



Resolution 2005-060

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE AGREEMENT WITH SPRINT PCS FOR A CELL TOWER LEASE

WHEREAS, the City Manager was authorized by the Council to negotiate a cell tower lease agreement with Sprint PCS; and

WHEREAS, the terms of the agreement are completed and in accordance with the expressed wishes of the Council, specifically as to location and aesthetics;

NOW, THEREFORE, THE CITY RESOLVES AS FOLLOWS:

Section 1. The City Council authorizes the City Manager to approve the agreement shown hereon as Exhibit A.

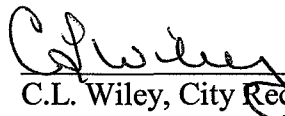
Section 2: This Resolution shall be effective upon its approval and adoption.

Duly passed by the City Council this 4th day of October 2005.



Keith S. Mays, Mayor

ATTEST:



C.L. Wiley, City Recorder

LEASE OF SITE FOR COMMUNICATIONS FACILITIES
BETWEEN THE CITY OF SHERWOOD, OREGON AND
SPRINT PCS, INC.

THIS LEASE entered into as of this ____ day of _____, 2005, by and between the CITY OF SHERWOOD, an Oregon municipal corporation (hereinafter referred to as "Landlord") and SPRINT PCS, INC., a Delaware corporation (hereinafter referred to as "Tenant").

BACKGROUND

Landlord is the owner in fee simple of a parcel of land located in the City of Sherwood, Washington County, State of Oregon, legally described on the attached Exhibit A (the "Owned Premises"). The street address is ____ NW Washington Street, Tax Map _____, Tax Lot _____.

Tenant desires to lease space for the installation of telecommunication facilities including a tower and related facilities as approved by the City, permit No. _____, for use in connection with its communications business.

Accordingly, the City of Sherwood and Sprint PCS, Inc. are entering into this Lease on the terms and conditions set forth below.

AGREEMENT

In consideration of their mutual covenants, the parties agree as follows:

1. LEASED PREMISES.

- a. Landlord leases to Tenant and Tenant leases from Landlord only the portion of space on the Owned Premises, the 20' x 20' fenced area, as shown on the Site Plan attached as Exhibit B ("Lease Site"). Tenant intends to locate its tower and related facilities as described on the attached Exhibit C consistent with Site Plan Permit No. _____. Tenant may not add additional towers, antenna or other equipment other than that shown on Exhibit C without the prior written approval of the Landlord which approval shall not be unreasonably withheld, delayed or conditioned.
- b. This Lease is not a franchise. Any such franchise permit must be obtained separately from Landlord.

2. TERM AND RENEWALS.

- a. The term of this Lease shall be five (5) years, commencing on _____, 2005 (the "Commencement Date") and ending _____, 2010. Provided that the Tenant is not in default under the Lease, the Tenant may renew the term of this Lease for four (4) additional five (5) year terms by providing Landlord notice of Tenant's intention to renew at least six (6) months prior to the end of the then-current term. Any renewal shall be on the same terms and conditions as are set forth in this Lease, unless otherwise agreed by both parties in writing. Landlord

may deny renewal of this Lease by written notification of its intention not to renew the Lease within thirty (30) days after receipt of Tenant's renewal notification or at any time at least six (6) months prior to the expiration of the initial term or any renewal term.

- b. At the end of the last renewal term, the Lease shall continue from month to month under the same terms and conditions set forth in the Lease. Either the Landlord or the Tenant may terminate the month-to-month lease by providing thirty (30) days prior written notice to the other. If Tenant remains in possession of the Lease Site at the expiration of this Lease or any Renewal Term without a written agreement, such tenancy shall be deemed a month-to-month tenancy under the same terms and conditions of this Lease.

3. RENT AND OTHER COMPENSATION.

- a. Tenant shall pay Landlord as rent for the space on the Lease Site the sum of EIGHT HUNDRED DOLLARS (\$800.00) per month ("Base Rent"). Tenant shall pay Landlord Base Rent at the first day of each month. Base Rent shall be increased annually as described below.
- b. Tenant shall pay Landlord a late payment charge equal to five percent (5%) of the late payment for any payment not paid when due.
- c. The Base Rent shall be increased annually effective as of each anniversary of the Commencement Date by an amount equal to four percent (4%).
- d. If this Lease is terminated at a time other than on the last day of the month, Rent shall be prorated as of the date of termination and, in the event of termination for any reason other than nonpayment of Rent, all prepaid Rents shall be refunded to the Tenant.
- e. Base Rent and any annual increases shall be paid by Tenant to Landlord without offset.
- f. In the event of collocation of additional facilities on Tenant's facilities, additional compensation will be due to Landlord as provided in Section 17(f) herein.
- g. In the event Landlord locates its facilities on the Leased Premises, it shall be allowed to do so without any compensation paid to Tenant.
- h. As additional compensation for the use of the Leased Premises, Tenant agrees to construct approximately 15 feet of pedestrian pathway as specified by Landlord, known as part of the Cedar Creek Trail.

4. SECURITY DEPOSIT. In addition to payments of the Base Rent, Tenant shall deposit with the Landlord, upon execution of this Lease, the sum of \$1,600.00 as security for Tenant's full and faithful performance and observance of its obligations under this Lease. Such security deposit shall not earn interest on account of Tenant, shall not be considered to be held in trust for Tenant; and shall not be considered an advance payment of rent or a measure of the Landlord's damages in the event of a default by Tenant. If Tenant fails to pay or perform any of its obligations under this Lease

as and when due, including without limitation the payment of the Base Rent, the Landlord may, but shall not be obligated to, use, apply, or retain all or any part of the security deposit to the extent required for the payment of any amount not paid when due or any amount which the Landlord may expend or incur by reason of Tenant's failure. If the Landlord so uses, applies, or retains all or any part of the security deposit, Tenant shall upon demand immediately deposit with the Landlord an amount equal to the amount so used, applied, or retained. If Tenant fully and faithfully performs and observes all of its obligations under this Lease, the security deposit or any balance thereof shall be refunded to Tenant within thirty (30) days after the expiration of this Lease and delivery to the Landlord of possession of the Lease Site and all payments required to be made by Tenant hereunder. In the event the Tenant fails to remove the Tower Facilities consistent with Section 20(c), Landlord may use the security deposit to offset the costs associated with removing the Tower Facilities. Any costs above the amount of the security deposit remain the obligation of the Tenant consistent with Section 20(c).

5. USE OF PREMISES.

- a. Tenant shall use the Lease Site for the installation, operation and maintenance of its tower for the transmission, reception and operation of a communications system and for no other uses. Installation, operation and maintenance includes installation of a tower, structure tower base, radio transmitting and receiving antennas, communicating equipment, an equipment cabinet or shelter and related facilities (collectively referred to as the "Tower Facilities") as set forth at Exhibit C (Site Plan approved by Site Plan Permit No. _____).
- b. Tenant shall, at its expense, comply with all present and future federal, state, and local laws, ordinances, rules and regulations (including laws and ordinances relating to health, radio frequency emissions, and any other radiation and safety requirements) in connection with Tenant's use, operation, maintenance, construction and/or installation of its Tower Facilities. Tenant recognizes that this Lease does not waive or otherwise obviate such obligation. Tenant at its expense shall obtain all licenses, permits, and land use approvals required for Tenant's use of the Lease Site.
- c. Tenant may, prior to or after the Commencement Date, obtain a title report, perform surveys, soils tests, and other engineering procedures on, under and over the Property, necessary to determine that Tenant's use of the Lease Site will be compatible with Tenant's engineering specifications, system design, operations and any federal, state, and local government approvals.
- d. Landlord agrees to reasonably cooperate with Tenant in obtaining, at Tenant's expense (including reimbursement of Landlord's reasonable attorney and administrative fees), any federal licenses and permits required for or substantially required by Tenant's use of the Lease Site.

6. CONSTRUCTION STANDARDS. The Tower Facilities shall be installed on Lease Site in a good and workmanlike manner without the attachment of any construction liens and in accordance with all applicable federal, state and local codes, rules and regulations including the

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National Electrical Code and the National Electrical Safety Code. All work that does not comply with applicable construction standards or Site Plan Permit No. _____ shall be removed at the sole expense of the Tenant.

7. AS-BUILT DRAWINGS. If requested by the Landlord, the Tenant shall furnish the Landlord with two (2) complete sets of plans drawn to scale and certified to the Landlord as accurately depicting the location of all telecommunication facilities constructed pursuant to the permit. These plans shall be submitted to the City Engineer or designee within sixty (60) days after completion of construction in a format mutually acceptable to the Tenant and the Landlord.

8. INSTALLATION OF EQUIPMENT.

- a. Tenant shall have the right, at its sole cost and expense, to install, operate and maintain on the Lease Site, in accordance with good engineering practices and with all applicable FCC rules and regulations, its Tower Facilities as described on Exhibit C. No additional facilities are permitted unless approved as required herein.
- b. Tenant's installation of all such Tower Facilities shall be done consistent with Site Plan Permit No. _____.

9. EQUIPMENT UPGRADE. Tenant may update or replace Tower Facilities from time to time with the prior written approval of Landlord, which approval shall not be unreasonably withheld, delayed or conditioned, provided that the replacement facilities are not greater in number or size than the existing facilities and that any change in their location on the Lease Site is approved in writing by Landlord. Tenant shall submit to Landlord a detailed proposal for any such replacement facilities and any supplemental materials as may be requested, for Landlord's evaluation and approval. This paragraph is not intended to eliminate or in any way alter the obligation of Tenant to obtain any and all needed land use approvals and permits.

10. VISUAL IMPACT. The height of the tower shall not exceed 160 feet including any lightning rod and red light as required by the FAA and other attachments consistent with Site Plan Permit No. _____. In addition, the Tower Facilities shall be painted to minimize visual impact in a color mutually acceptable to the Tenant and the Landlord.

11. MAINTENANCE.

- a. Tenant shall, at its own expense, maintain the Lease Site, and any equipment on or attached to the leased portion, in a safe condition, in good repair and in a manner suitable to Landlord so as not to conflict with the use of or other leasing of other property owned by the Landlord. Tenant shall not interfere with the use of the remaining portion of the Owned Premises, or any other facilities located on the property or other equipment of other tenants.
- b. Tenant shall have sole responsibility for the maintenance, repair, and security of all its equipment, personal property, Tower Facilities, and leasehold improvements, and shall keep the same in good repair and condition during the Lease term. Landlord shall similarly maintain its facilities if they are placed on the Lease Site.

- c. Tenant shall keep the Lease Site free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or interference with other uses of the Owned Premises.

12. PREMISES ACCESS.

- a. Tenant shall have the reasonable right of access to the Lease Site to reach its Tower Facilities, twenty-four (24) hours per day, seven (7) days per week.
- b. Landlord shall have access to the Lease Site at reasonable times to examine and inspect the Tower Facilities for safety reasons or to ensure that Tenant is meeting its covenants, and shall have access twenty-four (24) hours per day, seven (7) days per week to inspect and maintain its facilities on the Lease Site.

13. UTILITIES. At Tenant's sole expense, Tenant may obtain phone, electrical or other services consistent with Site Plan Permit No. _____. Landlord shall cooperate with Tenant and the utility service provider. Tenant shall pay for any and all costs resulting from the installation, maintenance or operation of utilities in connection with its Tower Facilities.

14. LICENSE FEES. Tenant shall pay, as they become due and payable, all fees, charges, taxes and expenses required for licenses and/or permits required for or occasioned by Tenant's use of the Lease Site. Tenant shall pay any real property or other taxes applicable to the Tower Facilities.

15. APPROVALS; COMPLIANCE WITH LAWS. Tenant's use of the Lease Site is contingent upon its obtaining all certificates, permits, zoning, franchises and other approvals that may be required by any federal, state or local authority. Tenant shall erect, maintain and operate its Tower Facilities in accordance with site standards, statutes, ordinances, rules and regulations in effect or that may be issued thereafter by the FCC or any other federal, state or local governing body.

16. INTERFERENCE. Each party's installation, operation, and maintenance of its Tower Facilities shall not damage or interfere in any way with any of the other party's operations or properly licensed communication facilities on the Owned Premises or other locations. Tenant agrees to cease all such activities that materially interfere with Landlord's existing use of the Owned Premises and/or with any and all government communication facilities immediately upon written or actual notice of such interference, however, in such case, Tenant shall have the right to terminate the Lease. If the Tenant elects to terminate the Lease, the provisions of Section 20(c) apply. Landlord, at all times during this Lease, reserves the right to take any action it deems necessary, in its sole discretion, to repair, maintain, alter or improve the Owned Premises in connection with its operations as may be necessary, including leasing other parts of the Owned Premises to others.

17. CO-LOCATION. Tenant will encourage co-location on the proposed tower consistent with the following:

- a. The tower shall be designed to accommodate a minimum expansion of three two-way antennas for every 40 vertical feet of tower;

- b. At the request of the Landlord, Tenant shall provide the Landlord with a report indicating the existing capacity of the telecommunications support structure, including the number and types of antennas which can be accommodated;
- c. In the event any other party requests a lease and/or permission to place any type of additional telecommunication facility on the tower or Owned Premises, Landlord and Tenant each agree that said other party will be permitted to operate only such equipment that does not cause interference with Landlord's or Tenant's use. In determining whether such request interferes with a party's use, the procedures of paragraph 17(d) apply;
- d. If either party receives any such request, that party shall submit a proposal complete with all technical specifications reasonably requested by the other and available for review for noninterference; however, Landlord and Tenant shall not be required to provide any specifications or information claimed to be of a proprietary nature by the third party. The third party shall be responsible for the reasonable cost of preparing the technical specifications for its proposed transmission facility. The party receiving such proposal shall have thirty (30) days following receipt of said proposal to make any objections thereto, and failure to make any objection within said thirty (30) day period shall be deemed consent to the installation of antennae or transmission facilities pursuant to said proposal;
- e. Tenant will allow shared use of the tower in the event a party requesting co-location is able to meet any technical requirements identified by the Tenant that are necessary to avoid interference with Tenant's management and use of the tower; and
- f. Prior to co-locating on the Tenant's tower, each additional carrier will be required to enter into a separate groundlease with the Landlord for use of land within the Lease Site or on the Owned Premises. Tenant further agrees that it will be obligated to pay ___% of its lease revenues from such third party to Landlord as additional compensation for this Lease.

18. RELOCATION. In the event the Landlord redevelops the property, Landlord may request relocation of the Communication Facilities or the utilities to the facilities, within Landlord's property. Landlord agrees to coordinate such redevelopment with Tenant to prevent interference with Tenant's transmission and reception from the Lease Site. Said request for relocation shall be made with a minimum of six (6) months prior written notice, and Landlord agrees to provide Tenant with a mutually acceptable location to relocate its facilities or utilities on the subject property. Upon relocation of the Communication Facilities, the access and utility easement(s) will be relocated as required. Tenant shall be given credit against the rent under this Lease for its reasonable costs incurred as a result of any such relocation required by the Landlord.

19. DEFAULT AND REMEDIES.

- a. It shall be a default if Tenant defaults in the payment or provision of Rent or any other sums to Landlord when due and does not cure such default within thirty (30)

days after receipt of written notification; or if either party defaults in the performance of any other covenant or condition of this Lease and does not cure such other default within sixty (60) days after written notice from Landlord specifying the default complained of; or if Tenant abandons or vacates the Lease Site; or if Tenant is adjudicated bankrupt or makes any assignment for the benefit of creditors; or if Tenant becomes insolvent or Landlord reasonably believes itself to be insecure.

- b. In the event of a default, Landlord shall have the right, at its option, in addition to and not exclusive of any other remedy Landlord may have by operation of law, without any further demand or notice, to re-enter the Lease Site and eject all persons therefrom, and either:
1. declare this Lease at an end, in which event Tenant shall immediately pay Landlord a sum of money equal to the total of:
 - A. the amount of the unpaid rent accrued through the date of termination;
 - B. the amount by which the unpaid rent reserved for the balance of the term exceeds the amount of such rental loss that the Tenant proves could be reasonably avoided (net of the costs of such reletting); and
 - C. any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under the Lease, or
 2. without terminating this Lease, relet the Lease Site, or any part thereof, for the account of Tenant upon such terms and conditions as Landlord may deem advisable, and any monies received from such reletting shall be applied first to the expenses of such reletting and collection, including reasonable attorney fees, any real estate commissions paid, and thereafter toward payment of all sums due or to become due Landlord hereunder and, if a sufficient sum shall not be thus realized to pay such sums and other charges, Tenant shall pay Landlord any deficiency monthly, notwithstanding that Landlord may have received rental in excess of the rental stipulated in this Lease in previous or subsequent months, and Landlord may bring an action therefore as such monthly deficiency shall arise.
- c. In the event of a default, Tenant shall have the right, in addition to any other rights that it may have in law or in equity, to terminate this lease in accordance with paragraph 20(c).

20. TERMINATION.

- a. This lease may be terminated by Tenant if:

1. Tenant is unable to obtain the approval of any agency, board, court, or other governmental authority necessary for the construction and/or operation of the communications equipment, or agency approval is revoked; or if Tenant determines the cost of obtaining such approval is commercially unfeasible;
 2. Tenant determines at any time that the Lease Site is not appropriate under Tenant's design or engineering specifications for its Tower Facilities or the communications system to which the Tower Facilities belong;
 3. The Lease Site or Tower Facilities are destroyed or damaged so as to hinder the effective use of the Tower Facilities; and
 4. Landlord or any lessee, licensee, invitee or agent interferes with Tenant's use of the Lease Site.
- b. This Lease may be terminated by Landlord if:
1. After affording Tenant a reasonable opportunity to cure, Landlord decides, in the interest of the public health, safety and welfare, to discontinue use of the Lease Site, said decision shall have a lawful basis and may be subject to review by a court of law; or
 2. Landlord determines that continued use of the Lease violates applicable laws or ordinances.
- c. Either party shall give thirty (30) days written notice of termination of this Lease. Upon termination of this Lease for any reason, Tenant shall remove its equipment, personal property, Tower Facilities, and leasehold improvements from the Lease Site on or before the date of termination, and shall repair any damage to the Lease Site caused by such equipment, normal wear and tear excepted. Any such property or facilities except for hazardous materials that are not removed by the end of Lease term shall become the property of Landlord. It is the responsibility of the Tenant to restore the Lease Site to its original condition, as near as practicable, and to remove any hazardous materials, if any, from the site. Tenant shall, if practicable, restore the site to one (1) foot below grade. All costs under this Subsection to be borne exclusively by the Tenant. In the event Tenant fails to remove the Tower Facilities or any hazardous waste from the site or fails to restore the site as provided in this section, Tenant shall reimburse the Landlord for any and all costs, attorney fees and otherwise, incurred by the Landlord to perform the same.

21. ACCEPTANCE OF PREMISES.

- a. Tenant accepts the Lease Site in the condition existing as of the Commencement Date. Landlord makes no representation or warranty with respect to the condition of the Lease Site and Landlord shall not be liable for any latent or patent defect in the Lease Site except as provided in 21(b).

- b. Landlord represents that to the best of its knowledge without conducting independent investigation that the Owned Premises and Lease Site have not been used for the generation, storage, treatment or disposal of hazardous materials. In addition, Landlord represents that to the best of its knowledge without conducting independent investigation that there are no hazardous materials or underground storage tanks located on the Owned Premises or Lease Site. During the Term and any Renewal Term, the parties to this Lease shall handle, store and dispose of all hazardous materials each brings onto the Owned Premises or Lease Site in accordance with all federal, state and local laws and regulations. If hazardous materials are deposited as a result of any act or omission of Landlord or Tenant, the non-depositing party shall have the right to terminate this Lease, and the depositing party shall indemnify and hold the other harmless from any and all claims arising out of such hazardous materials. For purposes of these provisions, "hazardous materials" means any chemical, pollutant or waste that is presently identified as hazardous, toxic or dangerous under any applicable federal, state or local law or regulations.

22. WAIVER OF SUBROGATION. The Landlord and Tenant agree that each waives any right of action that it may later acquire against the other party to this Lease for loss or damage to that party's property, or to property in which that party may have an interest, to the extent that such loss is covered by any insurance policy or policies and to the extent that proceeds (which proceeds are free and clear of any interest of third parties) are received by the party claiming the loss or damage. This waiver of subrogation shall not extend to any applicable deductibles under such policy or policies.

23. INSURANCE. Tenant shall maintain at its expense commercial general liability insurance covering actions by Tenant providing for a limit of not less than \$1,000,000.00 single limits, bodily injury and/or Lease Site damage combined, for damages arising out of bodily injuries or death of all persons and for damages to or destruction of Lease Site, including the loss of use thereof. Coverage shall include independent contractor's protection and premises-operations hereunder.

24. NOTICES. All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, to the following addresses:

If to Landlord, to:

City of Sherwood
20 NW Washington Street
Sherwood, Oregon 97140

If to Tenant, to:

Sprint PCS, Inc.

[address]

25. RECORDING. Landlord shall execute and Tenant shall be permitted to record at any time a memorandum of this Lease. If the Lease is terminated prior to the expiration of its term, Tenant

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shall record an appropriate instrument to clear the memorandum from the title to the Owned Premises.

26. ASSIGNMENT AND SUBLETTING.

- a. Tenant may not assign this Lease or sublet the Lease Site without the prior written consent of the Landlord, unless such assignment is to a parent, subsidiary or affiliate of Tenant. Tenant shall provide Landlord written notice of such assignment or subletting thirty (30) days prior to such assignment or subletting. Such notice shall contain information regarding the name of the parent, subsidiary or affiliate to which Tenant is assigning or subletting. Prior written consent of Landlord for subletting should not be unreasonably withheld, delayed, or conditioned.
- b. Nothing in this Lease shall preclude Landlord from leasing space on Owned Premises other than the Lease Site for communications equipment to any person or entity which may be in competition with Tenant or any other party, consistent with the terms of this Lease.

27. MISCELLANEOUS.

- a. Landlord and Tenant represent that each, respectively, has full right, power, and authority to execute this Lease.
- b. This Lease constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations, and other agreements of any kind. There are no representations or understandings of any kind not set forth herein. Any modification of or amendment to this Lease must be in writing and executed by both parties.
- c. If any term of this Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect.

28. GENERAL INDEMNIFICATION. Landlord shall exonerate, hold harmless, indemnify, and defend Tenant from any claims, obligations, liabilities, costs, demands, damages, expenses, suits or causes of action, including costs and reasonable attorneys fees, which may arise out of (i) any injury to or death of any person; or (ii) any damage to property, if such injury, death or damage arises out of or is attributable to or results from the acts or omissions of Landlord, or Landlord's principals, employees, agents or independent contractors consistent with the Oregon Tort Claims Act. Tenant shall exonerate, hold harmless, indemnify, and defend Landlord from any claims, obligations, liabilities, costs, demands, damages, expenses, suits or causes of action, including costs and reasonable attorney fees, which may arise out of (i) any injury to or death of any person; or (ii) any damage to property, if such injury, death or damage arises out of or is attributable to or results from the acts or omissions of Tenant, or Tenant's employees, agents or independent contractors.

29. SUCCESSORS AND ASSIGNS. This Lease shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

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30. APPLICABLE LAW. This Lease shall be governed by the laws of the State of Oregon.

IN WITNESS WHEREOF, the parties have executed this Lease, effective as of the date set forth below.

DATED: _____, 2005.

LANDLORD: CITY OF SHERWOOD

TENANT: SPRINT PCS, INC.

DRAFT

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