

RESOLUTION NO. 2310

A RESOLUTION APPROVING THE SECOND AMENDMENT TO THE LEASE AGREEMENT WITH SPRINT SPECTRUM REALTY COMPANY, L.P. FOR THE USE OF RESERVOIR #2 AS A PCS SITE.

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. The City has an established lease agreement with Sprint Spectrum Realty Company LP (Sprint) for a personal communications service (PCS) site located on Water Reservoir #2 which provides cellular phone services in the surrounding area.
2. The lease agreement was originally approved by Resolution No. 1232 in 1996, and provided for an initial term of five (5) years and three (3) automatic renewal terms of five (5) years.
3. Sprint has requested an amendment renewing the lease for an additional three (3) automatic renewal terms of five (5) years, with an increase in rent of 20% at the beginning of each renewal term.
4. A renewal of the lease is in the best interest of the City, providing lease revenue and avoiding the adverse visual impact on the neighborhood of the construction of a replacement cell tower.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE:

Section 1. Approves the Second Amendment to the PCS Site Lease Agreement with Sprint Spectrum Realty Company LP for the continued use of Reservoir #2 as a PCS site, in substantial conformity with Exhibit A of the Staff Report.

Section 2. Designates the City Manager or Finance Director (each a "City Official") or a designee of the City Official, to act on behalf of the City, and without further action by the City Council the City Official is hereby authorized, empowered and directed to sign the lease amendment on behalf of the City, and any and all other required and necessary documents to implement the intent of the agreement.

Section 3. The City Official is hereby authorized to execute, acknowledge and deliver the lease amendment in substantial conformity with Exhibit A of the Staff Report, including any other supporting and implementing documents, and to take any other action as may

be advisable, convenient, necessary, or appropriate to give full force and effect to the terms and intent of the lease amendment, and the execution thereof by any such City Official shall be conclusive as to such determination.

Section 4. Further, consistent with intent of the lease amendment, and in the best interest of the City, the City Official is authorized to determine, execute, acknowledge and deliver any subsequent addendums, extension, revisions, modification, or successor documents of the lease amendment, and the execution thereof by any such City Official shall be conclusive as to such determination.

Section 5. The Finance Director is authorized, as necessary to fulfill the lease amendment obligations, and is further directed to implement all such actions necessary to ensure budgetary compliance.

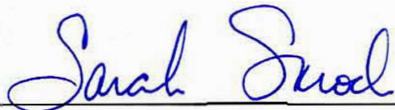
Section 6. This Resolution shall be effective upon adoption.

YEAS: 7
NAYS: 0
ABSTAINED: 0



Doug Daoust, Mayor

Date 9/23/15



Sarah Skroch, Deputy City Recorder
Adopted: September 22, 2015

Site Name: South Troutdale

Site ID #: PO03XC035

AMENDMENT NO. 2 TO PCS SITE AGREEMENT

This Amendment No. 2 (“Amendment”), effective as of the date last signed below (“Effective Date”), amends a certain PCS Site Agreement between Sprint Spectrum Realty Company, L.P., a Delaware limited partnership, (“**Lessee**”) successor-in-interest to Sprint Spectrum L.P., a Delaware limited partnership, and The City of Troutdale (“**Lessor**”), dated April 26, 1996, (“**Lease**”) as amended by Amendment No.1 to a certain PCS Site Agreement dated January 11, 2006 (“**First Amendment**”) (The Lease and First Amendment are collectively, the “**Agreement**”).

BACKGROUND

The Agreement will expire on April 24, 2016. Lessee and Lessor desire to extend the term of the Agreement, as set forth herein.

AGREEMENT

In consideration of the mutual promises between the parties and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Lessor and Lessee agrees as follows:

- 1. Term Extension.** Notwithstanding the provisions of Section 2 of the Lease and Section 1 and Section 2 of the First Amendment, the term of the Agreement will be extended for (3) three additional renewal terms of (5) five years each (each an “**Additional Renewal Terms**”), commencing upon expiration of the last remaining Renewal Term of the Agreement, under the same terms and conditions as are set forth therein, and as otherwise amended. The Agreement will automatically be extended for each Additional Renewal Term unless Lessee notifies Lessor of its intention not to renew prior to expiration of the then current Renewal Term or Additional Renewal Term.
- 2. Rent.** Notwithstanding anything contained in the Agreement to the contrary, effective April 25, 2016, the annual rent amount will be increased to Eighteen Thousand Six Hundred Sixty Two Dollars (\$18,662.00), payable in advance in annual installments, partial years to be pro-rated. Rent for each successive Additional Renewal Term thereafter will increase by 20% over the rent in effect for the prior 5-year term.
- 3. Assignment/Subletting:** Section 5 of the Agreement is deleted in its entirety and replaced with the following:

“Lessee will not assign or transfer this Agreement or sublet all or any portion of the Site without the prior written consent of Lessor, which consent will not be unreasonably withheld, conditioned or delayed; provided, however, that Lessee will have the right, without notice to or consent of Lessor, to sublease (or otherwise transfer or allow the use

of) all or any portion of the Site or assign its rights under this Agreement in whole or in part to: (a) any entity controlling, controlled by or under common control with Lessee; (b) any entity acquiring substantially all of the assets of Lessee; (c) any entity that is authorized to sell telecommunications products or services under the "Sprint" or "Sprint PCS" or other brand name(s) used or licensed by Lessee's parent corporation ("Contract Affiliate"); or (d) any successor entity in a merger or consolidation involving Lessee. Lessor will not be entitled to any additional rent or other fees for its review or approval."

4. Notices. Section 4 of the First Amendment is amended by deleting the entire provision and substituting the following in its place:

"All notices must be in writing and are effective only when deposited in the U.S. mail, return receipt requested and postage prepaid, or when sent via overnight delivery service.

Notices to Lessee are to be sent to:
Sprint Spectrum Realty Company, L.P.
Attn: Sprint Property Services
Sprint Site ID: PO03XC035
Mailstop KSOPHT0101-Z2650
6391 Sprint Parkway
Overland Park, Kansas 66251-2650

with a mandatory copy to:
Sprint Law Department
Attn.: Real Estate Attorney
Sprint Site ID: PO03XC035
Mailstop KSOPHT0101-Z2020
6391 Sprint Parkway
Overland Park, Kansas 66251-2020

Notices to Lessor are to be sent to:
City of Troutdale
Attn: City Manager
219 E. Historic Columbia River Hwy
Troutdale, OR 97060-2078.

with a mandatory copy to:
City of Troutdale
Attn: City Attorney
219 E. Historic Columbia River Hwy
Troutdale, OR 97060-2078."

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Troutdale, OR 97060-2078.”

6. General Terms and Conditions.

(a) All capitalized terms used in this Amendment, unless otherwise defined herein, will have the same meaning as the terms contained in the Agreement.

(b) In case of any inconsistencies between the terms and conditions contained in the Agreement and the terms and conditions contained in this Amendment, the terms and conditions herein will control. Except as set forth herein, all provisions of the Agreement are ratified and remain unchanged and in full force and effect.

(c) This Amendment may be executed in duplicate counterparts, each of which will be deemed an original.

(d) Each of the parties represent and warrant that they have the right, power, legal capacity and authority to enter into and perform their respective obligations under this Amendment.

(e) Lessor agrees to execute and deliver to Lessee a Memorandum of Agreement in the form annexed to the Agreement as Exhibit C, as modified to show the Additional Renewal Terms and acknowledges that Lessee may record the Memorandum of Agreement in the official records of the County where the Site is located.

The parties have executed this Amendment as of the Effective Date.

Lessor:

City of Troutdale

By: 

Name: Craig Ward

Title: City Manager

Date: 1/27/16

Lessee:

Sprint Spectrum Realty Company, L.P.,
a Delaware limited partnership

By: 

Name: Michael Mizzell

Title: Manager – Vendor Management

Date: 1/5/2016