

RESOLUTION NO. 2357

A RESOLUTION APPROVING THE FIRST AMENDMENT TO THE LEASE AGREEMENT WITH T-MOBILE WEST LLC 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 T-Mobile West LLC (T-Mobile) 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. 1276 in 1996, and provided for an initial term of five (5) years and three (3) renewal terms of five (5) years.
3. T-Mobile has requested an amendment renewing the lease for an additional four (4) 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 First Amendment to the Water Tank Lease Agreement with T-Mobile West LLC for the continued use of Reservoir #2 as a PCS site, in substantial conformity with Exhibit A of the Staff Report.

Section 2. Designates that Craig Ward, City Manager or Erich Mueller, 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.

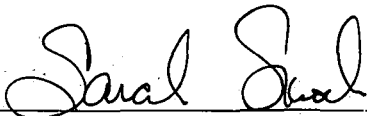
YEAS: 6
NAYS: 0
ABSTAINED: 0



Doug Daoust, Mayor

Date

10/28/16



Sarah Skroch, City Recorder

Adopted: October 25, 2016

FIRST AMENDMENT TO WATER TANK LEASE

THIS FIRST AMENDMENT TO WATER TANK LEASE ("First Amendment") is made and entered into on October 28, 2016 ("Effective Date"), by and between the City of Troutdale ("Landlord"), and T-Mobile West LLC, a Delaware limited liability company, formerly known as T-Mobile West Corporation, a Delaware corporation, as successor in interest to Western PCS I Corporation, a Delaware corporation ("Tenant") (collectively the "Parties").

Recitals

The Parties hereto recite, declare and agree as follows:

A. Landlord and Tenant, entered into that certain Water Tank Lease dated August 28, 1996, which commenced on November 1, 1996 (the "Lease"), for approximately 400 square feet of land, tower antenna space on a water tank and space for cable runs to connect the PCS equipment and antennas, located at 24451 Stark Street, Troutdale, OR 97060 (the "Site").

B. Landlord and Tenant desire to enter into this First Amendment in order to modify and amend certain provisions of the Lease.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant covenant and agree as follows:

1. Addition of Renewal Terms. Section 2 of the Lease is hereby amended to add four (4) additional and successive five (5) year renewal terms (collectively, the "Additional Renewal Terms" and individually each an "Additional Renewal Term"). Upon the expiration of the third Renewal Term (which the Parties acknowledge expires on October 31, 2016), the first Additional Renewal Term shall automatically commence, on the same terms and conditions of the Lease (except as modified herein), unless (i) the Lease is sooner terminated in accordance with its terms, or (ii) Tenant provides Landlord with written notice of its intention not to renew at least twelve (12) months prior to the expiration of the third Renewal Term or the then current Additional Renewal Term, as the case may be, or (iii) Landlord provides Tenant with written notice of its intention not to renew at least twelve (12) months prior to the expiration of the then current Additional Renewal Term.

2. Rent and Costs. Notwithstanding anything contained in the Lease to the contrary, effective November 1, 2016, the annual rent amount will be increased to Eighteen Thousand Six Hundred Sixty-Two Dollars and Forty Cents (\$18,662.40), payable in advance in annual installments, partial years to be pro-rated. Rent for each successive Additional Renewal Term thereafter will increase by twenty percent (20%) over the rent in effect for the preceding Renewal Term or Additional Renewal Term, as the case may be. Rent shall be payable in accordance with the terms of the Lease.

3. Notice Addresses. Notice addresses in Section 10 of the Lease are hereby deleted in their entirety and replaced with the following:

If to Tenant, to: T-Mobile USA, Inc.
12920 S.E. 38th Street
Bellevue, WA 98006
Attn.: Lease Compliance
Site No. PO01461A Stark & 242nd

If to Landlord, to: Public Works Director
City of Troutdale
342 SW 4th Street
Troutdale, OR 97060

4. Landlord Obligations. Notwithstanding anything to the contrary contained in the Lease, Landlord shall be responsible, at its sole cost and expense, for its customary routine maintenance of the Site.

5. Tenant Obligations. Notwithstanding anything to the contrary contained in the Lease, Tenant shall observe and adhere to the following requirements when conducting any work, installation, or maintenance at the Site or upgrading equipment on the Site:

- a. Provide 48-hour notice to the City of Troutdale Water Division (ph: (503) 674-3300) prior to commencing work.
- b. Access to the Site security gate and the water tank ladder shall be by request only and Tenant must make arrangements with Landlord to unlock and relock the gate each day.
- c. Tenant shall ensure that all gates, hatches, and locks are secured at the conclusion of each work day.
- d. All new and existing Tenant equipment placed on the water tank must be neatly aligned, organized, undamaged, painted to match the tank, clearly labeled with Tenant's name or logo, and equipped with bird-wire (if susceptible to perching).
- e. All trash, construction debris and waste, nuts, screws, washers, etc. must be cleaned up and removed from the tank and the Site at the completion of work.
- f. Tenant shall protect Landlord's facilities, and the facilities of other tenants, throughout the work. Any and all damage or disturbance to Landlord's facilities, or the facilities of other tenants, including, but not limited to, the tank, buildings, equipment, fencing, pavement, turf, and landscaping shall be restored promptly at Tenant's expense, to the reasonable satisfaction of the Landlord.
- g. Tenant shall contact the Troutdale Water Division (ph: (503) 674-3300) to arrange a final inspection with Landlord at the completion of work, prior to demobilizing from the Site.
- h. Notwithstanding anything to the contrary herein, in the event of an emergency, Tenant shall be permitted to access the Site after calling Landlord's 24-hour emergency number and arranging such access with the person on-call. Landlord's emergency contact phone number is 503-251-4163.

6. No Interference. Section 4 of the Lease is hereby amended to include the following at the end of the paragraph: "Tenant shall ensure that Tenant's equipment does not cause signal interference with Landlord's radio equipment located on the water tank and operated in compliance with all applicable laws and licenses. Upon request of the Landlord, Tenant shall, within twenty-four (24) hours after Landlord notifies Tenant's Emergency Contact of the suspected interference issue, commence its investigation of the reported signal interference and cure any signal interference caused by Tenant's equipment."

7. Tenant Emergency Contact. Tenant's emergency contact phone number is 1-888-662-4662. Tenant shall inform the Landlord promptly of any changes or reassignment of this emergency contact phone number.

8. Insurance. Section 8 of the Lease is hereby deleted in its entirety and is replaced in full with the following: "Tenant will procure and maintain a commercial general liability policy, with coverage limits of at least One Million and 00/ 100 Dollars (\$1,000,000.00) for each occurrence, One Million and 00/100 Dollars (\$1,000,000.00) for property damage, Three Million and 00/100 Dollars (\$3,000,000.00) general aggregate, with a certificate of insurance to be furnished to Landlord annually at least thirty (30) days prior to expiration. Such policy will provide that cancellation will not occur without at least thirty (30) days prior written notice to Landlord. Landlord shall be listed as an additional insured party on Tenant's commercial general liability policy. The limits required above may be satisfied with the combination of primary and excess liability insurance policies."

9. Assignment and Subleasing. Section 13 of the Lease is hereby modified to include the following provisions:

Landlord shall have the right to assign and transfer this Lease only to a successor owner of the Property. Only upon Tenant's receipt of written verification of a sale, or transfer of the Site shall Landlord be relieved of all liabilities and obligations and Tenant shall look solely to the new Landlord for performance under this Lease. Notwithstanding anything to the contrary herein, Tenant may, without Landlord's consent, assign this Lease to any corporation, partnership or other entity which (i) is controlled by, controlling or under common control with Tenant, (ii) shall merge or consolidate with or into Tenant, (iii) shall succeed to all or substantially all the assets, property and business of Tenant, or (iv) is an affiliate or subsidiary or other party as may be required in

connection with any offering, merger, acquisition, recognized security exchange or financing. Tenant shall notify Landlord in writing within ninety (90) days of Tenant's assignment of this Lease and include contact information (telephone, post-mail address and email address) of the assignee.

10. Terms: Conflicts. The terms and conditions of the Lease are incorporated herein by this reference, and capitalized terms used in this First Amendment shall have the same meanings such terms are given in the Lease. Except as specifically set forth herein, this First Amendment shall in no way modify, alter or amend the remaining terms of the Lease, all of which are ratified by the Parties and shall remain in full force and effect. To the extent there is any conflict between the terms and conditions of the Lease and this First Amendment, the terms and conditions of this First Amendment will govern and control.

11. Approvals. Landlord represents and warrants to Tenant, that the consent or approval of no third party, including, without limitation, a lender, is required with respect to the execution of this First Amendment, or if any such third party consent or approval is required, Landlord has obtained any and all such consents or approvals.

12. Amended Memorandum. Landlord agrees to execute and deliver to Tenant a recordable amended Memorandum of this First Amendment to the Lease ("Amended Memorandum") in the form attached hereto as Exhibit D-1, evidencing the Additional Renewal Terms. Tenant may record the Amended Memorandum at its sole cost and expense.

THE REMAINDER OF THIS PAGE SHALL REMAIN BLANK

13. Authorization. The persons who have executed this First Amendment represent and warrant that they are duly authorized to execute this First Amendment in their individual or representative capacity as indicated.

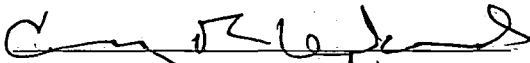
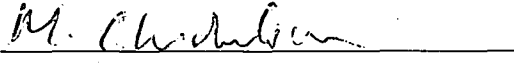
IN WITNESS WHEREOF, the Parties have executed First Amendment on the day and year first written above.

Landlord:

Tenant:

City of Troutdale

**T-Mobile West LLC,
a Delaware limited liability company**

By: <u></u>	By: <u></u>
Name: <u>Craig R. Ward</u>	Name: <u>M. CHIDAMBARAM</u>
Title: <u>City Manager</u>	Title: <u>Market Manager</u>
Date: <u>10/28/16</u>	Date: <u>10/19/16</u>

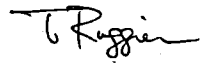


EXHIBIT D-1

FORM OF MEMORANDUM OF FIRST AMENDMENT TO WATER TANK LEASE

After Recording, Mail To:
T-Mobile USA, Inc.
12920 SE 38th Street
Bellevue, WA 98006
Attn: Lease Compliance
Site No: PO01461A
APN: R322103 (1N3E35CC 05300)
Recorded Document(s):

MEMORANDUM OF FIRST AMENDMENT TO WATER TANK LEASE

This memorandum evidences that a first amendment to that certain Water Tank Lease dated August 8, 1996 (the "Lease") was entered into by and between the City of Troutdale ("Landlord"), and T-Mobile West LLC, a Delaware limited liability company, formerly known as T-Mobile West Corporation, a Delaware corporation, as successor in interest to Western PCS I Corporation, a Delaware corporation ("Tenant"), for a portion of the real property ("Property") as legally described on Exhibit A, attached hereto and incorporated herein for all purposes.

The Parties entered into that certain first amendment to the Lease to among other terms, extend the term of the Lease with four (4) additional and successive five (5) year renewal terms (collectively, the "Additional Renewal Terms" and individually each an "Additional Renewal Term"). Upon the expiration of the third Renewal Term on October 31, 2016, the first Additional Renewal Term shall automatically commence, on the same terms and conditions of the Lease, unless sooner terminated in accordance with its terms.

This memorandum is not a complete summary of the Lease. It is being executed and recorded solely to give public record notice of the existence of the Lease with respect to the Property. Provisions in this memorandum shall not be used in interpreting the Lease provisions and in the event of conflict between this memorandum and the said unrecorded Lease, the unrecorded Lease shall control.

This memorandum may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto were upon the same instrument.

IN WITNESS WHEREOF, the Parties have executed this memorandum on the day and year last signed below.

LANDLORD:

TENANT:

City of Troutdale

**T-Mobile West LLC,
a Delaware limited liability company**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A
TO
MEMORANDUM OF FIRST AMENDMENT TO WATER TANK LEASE

The Property is legally described as follows:

PARCEL I:

A tract of land situated in the southwest one-quarter of Section 35, Township 1 North, Range 3 East of the Willamette Meridian, more particularly described as follows:

COMMENCING at a point on the Base Line 1022.30 feet East of the Southwest corner of said Section 35; thence North $1^{\circ}19'40''$ East parallel with the West line of a 12 acre tract heretofore conveyed to Ivan J. Korsund and Hazel Korsund, husband and wife and Lloyd Bjur and Idamae Bjur, husband and wife on May 6, 1947 and recorded in Book 1169, Page 281, Deed Records of Multnomah County, a distance of 357.38 feet to the point of beginning of the tract herein to be described; thence North $88^{\circ}35'50''$ West parallel with the South line of said Section 35, a distance of 159.00 feet to a point in the West line of the above mentioned 12 acre tract; thence North $1^{\circ}19'40''$ East along said West line, a distance of 79.62 feet; thence South $88^{\circ}35'50''$ East parallel with the south line of said Section 35, a distance of 159.00 feet; thence South $1^{\circ}19'40''$ West 79.62 feet to the point of beginning.

PARCEL II:

A tract of land, situated in the Southwest one-quarter of Section 35, Township 1 North, Range 3 East of the Willamette Meridian in the County of Multnomah and State of Oregon, more particularly described as follows:

COMMENCING at a point on the Baseline, 1022.30 feet East of the southwest corner of said Section 35; thence North $1^{\circ}19'40''$ East parallel with the west line of a 12 acre tract heretofore conveyed to Ivan J. Korsund and Hazel Korsund, husband and wife and Lloyd Bjur and Idamae Bjur, husband and wife on May 6, 1947 and recorded in Book 1169, Page 281, Deed Records of Multnomah County, a distance of 357.38 feet to the point of beginning of tract herein to be described; thence North $88^{\circ}35'50''$ West parallel with the south line of said Section 35, a distance of 159.00 feet to a point in the west line of the above mentioned 12 acre tract; thence South $1^{\circ}19'40''$ West 16.38 feet; thence South $88^{\circ}35'50''$ East 159.00 feet; thence North $1^{\circ}19'40''$ East 16.38 feet to the point of beginning.

After Recording, Mail To:

T-Mobile USA, Inc.

12920 SE 38th Street

Bellevue, WA 98006

Attn: Lease Compliance

Site No: PO01461A

APN: R322103 (1N3E35CC 05300)

MEMORANDUM OF FIRST AMENDMENT TO WATER TANK LEASE

This memorandum evidences that a first amendment to that certain Water Tank Lease dated August 8, 1996 (the "Lease") was entered into by and between the **City of Troutdale** ("Landlord"), and **T-Mobile West LLC, a Delaware limited liability company**, formerly known as T-Mobile West Corporation, a Delaware corporation, as successor in interest to Western PCS I Corporation, a Delaware corporation ("Tenant"), for ground space for communications equipment, antenna space on a water tank and space for cable runs (collectively, the "Site") on a portion of the real property located at 24451 Stark Street, Troutdale, OR 97060, as legally described on Exhibit A (the "Property"), attached hereto and incorporated herein for all purposes.

The parties entered into that certain first amendment to the Lease to among other terms, extend the term of the Lease with four (4) additional and successive five (5) year renewal terms (collectively, the "Additional Renewal Terms" and individually each an "Additional Renewal Term"). Upon the expiration of the third Renewal Term on October 31, 2016, the first Additional Renewal Term shall automatically commence, on the same terms and conditions of the Lease, unless sooner terminated in accordance with its terms.

This memorandum is not a complete summary of the Lease. It is being executed and recorded solely to give public record notice of the existence of the Lease with respect to the Property. Provisions in this memorandum shall not be used in interpreting the Lease provisions and in the event of conflict between this memorandum and the said unrecorded Lease, the unrecorded Lease shall control.

This memorandum may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto were upon the same instrument.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties have executed this memorandum on the day and year last signed below.

LANDLORD:

TENANT:

City of Troutdale

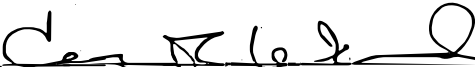
T-Mobile West LLC,
a Delaware limited liability company

By:

Name:

Title:

Date:



Craig R. Ward
City Manager
10/28/16

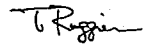
By:

Name:

Title:

Date:


M. CHIDAMBARAM
Market Manager
10/19/16



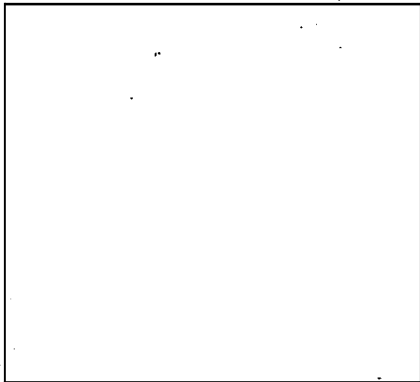
[Notary block for Landlord]

[Landlord Notary block for a Corporation, Partnership, or Limited Liability Company]

STATE OF OREGON)
) ss.
COUNTY OF Multnomah)

This instrument was acknowledged before me on October 28, 2014 by Craig Ward, [title] City Manager of the City of Troutdale, a city on behalf of said municipality.

Dated: October 28, 2014



(Use this space for notary stamp/seal)

Sarah Lynn Skroch
Notary Public
Print Name: Sarah Lynn Skroch
My commission expires 7/26/19



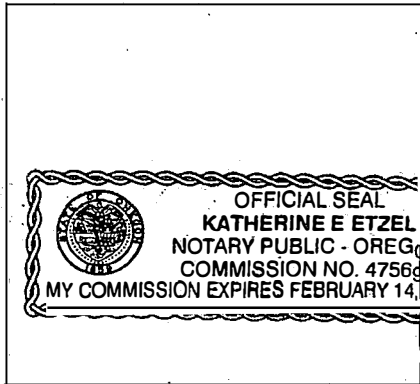
Keep
1" Margin

[Notary block for Tenant]

STATE OF OREGON)
) ss.
COUNTY OF Multnomah)

I certify that I know or have satisfactory evidence that Mohan Chidambaram is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Market manager of T-Mobile West LLC, a Delaware limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 10-19-16



(Use this space for notary stamp/seal)

Katherine E Etzel
Notary Public
Print Name Katherine E. Etzel
My commission expires 2-14-17

EXHIBIT A

TO

MEMORANDUM OF FIRST AMENDMENT TO WATER TANK LEASE

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