ITEM NO. 6

STAFF REPORT

CITY OF OCEANSIDE

DATE: March 4, 2015

TO: Honorable Mayor and City Councilmembers

FROM: Property Management

SUBJECT: **AMENDMENT 1 TO THE ENCROACHMENT PERMIT AGREEMENT WITH T-MOBILE USA, INC. FOR TELECOMMUNICATIONS FACILITIES**

SYNOPSIS

Staff recommends that the City Council approve Amendment 1 to the Encroachment Permit Agreement with T-Mobile USA, Inc. to encroach upon a portion of the rights-of-way located at 5003 ½ Douglas Drive for telecommunications facilities, extending the term of the agreement retroactively from April 1, 2014 to March 31, 2019, with minimum revenue to the City in the amount of $88,800 during the five-year term; and authorize the City Manager to execute the amendment.

BACKGROUND

Pacific Bell Wireless, LLC dba Cingular Wireless ("Cingular"), originally entered into an Encroachment Permit Agreement ("Agreement") with the City of Oceanside on March 17, 2004, to encroach upon a portion of the rights-of-way located at 5003 ½ Douglas Drive ("Premises") for telecommunications facilities. The original term of the Agreement expired March 31, 2014. T-Mobile USA, Inc. ("T-Mobile") purchased Cingular Assets in 2005 and T-Mobile is now the Permitee under the Agreement.

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 T-Mobile as telecommunication facilities. The continued use by T-Mobile 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 rights-of-way on a competitively neutral and nondiscriminatory basis.

FISCAL IMPACT

The Amendment requires annual payments of $17,760 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 March 31, 2019, assuming no CPI increases, would generate a minimum of $88,800. 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

T-Mobile 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 T-Mobile USA, Inc. to encroach upon a portion of the rights-of-way located at 5003 ½ Douglas Drive for telecommunications facilities, extending the term of the agreement retroactively from April 1, 2014 to March 31, 2019, with minimum revenue to the City in the amount of $88,800 during the five-year term; and authorize the City Manager to execute the amendment.

PREPARED BY:

Rosa A. Jones
Contract Coordinator

SUBMITTED BY:

Michelle Skaggs Lawrence
Interim City Manager

REVIEWED BY:

Douglas E. Eddow, Real Property Manager

Jane McPherson, Interim Financial Services Director

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FIRST AMENDMENT TO THE ENCROACHMENT PERMIT AGREEMENT
BETWEEN
THE CITY OF OCEANSIDE, CALIFORNIA
AND
T-MOBILE WEST, LLC

This First Amendment (Amendment") to Encroachment Permit Agreement ("Agreement") dated, for identification purposes, March 4, 2015, is made by and between the City of Oceanside, a municipal corporation ("City") and T-Mobile West LLC, a Delaware limited liability company formerly known as T-Mobile West Corporation, as successor-in-interest to TMO CA/LV LLC, formerly known as Pacific Bell Wireless LLC ("Permittee").

R E C I T A L S

WHEREAS, the City and Permittee are parties to that certain Encroachment Permit Agreement, dated March 17, 2004, ("Agreement"), to encroach upon a portion of the rights-of-way located at **5003 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 public record with the City Engineer of the City of Oceanside ("City Engineer"), **SD-682-01 DOUGLAS DRIVE at CORTE BOCINA** (the "Improvement Drawings");

WHEREAS, the original term of the Agreement expired March 31, 2014; and

WHEREAS, Permittee is now desirous of extending the term of the Agreement for an additional five (5) years to expire on March 31, 2019

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 April 1, 2014 and shall expire on March 31, 2019. 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 $17,760 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 payments become due. The Annual Fee shall be adjusted in accordance with Sections 4.c-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

By: _____
City Manager

Approved as to form:

By: _____ ASST.
City Attorney

"Permittee"

T-Mobile West, LLC
a Delaware limited liability company

By: _____

Name: Michael Fulton
General Manager
Title: T-Mobile San Diego

Approved as to form
Carolyn Luong
Sr. Corporate Counsel

NOTARY ACKNOWLEDGEMENT OF PERMITTEE'S SIGNATURE MUST BE ATTACHED.

[Permittee notary block for a Corporation, Partnership, or Limited Liability Company]

STATE OF CALIFORNIA)
) ss.
COUNTY OF San Diego)

On February 13, 2015 before me, Rachelle Lam, notary Public personally appeared Michael Fulton 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 signatures(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.

Notary Public
Print Name Rachelle Lam
My commission expires July 30, 2017

RACHELLE J. LAM
COMM. #2035274
Notary Public - California
Orange County
My Comm. Expires July 30, 2017

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(Use this space for notary stamp/seal)