrees, at Tenant's request, to reasonably assist Tenant with such applications and with obtaining and maintaining the government approvals. Where applicable law governs how the generator will be used, Tenant may use the generator in the manner set forth in applicable law. Tenant may terminate this **Second** Amendment by written notice to Landlord at any time, and the rent increase set forth in Section 3 shall not take effect or shall be cancelled, as applicable, following any such termination. Within one hundred twenty 120 days after termination of this **Second** Amendment, Tenant shall remove its equipment from the New Premises Area; provided that any portions of the equipment that Tenant fails to remove within such period and cessation of Tenant's operations at the New Premises Area shall be deemed abandoned. Tenant shall repair any damage, less ordinary wear and tear, to the New Premises Area caused by its removal activities.

5. Section 17 of the Agreement is hereby deleted in its entirety and replaced with the following:

Notices. All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows.

If to LANDLORD: City of Wheatland
111 C Street
Wheatland, CA 95692

If to TENANT: New Cingular Wireless PCS, LLC
Attn: TAG - LA
Re: Cell Site #CVL00685
Cell Site Name: Wheatland
Fixed Asset #: 10122790
1025 Lenox Park Blvd NE
3rd Floor
Atlanta, GA 30319

With copy to: New Cingular Wireless PCS, LLC
Attn: Legal Department
Re: Cell Site # CVL00685
Cell Site Name: Wheatland (CA)
Fixed Asset #: 10122790
208 S. Akard Street
Dallas, Texas, 75202-4206

Exhibit A

The copy sent to the Legal Department is an administrative step which alone does not constitute legal notice. Either party hereto may change the place for the giving of notice to it by thirty (30) days prior written notice to the other as provided herein.

6. Other Terms and Conditions Remain. In the event of any inconsistencies between the Agreement and this Second Amendment, the terms of this Second Amendment shall control. Except as expressly set forth in this Second Amendment, the Agreement otherwise is unmodified and remains in full force and effect. Each reference in the Agreement to itself shall be deemed also to refer to this Second Amendment. The rights granted to Tenant herein are in addition to and not intended to limit any rights of Tenant in the Agreement. Unless otherwise specified herein or unless the context requires otherwise, the terms in the Agreement shall apply to the New Premises Area.

7. Capitalized Terms. All capitalized terms used but not defined herein shall have the same meanings as defined in the Agreement.

Exhibit A

IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute and seal this Second Amendment on the dates set forth below.

LANDLORD:

TENANT:

New Cingular Wireless PCS, LLC,
a Delaware limited liability
company

By: AT&T Mobility Corporation
Its: Manager

By: _____

By: _____

Print Name: _____

Print Name: _____

Its: _____

Its: _____

Date: _____

Date: _____

Exhibit A

EXHIBIT 1-A

Additional Premises Area

See attached

EXHIBIT 1

DESCRIPTION OF PREMISES

Page 2 of 2

to the Agreement dated _____, 2008, by and between The City of Wheatland, a General Law City, having a mailing address of 313 Main Street, P.O. Box 395, Wheatland, CA 95692 (hereinafter referred to as "**Landlord**") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 12555 Cingular Way, Alpharetta, GA 30004 (hereinafter referred to as "**Tenant**").

The Premises are described and/or depicted as follows:

WHEATLAND

Lease Area Description

All that certain lease area being a portion of Block 28, Lot 6, the City of Wheatland, California, being more particularly described as follows:

Commencing at a Standard City Monument in Well set for the centerline intersection of Main Street and A Street and running thence on GPS bearing North 64°24'03" West 277.68 feet more or less to the most Easterly corner of the Northeast footing of (4) footings directly under an existing water tower and the True Point of Beginning; thence from said point of beginning North 36°12'44" East 18.00 feet; thence South 53°47'16" East 18.00 feet; thence South 36°12'44" West 18.00 feet; thence North 53°47'16" West 18.00 feet to the True Point of Beginning.

Together with an easement for utility purposes three (3) feet in width the centerline of which is described as follows: beginning at the midpoint on the Northeast boundary of the above described lease area and running thence North 36°00'00" East 0.66 feet to a point hereafter defined as Point "A"; thence South 54°00'00" East 62.56 feet; thence South 36°00'00" West 6 feet more or less to the existing electrical facilities.

Also together with an easement for utility purposes three (3) feet in width the centerline of which is described as follows: beginning at Point "A" as previously defined and running thence North 54°00'00" West 34.45 feet; thence South 36°00'00" West 7.95 feet; thence North 54°00'00" West 4 feet more or less to the existing telephone cabinet.

Also together with an easement for utility purposes three (3) feet in width from the above described lease area to the superimposed water tank; thence up, over and upon said water tank as is necessary to install, operate and maintain necessary communications equipment.

Also together with an easement for access purposes twelve (12) feet in width from the above described lease area over and across the underlying parcel to the public right of way.