

STAFF REPORT*CITY OF OCEANSIDE*

DATE: February 5, 2014

TO: Honorable Mayor and City Councilmembers

FROM: Property Management Division

SUBJECT: **AMENDMENT 1 TO THE ENCROACHMENT PERMIT AGREEMENT BETWEEN THE CITY OF OCEANSIDE AND SPRINT PCS ASSETS, LLC, FOR A TELECOMMUNICATIONS FACILITY**

SYNOPSIS

Staff recommends that the City Council approve Amendment 1 to the Encroachment Permit Agreement with Sprint PCS Assets, LLC, to encroach upon a portion of the right-of-way located at 825 ½ Douglas Drive, for a telecommunication facility, extending the term of the agreement retroactively from June 1, 2013, to May 30, 2018, with minimum total revenue to the City in the amount of \$86,400; and authorize the City Manager to execute the amendment.

BACKGROUND

Sprint PCS Assets, LLC ("Sprint"), originally entered into an Encroachment Permit Agreement ("Agreement") with the City of Oceanside on May 21, 2003, to encroach upon a portion of the right-of-way located at 825 ½ Douglas Drive, for a telecommunication facility. The original term of the Agreement expired May 31, 2013.

ANALYSIS

The proposed amendment to the Agreement extends the term of the Agreement an additional five years for the continued use of the premises by Sprint as a telecommunication facility; which use by Sprint will provide continued revenue to the City.

FISCAL IMPACT

The Amendment requires annual payments of \$17,280; thereafter, the amount is 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 Agreement through May 31, 2018, assuming no CPI increases, would generate a minimum of \$86,400. However, the amount could be higher depending on the increase in CPI over the five-year period. Revenues generated by telecommunication and cellular sites throughout the City accrue 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.

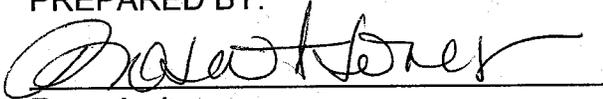
CITY ATTORNEY'S ANALYSIS

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

RECOMMENDATION

Staff recommends that the City Council approve Amendment 1 to the Encroachment Permit Agreement with Sprint PCS Assets, LLC, to encroach upon a portion of the right-of-way located at 825 1/2 Douglas Drive, for a telecommunication facility, extending the term of the agreement retroactively from June 1, 2013, to May 30, 2018, with minimum total revenue to the City in the amount of \$86,400; and authorize the City Manager to execute the amendment.

PREPARED BY:



Rosa A. Jones
Contract Coordinator

SUBMITTED BY:



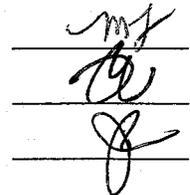
Steven R. Jepsen
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Douglas E. Eddow, Real Property Manager

James R. Riley, Financial Services 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 25, 2013, is made by and between the City of Oceanside, a municipal corporation ("City") and Sprint Telephony PCS, L.P., dba Sprint PCS Assets, LLC ("Permittee").

R E C I T A L S

WHEREAS, the City and Permittee entered into that certain Encroachment Permit Agreement, dated May 21, 2003 ("referred to herein as the "Agreement"), to encroach upon a portion of the rights-of-way located on the **825 ½ 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 a public record with the City Engineer of the City of Oceanside ("City Engineer"), SD54XC894, (the "Improvement Drawings").

WHEREAS, the original term of the Agreement expired on May 31, 2013; and

WHEREAS, Permittee is now desirous of extending the term of the Agreement for an additional five (5) years to expire on May 31, 2018

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 replace with the following:

"The term of this Agreement shall be extended an additional five (5) years beginning retroactive to June 1, 2013 and shall expire on May 31, 2018. 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 telecommunication 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 27 herein."

2. **Section 4. Compensation. b. Annual Fee. First Paragraph** shall be deleted in its entirety and replaced with the following:

"Commencing on June 1, 2013, For the month of June 2013, Permittee shall pay to the City the prorated monthly amount of One Thousand Four Hundred and No/100 Dollars (\$ 1,400.00). Commencing July 1, 2013, Permittee shall pay to the City and annual fee of Seventeen Thousand Two Hundred Eighty and No/100 Dollars (\$17,280.00) without demand

from City, on or before first (1st) 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."

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 the event of a conflict between this Amendment and the Agreement the terms of this Amendment shall prevail.

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: *Scott Hamilton*, 1957.
City Attorney

"Permittee"

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

By: *[Signature]*

Name: *Mgr Vendor Mgt James Blain*

Title: *Mgr Vendor Mgt*

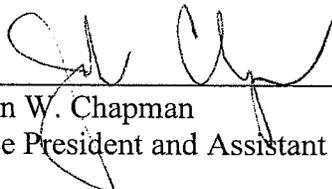
NOTARY ACKNOWLEDGEMENT OF PERMITTEE'S SIGNATURE MUST BE ATTACHED.



CERTIFICATE

The undersigned, the duly authorized Vice President and Assistant Secretary of Sprint Telephony PCS, L.P., a Delaware limited partnership ("Sprint"), does hereby certify that James Blain, Manager Vendor Management, is duly authorized to execute on behalf of Sprint that certain First Amendment to the Encroachment Permit Agreement between the City of Oceanside, a California municipal corporation, and Sprint [Ref: 825½ Douglas Drive, Oceanside, CA / SD54XC894].

Dated: January 23, 2014.

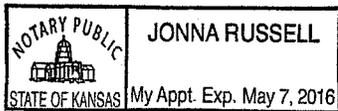
Name: 
John W. Chapman
Vice President and Assistant Secretary

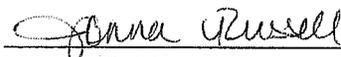
ACKNOWLEDGEMENT

STATE OF KANSAS)

COUNTY OF JOHNSON)

Before me, a notary public in and for said County and State, on this 23rd day of January, 2014, personally appeared John W. Chapman, Vice President and Assistant Secretary of Sprint Telephony PCS, L.P., a Delaware limited partnership, to me known to be the person who executed this instrument, and acknowledged to me that John W. Chapman executed the same as a free and voluntary act and deed for the purposes set forth.




Notary Public