

STAFF REPORT*CITY OF OCEANSIDE*

DATE: May 7, 2014

TO: Honorable Mayor and City Councilmembers

FROM: Property Management Division

SUBJECT: **AMENDMENT 2 TO PROPERTY USE AGREEMENT BETWEEN THE CITY OF OCEANSIDE AND SPRINT PCS ASSETS, LLC, FOR A TELECOMMUNICATION FACILITY**

SYNOPSIS

Staff recommends that the City Council approve Amendment 2 to the Property Use Agreement with Sprint PCS Assets, LLC, for non-exclusive use of a portion of Martin Luther King, Jr. Park at 4500 Mesa Drive for a telecommunication facility, extending the term of the agreement retroactively from September 1, 2013, to August 31, 2018, with minimum total revenue to the City in the amount of \$241,740; and authorize the City Manager to execute the amendment.

BACKGROUND

Sprint PCS Assets, LLC (Sprint), originally entered into a Property Use Agreement (Agreement) with the City of Oceanside on August 6, 2003, for non-exclusive use of a portion of Martin Luther King, Jr. Park at 4500 Mesa Drive ("Premises") for a telecommunication facility. The term of the Agreement expired on August 31, 2013, and Sprint since has been on a month-to-month basis. Sprint has requested to exercise its option to extend the Agreement for an additional five years to expire August 31, 2018.

ANALYSIS

The proposed amendment extends the term of the Agreement an additional five years for the continued use of the Premises by Sprint as a telecommunication facility. The City does not anticipate needing the Premises through the extended term of the Agreement. The continued use of the Premises by Sprint PCS Assets, LLC, will provide additional revenue to the City.

FISCAL IMPACT

The Amendment requires an annual payment of \$48,348 retroactive to September 1, 2013, payable in installments of \$4,029 a month. Thereafter, the rent 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 August 31, 2018, assuming no CPI increases, would

generate a minimum of \$241,740. However, this amount could be higher depending on the increase in CPI over the five-year period. Revenues generated by telecommunication and cellular sites on City-owned property throughout the City accrue to the City's General Fund 1011.4351.0006.

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.

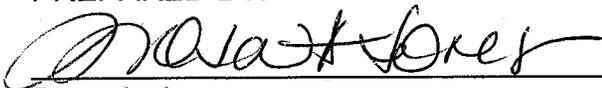
CITY ATTORNEY'S ANALYSIS

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

RECOMMENDATION

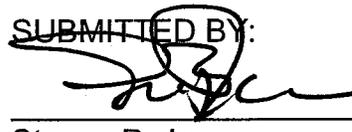
Staff recommends that the City Council approve Amendment 2 to the Property Use Agreement with Sprint PCS Assets, LLC, for non-exclusive use of a portion of Martin Luther King, Jr. Park at 4500 Mesa Drive for a telecommunication facility, extending the term of the agreement retroactively from September 1, 2013, to August 31, 2018, with minimum total revenue to the City in the amount of \$241,740; and authorize the City Manager to execute the amendment.

PREPARED BY:



Rosa A. Jones
Contract Coordinator

SUBMITTED BY:



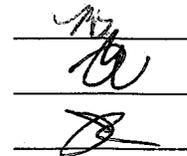
Steven R. Jepsen
City Manager

REVIEWED BY:

Michelle Skaggs-Lawrence, Deputy City Manager

Douglas E. Eddow, Real Property Manager

James R. Riley, Financial Services Director



SECOND AMENDMENT TO PROPERTY USE AGREEMENT

This Second Amendment to Property Use Agreement ("Amendment") dated November 25, 2013, is entered into by and between the City of Oceanside, a municipal corporation ("City") and Sprint PCS Assets, L.L.C. ("Permittee").

RECITALS

WHEREAS, the City and Permittee entered into that certain Property Use Agreement, dated as of August 6, 2003 ("Agreement"), for property known as Martin Luther King Park herein after referred to as the "Premises."

WHEREAS, the original term of the Agreement expired August 31, 2008, and was extended an additional five (5) years to expire August 31, 2013 pursuant to the First Amendment to Property Use Agreement dated July 8, 2009 ("First Amendment");

WHEREAS, the Agreement, as amended by the First Amendment gives, Permittee two (2) remaining five (5) year options to extend the term of the Agreement;

WHEREAS, Permittee has provided notice to the City that it is exercising one of its remaining two (2) five year options to extend the term of the Agreement; and

WHEREAS, the City and Permittee are desirous of amending the Agreement to extend the term thereof.

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

AGREEMENT

1. **SECTION 2: TERM, Subsection 2.01 Commencement.** shall be deleted in its entirety and replaced with the following language:

"2.01 Term. The term of the Agreement, as amended, shall be for five (5) additional years, commencing retroactive to September 1, 2013 and expiring on August 31, 2018."

2. **SECTION 2: TERM, Subsection 2.02 Renewal Option.** shall be amended to reflect that Permittee has only one (1) remaining five (5) year option to renew the term of the Agreement. All other terms of said Subsection 2.02 shall remain the same.

3. **SECTION 3: PROPERTY USE PAYMENT, Subsection 3.02 Initial Property Use Payment** shall be deleted in its entirety and replaced with the following language:

"3.02 Property Use Payment. The minimum Property Use Payment beginning retroactive to September 1, 2013 thru December 31, 2013 shall be **Four Thousand Twenty Nine and No/100 Dollars (\$4,029.00)** per month. Beginning

January 1, 2014, the minimum Property Use Payment shall be **Four Thousand Two Hundred Twenty One and 30/100 Dollars (\$4,221.30)** per month. The Property Use Payments shall be payable monthly in advance on or before the first (1st) day of each new month. For the convenience of the Agreement, the Property Use Payment may be referred to as "Rent".

4. **SECTION 3: PROPERTY USE PAYMENT, Subsection 3.03 Minimum Property Use Payment Adjustment Date**, shall be amended to delete the first paragraph and be replaced with the following:

" 3.03 Minimum Property Use Payment Adjustment Date. The minimum property use adjustment date shall be the first (1st) day of January, beginning January 2015 and annually thereafter during the term of the Agreement. The minimum annual Property Use Payment amount shall be adjusted on each Property Use Payment adjustment date as set forth below."

All other terms of said Subsection 3.03 shall remain the same.

5. Except as expressly modified by this Amendment, the Agreement and all of its terms and conditions as previously amended, 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: *Antonia Hamilton, Esq.*
City Attorney

"Permittee"

Sprint PCS, Assets, L.L.C.

By: *[Signature]*

Its: GARY LINDSEY, MANAGER, REAL ESTATE

By: *[Signature]*

Its: JAMES BLAIN, MANAGER VENDOR MANAGEMENT

NOTARY ACKNOWLEDGEMENT OF PERMITTEE'S SIGNATURE MUST BE ATTACHED