



AGENDA REPORT
SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: December 4, 2012

Agenda Item 66
Approvals:
City Manager [Signature]
Dept. Head [Signature]
Attorney AT
Finance _____

Department: Finance & Administrative Services
Prepared By: Thomas Rendina, Business Services Officer

Subject: *FIRST AMENDMENT TO THE COMMUNICATION SITE LEASE AGREEMENT.*

Summary: Los Angeles SMSA Limited Partnership, dba Verizon Wireless, operates a cellular communications site at 2916 Via San Gorgonio. In November 2011 City Council approved a one-year fee waiver program for installation of back-up generators at cellular sites to encourage site operators to install generators to prevent loss of communications during emergencies.

Verizon Wireless approached the City in February 2012 and applied for the necessary permits to install back-up generators at two existing sites; the San Gorgonio site, which is leased from the City, and a site on private property at the ShoreCliffs Mobile Home Park. Verizon Wireless also plans to install a back-up generator at a newly proposed site at the Vista Hermosa Sports Park, under review by the Planning Commission at this time.

Since the generator will be added to an existing equipment enclosure, Planning has made a "stealth determination". As such, no Conditional Use Permit (CUP) is required nor will additional permit fees be charged to upgrade the existing communication site at 2916 Via San Gorgonio.

Recommended

Action: STAFF RECOMMENDS THAT the City Council authorize the Mayor to execute the First Amendment to the Communications Site Lease Agreement, by and between the City of San Clemente and Los Angeles SMSA Limited Partnership, dba Verizon Wireless.

Fiscal Impact: General Fund revenues will increase \$2,600 per year.

Attachments: First Amendment to Communications Site Lease Agreement
Exhibit "B-1" attachments "A-1", "A-2", "A-3", "A-4", and "E-1" are on file with the City Clerks Office.

Notification:



FIRST AMENDMENT TO COMMUNICATIONS SITE FACILITY LEASE

This First Amendment to the Communications Site Lease (the "First Amendment") is made and entered into on this ___ day of _____, 2012 by and between the CITY OF SAN CLEMENTE, a California municipal corporation ("Lessor"), and LOS ANGELES SMSA LIMITED PARTNERSHIP D/B/A VERIZON WIRELESS, (herein "Lessee"), (hereinafter collectively referred to as the "Parties").

RECITALS

WHEREAS, the Property is owned by the LESSOR (the "Property") located at 2916 ½ Via San Gorgonio, (San Gorgonio Park) in San Clemente, California; and

WHEREAS, on June 21, 2011, LESSEE entered into the Communications Site Facility Lease (the "Lease"), the initial term of which is scheduled to expire on May 31, 2016; and

WHEREAS, in February, 2012, LESSEE notified LESSOR of its desire to add a backup generator and additional support equipment to the existing Lease location (the "Premises"); and

WHEREAS, LESSOR agrees to allow the increase of the size of the Premises to accommodate the addition of the backup generator and additional support equipment subject to adjusting the rental payment; and

WHEREAS, the Parties hereto desire to enter into this First Amendment to amend the Lease;

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby confirmed, the Parties hereto agree as follows:

COVENANTS

SECTION 1: Section 1.1 of the Lease is hereby amended to read as follows:

"1.1 **DEMISE:** LESSOR agrees to lease to LESSEE a portion of LESSOR's Property described as a twenty-nine-foot (29') by thirty-four-foot (34')

parcel of ground space containing approximately nine hundred eighty-six (986) square feet for LESSEE's generator, equipment and related appurtenances (the "Ground Space"), space below the Ground Space for LESSEE's equipment vault (the "Underground Equipment Area"), and a six-foot (6') by six-foot (6') parcel of ground space containing approximately thirty-six (36) square feet for LESSEE's antenna structure and equipment appurtenant thereto (the "Antenna Space"), together with a non-exclusive easement (the "Utilities Easement") for the installation and maintenance of utility wires, poles, cables, conduits, and pipes on the Property extending between, to and from the Ground Space, Underground Equipment Area, Antenna Space and all appropriate utility sources. The Ground Space, Underground Equipment Area, Antenna Space and Utilities Easement shall hereinafter collectively be referred to as the "Premises" for all purposes under the Lease and are substantially described and depicted in Exhibit "B-1" attached hereto and made a part hereof. Access to the Premises from a public right-of-way shall be provided by LESSOR. LESSOR shall provide LESSEE, LESSEE's employees, agents, and subcontractors access over the Property to the Premises twenty-four (24) hours a day, seven (7) days a week without notice to LESSOR, at no charge to LESSEE."

Upon full execution of this Amendment and installation of the improvements described herein, Exhibit "B-1" shall replace Exhibit "B" attached to the Lease in its entirety.

SECTION 2: Lessor acknowledges and agrees that Lessee intends to construct and install certain improvements on the Premises, which shall include, but are not limited to, a generator pad, generator, all generator connections and a new curb surrounding the Ground Space, all as more particularly described and depicted in Exhibit "B-1" attached hereto (collectively, the "Generator Improvements"). Lessor hereby consents to the construction, installation, operation and maintenance of the Generator Improvements as the same may be modified, added to and/or substituted from time to time during the term of the Lease, as the same may be extended. Lessee shall be solely responsible for the care, repair and maintenance of the Generator Improvements.

SECTION 3: Any required permits for the Generator Improvements shall be obtained by Lessee at Lessee's sole expense. Furthermore, it is understood and agreed that Lessee's ability to install the Generator Improvements is contingent upon its obtaining after the execution date of this First Amendment all of the certificates, permits and other approvals (collectively, "Governmental Approvals") that may be required by any Federal, State or Local authorities as well as satisfactory structural analysis and soil boring tests which will permit Lessee to install and

operate the Generator Improvements as set forth in this First Amendment. Lessor shall cooperate with Lessee in its efforts to obtain such approvals. In the event that any of such applications for such Governmental Approvals should be finally rejected or any Governmental Approval issued to Lessee is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority or structural analysis or soil boring tests are found to be unsatisfactory so that Lessee in its sole discretion will be unable to install, operate, or maintain the Generator Improvements or Lessee determines that the Generator Improvements are no longer compatible for its intended use, Lessee shall have the right to terminate this First Amendment; however, the Lease shall remain in full force and effect. Notice of Lessee's exercise of its right to terminate shall be given to Lessor in writing by certified mail, return receipt requested, and shall be effective upon the mailing of such notice by Lessee. All rent in connection with this First Amendment paid to said termination date shall be retained by Lessor. Upon such termination, this First Amendment shall be of no further force or effect, and the parties shall have no further obligations under this First Amendment.

SECTION 4: Commencing on the first (1st) day of the month following installation of the Generator Improvements, the monthly rental payment due by Lessee defined in Section 3 of the Lease shall increase to One Thousand Five Hundred Fifty-Three Dollars and Seventy-Six Cents (\$1,553.76) per month and will be adjusted annually as set forth in section 3.2 of the Lease.

SECTION 5: Except as expressly amended by this First Amendment, the Lease and all its provisions shall remain in full force and effect. In the event of a conflict between any term or provision of the Lease and this First Amendment, the terms and provisions of this First Amendment shall control. In addition, except as otherwise stated in this First Amendment, all initially capitalized terms will have the same respective defined meaning stated in the Lease.

[Signatures appear on the following page.]

Dated: _____

LESSOR

CITY OF SAN CLEMENTE,
a California municipal corporation

By: _____

Title: _____

LESSEE

Los Angeles SMSA Limited Partnership,
dba Verizon Wireless

By: _____

Name: Walter L. Jones, Jr.

Its: Area Vice President Network

Lease Administration Contact:

Los Angeles SMSA Limited Partnership
d/b/a Verizon Wireless
180 Washington Valley Road
Bedminster, New Jersey 07921
Attn: Network Real Estate

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

Dated: _____

Exhibit B-1

**Please see attached pages "A-1", "A-2", "A-3"
"A-4", and "E-1".**