



DATE: February 18, 2015

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 TELECOMMUNICATION FACILITY**

SYNOPSIS

Staff recommends that the City Council approve Amendment 1 to an Encroachment Permit Agreement with Sprint PCS Assets, LLC, to encroach upon a portion of the rights-of-way located at 2844 ½ College Boulevard for a telecommunications facility, extending the term of the agreement retroactively from October 1, 2013; to September 30, 2018, with minimum revenue to the City in the amount of \$86,400 during the five-year term; 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 September 17, 2003, to encroach upon a portion of the right-of-way located at 2844 ½ College Avenue ("Premises") for a telecommunication facility. The original term of the Agreement expired September 30, 2013.

ANALYSIS

The proposed amendment to the Agreement ("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 continued use by Sprint will provide continued revenue to the City. The City has the authority to manage and to require fair and reasonable compensation from telecommunication providers within City rights-of-way on a competitively neutral and nondiscriminatory basis.

FISCAL IMPACT

The Amendment requires annual payments of \$17,280 during the five-year extension period. The annual payments 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 Agreement through September 30, 2018, assuming no CPI increases, would generate a minimum of \$86,400. However,

this amount could be higher depending on the increase in the CPI over said five-year period. Payments received under the Agreement will be deposited to the City's General Fund revenue account 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.

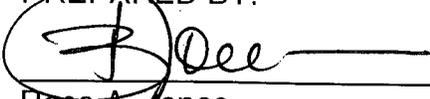
CITY ATTORNEY'S ANALYSIS

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 an Encroachment Permit Agreement with Sprint PCS Assets, LLC, to encroach upon a portion of the rights-of-way located at 2844 ½ College Boulevard for a telecommunications facility, extending the term of the agreement retroactively from October 1, 2013; to September 30, 2018, with minimum revenue to the City in the amount of \$86,400 during the five-year term; 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, Assistant City Manager
Douglas E. Eddow, Real Estate Manager
Jane McPherson, Interim Financial Services Director







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

This First Amendment to Encroachment Permit Agreement (“Amendment”) dated, for identification purposes, November 5, 2014, is made by and between the City of Oceanside, a municipal corporation (“City”) and Sprint PCS Assets L.L.C., a Delaware Limited Liability Company (“Permittee”).

R E C I T A L S

WHEREAS, the City and Permittee’s predecessor-in-interest entered into that certain Encroachment Permit Agreement, dated September 17, 2003, (“Agreement”), to encroach upon a portion of the rights-of-way located on the north side of 2844 ½ College Avenue, 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”), **2844 ½ COLLEGE AVENUE SD55XC007** (the “Improvement Drawings”);

WHEREAS, the original term of the Agreement expired September 30, 2013; and

WHEREAS, Permittee is now desirous of extending the term of the Agreement for an additional five (5) years to expire on September 30, 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 replaced with the following: The term of this Agreement shall be extended an additional five (5) years beginning October 1, 2013 and shall expire on September 30, 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 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.**

Subsection b. Annual Fee shall be deleted in its entirety and replaced with the following:

“Commencing on July 1, 2015 Permittee shall pay to the City an Annual Fee of \$17,280 without demand from City, on or before the 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 payment become due. The Annual Fee shall be adjusted in accordance with Sections 4.c,d and e.

Checks shall be made payable to the City of Oceanside and delivered to the City Property Manager at 300 North Coast Highway, Oceanside, CA 92054. City may change the place and time of payment at any time upon 30-days notice to Permittee. Permittee agrees to pay City an additional Twenty-Five Dollars (\$25) for any returned check which is not honored by the financial institution from which the check is drawn, which amount shall be considered as additional Annual Fee payment.

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

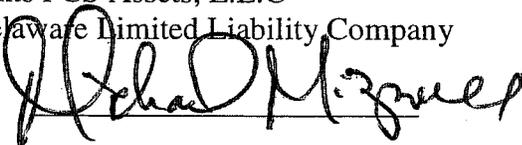
Approved as to form:

By: _____
City Manager

By: 
City Attorney

“Permittee”

Sprints PCS Assets, L.L.C
a Delaware Limited Liability Company

By: 

Name: MICHAEL MIZZEU

Title: MGR, Vendor, MGT

NOTARY ACKNOWLEDGEMENT OF PERMITTEE’S SIGNATURE MUST BE ATTACHED.

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

Acknowledgment by Corporation
Pursuant to Uniform Acknowledgment Act

The foregoing instrument was acknowledged before me this 8th day of
January, 2015, by Michael Mizzell on behalf of Sprint PCS
Assets, L.L.C., a Delaware limited liability company

In witness whereof I hereunto set my hand and official seal.

Notary Public
State of Kansas
Pamela D. Mahoney
My Commission Expires 6/3/2018

Pamela D. Mahoney