

Issue Analysis Form



Date: July 14, 2020

Item: Public Hearing for Amendment to Courthouse Water Tank Lease Agreement

Lead Department(s): Engineering & Utilities

Contact Person(s): Frank Haltom, Director

Description and Current Status

New Cingular Wireless PCS, LLC (AT&T) currently leases space at the Courthouse water tank located on Sawmill Road. A lease agreement was originally executed in March 1999 and is scheduled to expire February 29, 2024. New Cingular Wireless PCS, LLC has requested to amend the agreement to extend the lease beyond 2024 with the following terms:

1. Allows for up to six (6) separate consecutive additional periods of five (5) years each, effectively expiring in 2054.
2. Rent payable under the new lease agreement shall be \$2,300.00 per month through the first year. Rent shall be adjusted each year on March 1st and increase by 2.5% over the Rent paid during the previous year.

Copies of the amendment are attached for the Board's review.

Government Path

Does this require IDA action? Yes No

Does this require BZA action? Yes No

Does This require Planning Commission Action? Yes No

Does this require Board of Supervisors action? Yes No

Does this require a public hearing? Yes No

If so, before what date? July 14, 2020

Board Action Requested: Resolution to amend the lease agreement with New Cingular Wireless PCS, LLC at the Courthouse water tank.

Fiscal Impact Statement

The current lease agreement will generate approximately \$648,210 in revenues over the 25-year lease. The amendment has the potential to generate approximately \$1,248,810 in revenues over the 30-year lease.

County Impact

Continuing the lease with New Cingular Wireless PCS, LLC will allow for continued cellular service to their customers in the county.

Notes

None.

Board of Supervisors
County of Prince George, Virginia

Resolution

At a meeting of the Board of Supervisors of the County of Prince George held in the Boardroom, Third Floor, County Administration Building, 6602 Courts Drive, Prince George, Virginia, this 14th day of July, 2020:

Present:

Donald Hunter, Chairman
Alan R. Carmichael, Vice-Chair
Floyd M. Brown, Jr.
Marlene J. Waymack
T. J. Webb

Vote:

P-4

On motion of _____, seconded by _____, which carried unanimously, the following Resolution was adopted:

RESOLUTION: TO ACCEPT THE AMENDMENT TO COURTHOUSE WATER TANK LEASE AGREEMENT.

WHEREAS, New Cingular Wireless PCS, LLC (AT&T) currently leases space at the Courthouse water tank located on Sawmill Road. A lease agreement was originally executed in March 1999 and is scheduled to expire February 29, 2024; and

WHEREAS, New Cingular Wireless PCS, LLC has requested to amend the agreement to extend the lease for up to six (6) separate consecutive additional periods of five (5) years each; and

WHEREAS, New Cingular Wireless PCS, LLC will pay the County rent of \$2,300.00 per month through the first year, and shall be adjusted each subsequent year on March 1st and increase by 2.5% over the rent paid during the previous year.

NOW, THEREFORE BE IT RESOLVED: That the Board of Supervisors of the County of Prince George this 14th day of July, 2020, approves the amendment to the lease with New Cingular Wireless PCS, LLC and authorizes the County Administrator to execute such amendment.

CERTIFICATION OF ADOPTION OF RESOLUTION

The undersigned Clerk of the Board of Supervisors of the Prince George County, Virginia hereby certifies that the Resolution set forth above was adopted during an open meeting on July 14, 2020, by the Board of Supervisors with the following votes:

Yes:

No:

Abstentions:

Absent:

Signed this day of July 14, 2020

Teresa Knott, Clerk

Prince George County Board of Supervisors

TAX MAP:

Consideration: \$ N/A

PREPARED BY:

Md7, LLC

WHEN RECORDED RETURN TO:

Michael Fraunces, Manager
10590 W. Ocean Air Drive
Suite 300
San Diego, CA 92130

SPACE ABOVE FOR RECORDER'S USE

Re: Cell Site #: RI161
Cell Site Name: Prince George County Water Tank (VA)
Fixed Asset Number: 10068160
State: VA
County: Prince George

**MEMORANDUM
OF
AGREEMENT**

This Memorandum of Agreement is entered into on this ____ day of _____, 202__, by and between the County of Prince George, a Virginia municipality political subdivision of the Commonwealth of Virginia, having a mailing address at 6602 Courts Drive, Third Floor, P.O. Box 68, Prince George, VA 23875 (hereinafter referred to as "**Landlord**") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, successor by merger to Triton PCS Property Company L.L.C., having a mailing address of 1025 Lenox Park Blvd. NE, 3rd Floor, Atlanta, GA 30319 (hereinafter referred to as "**Tenant**").

1. Landlord and Tenant (or its predecessor in interest) entered into a certain Water Tank Option and Lease Agreement dated February 16, 1999, as further amended by that certain First Amendment to Water Tank Option and Lease Agreement dated _____, 202__ (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 Prince George, County of Prince George, commonly known as 6310 Sawmill Road. All of the foregoing are set forth in the Agreement.

2. Commencing on March 1, 2024, the Agreement shall extend for six (6) successive five (5) year options to renew.
3. The portion of the land being leased to Tenant (the “**Premises**”) is described in **Exhibit 1** annexed hereto.
4. This Memorandum of Agreement 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 Agreement 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.

[NO MORE TEXT ON THIS PAGE - SIGNATURES TO FOLLOW ON NEXT PAGE]

Exhibit 1 to Memorandum of Agreement

Legal Description

Street Address: 6310 Sawmill Road, Prince George, VA 23875

APN: _____

That certain Premises (and access and utility easements) on a portion of the real property described as follows:

[INSERT LEGAL DESCRIPTION HERE]

DRAFT

Cell Site No.: RI161
Cell Site Name: Prince George County Water Tank
Fixed Asset No.: 10068160
Market: VA / WV
Address: 6310 Sawmill Road

FIRST AMENDMENT TO WATER TANK OPTION AND LEASE AGREEMENT

THIS FIRST AMENDMENT TO WATER TANK OPTION AND LEASE AGREEMENT ("**First Amendment**"), dated as of the latter of the signature dates below (the "**Effective Date**"), is by and between the County of Prince George, a [political subdivision of the Commonwealth of Virginia](#) ~~municipality~~, having a mailing address of 6602 Courts Drive, [Third Floor](#), P.O. Box 68, Prince George, VA 23875 (hereinafter referred to as "**Landlord**"), and New Cingular Wireless PCS, LLC, a Delaware limited liability company, successor by merger to Triton PCS Property Company L.L.C., having a mailing address of 1025 Lenox Park Blvd. NE, 3rd Floor, Atlanta, GA 30319 (hereinafter referred to as "**Tenant**").

WHEREAS, Landlord and Tenant (or its respective predecessor in interest) entered into a Water Tank Option and Lease Agreement dated February 16, 1999 (hereinafter, the "**Agreement**"), whereby Landlord leased to Tenant certain Premises, therein described, that are a portion of the Property located at 6310 Sawmill Road, Prince George, VA; and

WHEREAS, the term of the Agreement will expire on March 23, 2024, and the parties mutually desire to renew the Agreement, memorialize such renewal period and modify the Agreement in certain other respects, all on the terms and conditions contained herein; and

WHEREAS, Landlord and Tenant desire to amend the Agreement to extend the term of the Agreement; and

WHEREAS, Landlord and Tenant desire to amend the Agreement to adjust the Rent in conjunction with the modifications to the Agreement contained herein; and

WHEREAS, Landlord and Tenant desire to amend the Agreement to modify the notice section thereof; and

WHEREAS, Landlord and Tenant desire to amend the Agreement to permit Tenant to add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including but not limited to emergency 911 communication services; and

WHEREAS, Landlord and Tenant desire to amend the Agreement to clarify scope of Tenant's permitted use of the Premises; and

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

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 that the recitals set forth above are incorporated herein as if set forth in their entirety and further agree as follows:

Cell Site No.: RI161
Cell Site Name: Prince George County Water Tank
Fixed Asset No.: 10068160
Market: VA / WV
Address: 6310 Sawmill Road

1. **Extension of Term.** The Term of the Agreement shall be modified to provide that the current term, which commenced on March 24, 2019, shall expire on February 29~~8~~, 2024 ("Current Term"), and commencing on March 1, 2024, will be automatically renewed, upon the same terms and conditions of the Agreement, as amended herein, for up to six (6) separate consecutive additional periods of five (5) years each (each such five (5) year additional period is hereinafter referred to as an "Additional Renewal Term" and each such Additional Renewal Term shall be considered a Renewal Term under the Agreement), without further action by Tenant unless Tenant notifies Landlord in writing of Tenant's intention not to renew the Agreement at least sixty (60) days prior to the expiration of the Current Term or the then current Additional Renewal Term. The Current Term and the Additional Renewal Terms are collectively referred to as the Term ("**Term**").

2. **Rent.** Commencing on March 1, 2024, the current Rent payable under the Agreement shall be Two Thousand Three Hundred and No/100 Dollars (\$2,300.00) per month, and shall continue during the Term, subject to adjustment as provided herein. Section 4(c) of the Agreement shall be amended to provide that Rent shall be adjusted as follows: on March 1, 2025 and each year thereafter, including throughout any Additional Renewal Term exercised, the monthly Rent will increase by two and a half percent (2.5%) over the Rent paid during the previous year.

3. **Expansion of Permitted Use.** Tenant, its personnel, invitees, contractors, agents, or assigns may use the Premises, at no additional cost or expense, for the transmission and reception of any and all communications signals and, with prior written notice to Landlord, to modify, supplement, replace, upgrade, ~~expand,~~ including but not limited to the number and type(s) of antennas, or refurbish the equipment and/or improvements thereon (collectively, "**Communications Facility**"), or relocate the same within the Premises at any time during the term of the Agreement for any reason, so long as these changes do not exceed the structural capacity of the tower/structure at this height, or at Tenant's sole expense upgrade the structural capacity, or in order to be in compliance with any current or future federal, state or local mandated application, including but not limited to emergency 911 communication services, or for any other reason. Landlord shall reasonably cooperate in obtaining governmental and other use permits or approvals necessary or desirable for the foregoing permitted use. If Landlord does not comply with the terms of this section, in addition to any other rights it may have at law, Tenant may terminate the Agreement and shall have no further liability to Landlord. If Landlord does not comply with the terms of this section, Tenant will have the right to exercise any and all rights available to it under law and equity, including the right to cure Landlord's default and to deduct the costs of such cure from any monies due to Landlord from Tenant.

4. **Right of First Refusal.** Notwithstanding any other provisions contained in the Agreement, if at any time after the date of this First Amendment, Landlord receives a bona fide written offer from a third party seeking any sale, conveyance, assignment or transfer, whether in whole or in part, of any property interest in or related to the Premises, including without limitation any offer seeking an assignment or transfer of the Rent payments associated with the Agreement or an offer to purchase an easement with respect to the Premises ("**Offer**"), Landlord

Cell Site No.: RI161
Cell Site Name: Prince George County Water Tank
Fixed Asset No.: 10068160
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shall immediately furnish Tenant with a copy of the Offer. Tenant shall have the right within ninety (90) days after it receives such copy to match the financial terms of the Offer and agree in writing to match such terms of the Offer. Such writing shall be in the form of a contract substantially similar to the Offer, but Tenant may assign its rights to a third party. If Tenant chooses not to exercise this right or fails to provide written notice to Landlord within the ninety (90) day period, Landlord may sell, convey, assign or transfer such property interest in or related to the Premises pursuant to the Offer, subject to the terms of the Agreement. If Landlord attempts to sell, convey, assign or transfer such property interest in or related to the Premises without complying with this Paragraph 4, the sale, conveyance, assignment or transfer shall be void. Tenant shall not be responsible for any failure to make payments under this Agreement and reserves the right to hold payments due under this the Agreement until Landlord complies with this Paragraph 4. Tenant's failure to exercise the right of first refusal shall not be deemed a waiver of the rights contained in this Paragraph 4 with respect to any future proposed conveyances as described herein.

5. **Charges.** All charges payable under the Agreement such as utilities and taxes shall be billed by Landlord within one (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by Landlord, and shall not be payable by Tenant. The foregoing shall not apply to monthly Rent which is due and payable without a requirement that it be billed by Landlord. The provisions of this subparagraph shall survive the termination or expiration of the Agreement.

6. **Acknowledgment.** Landlord acknowledges that: 1) this First Amendment is entered into of the Landlord's free will and volition; 2) Landlord has read and understands this First Amendment and the underlying Agreement and, prior to execution of this First Amendment, was free to consult with counsel of its choosing regarding Landlord's decision to enter into this First Amendment and to have counsel review the terms and conditions of this First Amendment; 3) Landlord has been advised and is informed that should Landlord not enter into this First Amendment, the underlying Agreement between Landlord and Tenant, including any termination or non-renewal provision therein, would remain in full force and effect.

7. **Notices.** Section 14 of the Agreement is hereby deleted in its entirety and replaced with the following:

“(a) **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 Tenant:

New Cingular Wireless PCS, LLC
Attn.: Network Real Estate Administration
Re: Cell Site #: RI161
Cell Site Name: Prince George County Water Tank (VA); Fixed Asset No.: 10068160

Cell Site No.: RI161
Cell Site Name: Prince George County Water Tank
Fixed Asset No.: 10068160
Market: VA / WV
Address: 6310 Sawmill Road

1025 Lenox Park Blvd. NE
3rd Floor
Atlanta, GA 30319

With a required copy of the notice sent to the address above to AT&T Legal at:

New Cingular Wireless PCS, LLC
Attn.: AT&T Legal Department
Re: Cell Site #: RI161
Cell Site Name: Prince George County Water Tank (VA); Fixed Asset No.: 10068160
208 S. Akard Street
Dallas, Texas, 75202-4206

A copy sent to the Legal Department is an administrative step which alone does not constitute legal notice.

And as to Landlord:

County of Prince George
6602 Courts Drive, Third Floor
P.O. Box 68
Prince George, VA 23875

(b) In the event of a change in ownership, transfer or sale of the Property, within ten (10) days of such transfer, Landlord will send the below documents to Tenant. In the event Tenant does not receive such appropriate documents, Tenant shall not be responsible for any failure to pay the current landlord.

- (i) New deed to Property
- (ii) New W-9
- (iii) New Payment Direction Form
- (iv) Full contact information for new Landlord including all phone numbers

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.”

8. **Memorandum of Agreement.** Either party will, at any time upon fifteen (15) days prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum of Agreement substantially in the form of the Attachment 1. Either party may record this memorandum at any time, in its absolute discretion.

9. **Other Terms and Conditions Remain.** In the event of any inconsistencies between the Agreement and this First Amendment, the terms of this First Amendment shall control. Except as expressly set forth in this First 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 First Amendment.

Cell Site No.: RI161
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(Signature of Notary)

(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of

My appointment expires: _____

Attachment 1

Memorandum of Agreement

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