

# STAFF REPORT



ITEM NO. 6  
CITY OF OCEANSIDE

DATE: April 17, 2013  
TO: Honorable Mayor and City Councilmembers  
FROM: Property Management Division  
SUBJECT: **AMENDMENTS TO THREE ENCROACHMENT PERMIT AGREEMENTS BETWEEN THE CITY OF OCEANSIDE AND SPRINT PCS ASSETS, LLC, FOR TELECOMMUNICATIONS FACILITIES**

## **SYNOPSIS**

Staff recommends that the City Council approve Amendments to three Encroachment Permit Agreements with Sprint PCS Assets, LLC, to encroach upon a portion of the rights-of-way located: on the east side of Vandegrift Boulevard, 290' south of Douglas Drive; at 3770 Merced; and on the west side of Elaine Avenue for telecommunications facilities; extending the term of the agreements from October 1, 2012, to September 30, 2017, with minimum revenue to the City in the amounts of \$84,000, \$84,000 and \$86,389 respectively, and authorize the City Manager to execute the amendments.

## **BACKGROUND**

Sprint PCS Assets, LLC ("Sprint"), originally entered into three separate Encroachment Permit Agreements with the City of Oceanside on September 18, 2002, to encroach upon a portion of the rights-of-way located: on the east side of Vandegrift Boulevard, 290' south of Douglas Drive; at 3770 Merced; and on the west side of Elaine Avenue, (Collectively "Premises") for telecommunications facilities. The original term of the Agreements expired September 30, 2012.

## **ANALYSIS**

The proposed amendments to the Agreements ("Agreements") extend the term of the Agreements an additional five years for the continued use of the Premises by Sprint as telecommunication facilities. The continued use by Sprint, LLC, will provide continued revenue to the City. The City has the authority to manage and to require fair and reasonable compensation from telecommunications providers within City right-of-way on a competitively neutral and nondiscriminatory basis.

## **FISCAL IMPACT**

The Amendments require annual payments of \$16,800, \$16,800 and \$17,277 respectively; thereafter, said amounts are subject to adjustment based on annual increases, if any, in the Consumer Price Index ("CPI") during the five-year extension

period. It is anticipated that the five-year extension of the term of the Agreements through September 30, 2017, assuming no CPI increases, would generate a minimum of \$84,000, \$84,000, and \$86,389 respectively. However, these amounts could be higher depending on the increase in CPI over said five-year period. Revenues generated by telecommunication and cellular sites throughout the City are recorded in to the City's General Fund 1101.4351.0005.

**COMMISSION OR COMMITTEE REPORT**

Does not apply.

**INSURANCE REQUIREMENTS**

Sprint will be required to maintain the City's standard insurance requirements over the term of the Agreement.

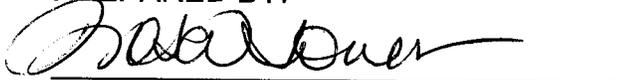
**CITY ATTORNEY'S ANALYSIS**

The referenced documents have been reviewed by the City Attorney and approved as to form.

**RECOMMENDATION**

Staff recommends that the City Council approve Amendments to three Encroachment Permit Agreements with Sprint PCS Assets, LLC, to encroach upon a portion of the rights-of-way located: on the east side of Vandegrift Boulevard, 290' south of Douglas Drive; at 3770 Merced; and on the west side of Elaine Avenue for telecommunications facilities; extending the term of the agreements from October 1, 2012, to September 30, 2017, with minimum revenue to the City in the amounts of \$84,000, \$84,000 and \$86,389 respectively, and authorize the City Manager to execute the amendments.

PREPARED BY:



Rosa A. Jones  
Contract Coordinator

SUBMITTED BY:



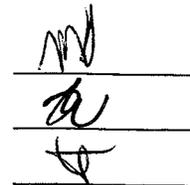
Peter A. Weiss  
City Manager

REVIEWED BY:

Michelle Skaggs-Lawrence, Deputy City Manager

Douglas E. Eddow, Real Property Manager

Teri Ferro, Financial Service Director



**FIRST AMENDMENT TO THE ENCHROACHMENT PERMIT AGREEMENT  
BETWEEN  
THE CITY OF OCEANSIDE, CALIFORNIA  
AND  
SPRINT TELEPHONY PCS, L.P., dba SPRINT PCS ASSETS, L.L.C**

This First Amendment to Encroachment Permit Agreement (“Amendment”) dated, for identification purposes, November 7, 2012, is made by and between the City of Oceanside, a municipal corporation (“CITY”) and Sprint Telephony PCS, L.P., dba Spring PCS Assets, L.L.C (“LESSEE”).

**R E C I T A L S**

**WHEREAS**, the City and Permittee entered into that certain Encroachment Permit Agreement, dated September 18, 2002 (“Agreement”), to encroach upon a portion of the rights-of-way located on the east side of **Vandegrift Boulevard, 290’ south of Douglas Drive**, hereinafter referred to as the “Rights-of-way”, as described and illustrated in those certain improvement drawings as approved by and on file as public record with the City Engineer of the City of Oceanside (“City Engineer”), **Sprint SD34XC663** (the “Improvement Drawings”);

**WHEREAS**, the original term of the Agreement expired on September 30, 2012; and

**WHEREAS**, Permittee is now desirous of extending the term of the Agreement for an additional five (5) years to expire on September 30, 2017

**A G R E E M E N T**

**NOW THEREFORE**, in consideration of the covenants and conditions contained herein, the parties hereto agree to amend the Agreement as follows:

1. **Section 2. Term** shall be deleted in its and replaced with the following: The terms of this Agreement shall be extended an additional five (5) years beginning October 1, 2012 and shall expire on September 30, 2017. This Agreement authorizes the Permittee to encroach upon the Rights-of-way for so long as the Permittee is using the encroachment to provide wireless services; provided however, that the terms and conditions of this Agreement shall be reviewed and, if necessary, renegotiated in good faith for purposed of reaching an agreement shall be grounds for termination of this Agreement pursuant to Section 25 herein

2. **Section 4. Compensation**

**b. Annual Fee.** Shall be deleted in its entirety and replaced with the following: Commencing on October 1, 2012 Permittee shall pay the City an annual fee of \$16,800 without demand from the City, on or before first (1<sup>st</sup>) say of July each year and in accordance with this Section, whether or not Rights-of-way are occupied by Permittee’s Facilities when said payments become due. The first annual payments shall be due October 1, 2012 and shall be prorated from said date to June 30, 2013

4. Except as expressly modified by this Amendment, the Agreement and all of its terms and conditions, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto agree to all of the covenants and conditions as set forth herein as of the date first written above.

“City”

City of Oceanside  
a municipal corporation

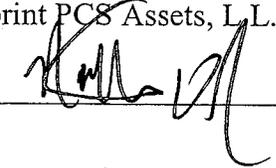
Approved as to form:

By: \_\_\_\_\_  
City Manager

By:  \_\_\_\_\_  
City Attorney

“Permitee”

Sprint Telephony PCS, L.P.,  
dba Sprint PCS Assets, L.L.C

By:  \_\_\_\_\_

Name: NATHAN OLSON

Title: AUTHORIZED REPRESENTATIVE

**NOTARY ACKNOWLEDGEMENT OF PERMITTEE’S SIGNATURE MUST BE ATTACHED.**

State of ~~California~~ Kansas  
County of Johnson )

On March 11, 2013 before me,  
Renet A Mitchell  
(insert name and title of the officer)

personally  
appeared Nathan Olson  
\_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose  
name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s)  
on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed  
the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of ~~California~~ <sup>KANSAS</sup> that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Renet A Mitchell



(Seal)

**FIRST AMENDMENT TO THE ENCHROACHMENT PERMIT AGREEMENT  
BETWEEN  
THE CITY OF OCEANSIDE, CALIFORNIA  
AND  
SPRINT TELEPHONY PCS, L.P., dba SPRINT PCS ASSETS, L.L.C**

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**R E C I T A L S**

**WHEREAS**, the City and Permittee entered into that certain Encroachment Permit Agreement, dated September 18, 2002 (“Agreement”), to encroach upon a portion of the rights-of-way located on the north side of Merced Drive and the northerly prolongation of the east side of Wisteria Drive (3770 Merced, Oceanside, CA), hereinafter referred to as the “Rights-of-way”, as described and illustrated in those certain improvement drawings as approved by and on file as public record with the City Engineer of the City of Oceanside (“City Engineer”), **NIGHTHAWK SD35XC159** (the “Improvement Drawings”);

**WHEREAS**, the original term of the Agreement expired September 30, 2012; and

**WHEREAS**, Permittee is now desirous of extending the term of the Agreement for an additional five (5) years to expire on September 30, 2017

**A G R E E M E N T**

**NOW THEREFORE**, in consideration of the covenants and conditions contained herein, the parties hereto agree to amend the Agreement as follows:

1. **Section 2. Term** shall be deleted in its entirety and replaced with the following: The term of this Agreement shall be extended an additional five (5) years beginning October 1, 2012 and shall expire on September 30, 2017. This Agreement authorizes the Permittee to encroach upon the Rights-of-Way for so long as the Permittee using the encroachment to provide wireless services; provided however, that the terms and conditions of this Agreement shall be reviewed and, if necessary, renegotiated in a manner consistent with applicable law. Failure of the Permittee to renegotiate in good faith for purposes of reaching an Agreement shall be grounds for termination of this Agreement pursuant to Section 25 herein.

2. **Section 4. Compensation.**

**b. Annual Fee.** Shall be deleted in its entirety and replaced with the following; Commencing on October 1, 2012 Permittee shall pay to the City an annual fee of \$16,800 without demand from City, on or before the first (1<sup>st</sup>) day of July each year and in accordance with this Section, whether or not Rights-of-way are occupied by Permittee’s Facilities when said payment become due. The first annual payment shall be due October 1, 2012 and shall be prorated from said date to June 30, 2013.

3. Except as expressly modified by this Amendment, the Agreement and all of its terms and conditions, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto agree to all of the covenants and conditions as set forth herein as of the date first written above.

“City”

City of Oceanside  
a municipal corporation

Approved as to form:

By: \_\_\_\_\_  
City Manager

By: *Andrew J. Hamilton, A.B.S.T.*  
City Attorney

“Permittee”

Sprint Telephony PCS, L.P.,  
dba Sprints PCS Assets, L.L.C

By: *Nathan Olson*

Name: NATHAN OLSON

Title: AUTHORIZED REPRESENTATIVE

**NOTARY ACKNOWLEDGEMENT OF PERMITTEE’S SIGNATURE MUST BE ATTACHED.**

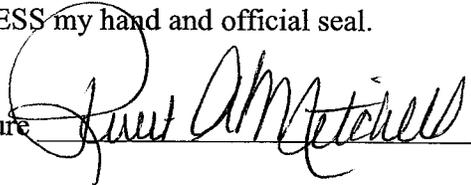
State of ~~California~~ KANSAS  
County of Johnson )

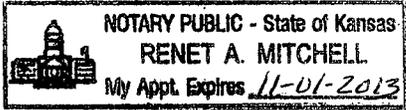
On March 11, 2013 before me,  
~~Renet~~ Renet Mitchell,  
(insert name and title of the officer)

personally  
appeared Nathan Olson  
\_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose  
name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s)  
on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed  
the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of ~~California~~ <sup>Kansas</sup> that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 



(Seal)

**FIRST AMENDMENT TO THE ENCHROACHMENT PERMIT AGREEMENT  
BETWEEN  
THE CITY OF OCEANSIDE, CALIFORNIA  
AND  
SPRINT TELEPHONY PCS, L.P., dba SPRINT PCS ASSETS, L.L.C**

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**R E C I T A L S**

**WHEREAS**, the City and Permittee entered into that certain Encroachment Permit Agreement, dated September 18, 2002 and as amended by the certain Agreement and Addendum to the Encroachment Permit Agreements dated July, 2005 (collectively referred to herein as the “Agreement”), to encroach upon a portion of the rights-of-way located on the **west side of Elaine Avenue, approximately 191’ from Gold Drive** hereinafter referred to as the “Rights-of-way”, as described and illustrated in those certain improvement drawings as approved by and on file as public record with the City Engineer of the City of Oceanside (“City Engineer”), **Sprint SD34XC651** (the “Improvement Drawings”);

**WHEREAS**, the original term of the Agreement expired on September 30, 2012; and

**WHEREAS**, Permittee is now desirous of extending the term of the Agreement for an additional five (5) years to expire on September 30, 2017

**A G R E E M E N T**

**NOW THEREFORE**, in consideration of the covenants and conditions contained herein, the parties hereto agree to amend the Agreement as follows:

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2. **Section 4. Compensation.**

**b. Annual Fee.** shall be deleted in its entirety and replaced with the following: Commencing on October 1, 2012 Permittee shall pay to the City an annual fee of \$17,277.92 without demand from City, on or before first (1<sup>st</sup>) day of July each year and in accordance with this Section, whether or not Rights-of-way are occupied by Permittee’s Facilities when said payments become

due. The first annual payments shall be October 1, 2012 and shall be prorated from said date to June 30, 2013

3. Except as expressly modified by this Amendment, the Agreement and all of its terms and conditions, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto agree to all of the covenants and conditions as set forth herein as of the date first written above.

“City”

City of Oceanside  
a municipal corporation

Approved as to form:

By: \_\_\_\_\_  
City Manager

By: Bryan D. Miller, Esq.  
City Attorney

“Permittee”

Sprint Telephony PCS, L.P.,  
dba Sprint PCS Assets, L.L.C

By: [Signature]

DATE: 2/27/2013

Name: NATHAN OLSON

Title: AUTHORIZED REPRESENTATIVE

**NOTARY ACKNOWLEDGEMENT OF PERMITTEE’S SIGNATURE MUST BE ATTACHED.**

State of California  
County of \_\_\_\_\_)

On \_\_\_\_\_ before me,

\_\_\_\_\_  
(Insert name and title of the officer)

personally  
appeared \_\_\_\_\_  
\_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose  
name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s)  
on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed  
the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

Kansas  
State of ~~California~~  
County of Johnson )

On February 27, 2013 before me,  
Renet A Mitchell,  
(insert name and title of the officer)

personally  
appeared NATHAN OLSON,  
\_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose  
name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s)  
on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed  
the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of ~~California~~ Kansas that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Renet A Mitchell



(Seal)