

FOR BOARD ACTION

Agenda Item # 6

Meeting Date:

10/30/12

SUBJECT: First Amendment - Six Northern PCS Services Antenna Site Agreements (Sprint)

PREPARED BY: Doug Rovang, Senior Civil Engineer

ITEM DESCRIPTION:

A proposed First Amendment to the six (6) Northern PCS Services, LLC Site Agreements listed below has been received from Sprint Nextel. (Northern PCS Services was acquired by Sprint in 2007, but continues as a separate corporate entity.)

Site Agreement dated April 4, 2000 with respect to Leased Premises located at the following three sites:

John Adams Water Tower (Site MS03NP116): Located at 3110 18th Avenue NW, Rochester, Minnesota

Baihly High Water Tower (Site MS03NP114): Located at 2301 Baihly Summit Drive, Rochester, Minnesota

Airport Water Tower (Site MS03NP109): Located at 7037 11th Avenue SW, Rochester, Minnesota

Site Agreement dated August 22, 2002 with respect to Leased Premises located at the following site:

North Park Water Tower (Site MS03NP411): Located at 6380 Fairway Drive NW, Rochester, Minnesota

Site Agreement dated December 21, 2004 with respect to Leased Premises located at the following site:

Country Club Water Tower (Site MS03NP444): Located at 4403 Meadow Lakes Drive NW, Rochester, Minnesota

Site Agreement dated November 15, 2006 with respect to Leased Premises located at the following site:

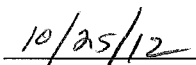
Willow High Water Tower (Site MS03NP730): Located at 3807 10th Avenue SW, Rochester, Minnesota

Sprint is proposing to upgrade these sites to 4G wireless capability. The proposed Amendment would accomplish the following:

- 1) Upgrade the listing of "Sprint" equipment allowed to be installed at each water storage tank site (which would reduce the number of physical antennas on the top of the tanks, and the number of cables extending from the ground up through the internal dry riser to the top of the tanks);
- 2) Update to the annual rental amount at each site to reflect current typical site rental rates for other wireless carriers with whom RPU has Site Agreements. Current and proposed 2013 rate information for each site is shown below:

	<u>Current Annual Site Rent</u>	<u>Proposed Annual Site Rent</u>
<u>John Adams Water Tower Site:</u>	\$10,693.39	\$14,076.82 + CPI-U adjustment
<u>Baihly High Water Tower Site:</u>	\$10,693.39	\$14,076.82 + " "
<u>Airport Water Tower Site:</u>	\$10,693.39	\$14,076.82 + " "
<u>North Park Water Tower Site:</u>	\$10,693.39	\$14,076.82 + " "
<u>Country Club Water Tower Site:</u>	\$10,693.39	\$14,076.82 + " "
<u>Willow High Water Tower Site:</u>	\$14,076.82	\$14,076.82 + " "


General Manager


Date

FOR BOARD ACTION

Agenda Item # 6

Meeting Date: 10/30/12

Rent thereafter would be adjusted annually based on the corresponding change in the CPI-U.

- 3) Establishes a new "initial" term for each of the six (6) Site Agreements which will extend from November 1, 2012, to December 31, 2020. (The current 5-year period termination dates for the six Site Agreements range from 2012 to 2016.)
- 4) Retains each party's right to terminate the Site Agreement at the end of the new "initial" term, and at the end of the succeeding five-year terms by providing such notice at least 90 days prior to the expiration of the five-year period.

RPU staff will provide additional information related to the method used to determine Site Agreement rent amounts. The proposed Amendment has been reviewed by the City Attorney.

FOR CAPITAL PURCHASES/BIDS/MAJOR PROJECTS:

Not applicable.

UTILITY BOARD ACTION REQUESTED:

Management recommends the Utility Board approve the proposed Amendment to the above-listed Northern PCS Services, LLC Site Agreements, and request the Mayor and City Clerk to execute the Amendment.

General Manager

Date

FIRST AMENDMENT TO SITE AGREEMENTS

THIS FIRST AMENDMENT TO SITE AGREEMENTS ("Amendment") is made and entered into by and between the City of Rochester, a Minnesota Municipal Corporation ("CITY") and Northern PCS Services, a Minnesota limited liability company ("Sprint Nextel" or "LESSEE").

Recitals

The parties hereto recite, declare and agree as follows:

A. CITY and LESSEE entered into the following Agreements:

Site Agreement dated April 4, 2000 with respect to Leased Premises located the following three sites:

John Adams Water Tower (Site MS03NP116): Located at 3110 18th Avenue NW, Rochester, Minnesota

Baihly High Water Tower (Site MS03NP114): Located at 2301 Baihly Summit Drive, Rochester, Minnesota

Airport Water Tower (Site MS03NP109): Located at 7037 11th Avenue SW, Rochester, Minnesota

Site Agreement dated August 22, 2002 with respect to Leased Premises located the following site:

North Park Water Tower (Site MS03NP411): Located at 6380 Fairway Drive NW, Rochester, Minnesota

Site Agreement dated December 21, 2004 with respect to Leased Premises located the following site:

Country Club Water Tower (Site MS03NP444): Located at 4403 Meadow Lakes Drive NW, Rochester, Minnesota

Site Agreement dated November 15, 2006 with respect to Leased Premises located the following site:

Willow High Water Tower (Site MS03NP730): Located at 3807 10th Avenue SW, Rochester, Minnesota

B. CITY and LESSEE desire to enter into this Amendment in order to modify and amend certain provisions of the above Agreements.

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, CITY and LESSEE covenant and agree as follows:

1. Effective with the signing of this Amendment, Sub-paragraphs A., B., and C. of Paragraph 1 "PROPERTY", Paragraph 2 "OPTION TERMS" and Paragraph 3 "RENT" of the April 4, 2000 Agreement will be deleted in their entirety and replaced with the following:

- A. John Adams Water Tower Site: Located at 3110 18th Avenue NW, Rochester, Minnesota. Real property comprised of approximately one-hundred-eighty-five (185) square feet of land, water tower ("Structure") exterior space for attachment of up to eighteen (18) antenna equivalents (three six-port antennas), space required for three (3) 1-1/4" hybrid cable runs to connect equipment and antennas, non-exclusive easements required to run utility lines/cables, a non-exclusive easement across CITY's property (hereinafter defined) for access in or upon the CITY's real property ("CITY's Property"). CITY's property if legally described and Leased Premises are shown in relationship to CITY's property in Exhibit "A-1" Attached hereto, and the locations of the equipment and antennas on the Structure are depicted in Exhibit "B-1" attached hereto, which Exhibits replace Exhibit A and Exhibit B to the April 4, 2000 Agreement, respectively. All existing LESSEE coax cables extending between ground and top of tower are to be removed. (An "antenna equivalent" is defined as follows: a single transmit/receive antenna, a single transmit antenna, or a single receive antenna is considered an antenna equivalent. For example, a dual-port antenna is two antenna equivalents, a triple-port antenna is three antenna equivalents, and a quad-port antenna is four antenna equivalents.)

TERM. The new initial term of this amended agreement for this site shall begin on November 1, 2012, and shall terminate on December 31, 2020 ("New Initial Term").

- B. Baihly Water Tower Site: Located at 2301 Baihly Summit Drive SW, Rochester, Minnesota. Real property comprised of approximately one-hundred-eighty-five (185) square feet of land, water tower ("Structure") exterior space for attachment of up to eighteen (18) antenna equivalents (three six-port antennas), space required for three (3) 1-1/4" hybrid cable runs to connect equipment and antennas, non-exclusive easements required to run utility lines/cables, a non-exclusive easement across CITY's property (hereinafter defined) for access in or upon the CITY's real property ("CITY's Property"). CITY's property if legally described and Leased Premises are shown in relationship to CITY's property in Exhibit "C-1" Attached hereto, and the locations of the equipment and antennas on the Structure are depicted in Exhibit "D-1" attached hereto, which Exhibits replace Exhibit C and Exhibit D to the April 4, 2000 Agreement, respectively. All existing LESSEE coax cables extending between ground and top of tower are to be removed. (An "antenna equivalent" is defined as follows: a single transmit/receive antenna, a single transmit antenna, or a single receive antenna is considered an antenna equivalent. For example, a dual-port antenna is two antenna equivalents, a triple-port antenna is three antenna equivalents, and a quad-port antenna is four antenna equivalents.)

TERM. The new initial term of this amended agreement for this site shall begin on November 1, 2012, and shall terminate on December 31, 2020 ("New Initial Term").

- C. Airport Water Tower Site: Located at 7037 11th Avenue SW, Rochester, Minnesota. Real property comprised of approximately one-hundred-eighty-five (185) square feet of land, water tower ("Structure") exterior space for attachment of up to eighteen (18) antenna equivalents (three six-port

antennas), space required for three (3) 1-1/4" hybrid cable runs (to connect equipment and antennas, non-exclusive easements required to run utility lines/cables, a non-exclusive easement across CITY's property (hereinafter defined) for access in or upon the CITY's real property ("CITY's Property"). CITY's property if legally described and Leased Premises are shown in relationship to CITY's property in Exhibit "E-1" Attached hereto, and the locations of the equipment and antennas on the Structure are depicted in Exhibit "F-1" attached hereto, which Exhibits replace Exhibit E and Exhibit F to the April 4, 2000 Agreement, respectively. All existing LESSEE coax cables extending between ground and top of tower are to be removed. (An "antenna equivalent" is defined as follows: a single transmit/receive antenna, a single transmit antenna, or a single receive antenna is considered an antenna equivalent. For example, a dual-port antenna is two antenna equivalents, a triple-port antenna is three antenna equivalents, and a quad-port antenna is four antenna equivalents.)

TERM. The new initial term of this amended agreement for this site shall begin on November 1, 2012, and shall terminate on December 31, 2020 ("New Initial Term").

2. OPTION TERMS. Following the expiration of the New Initial Term for each site under the April 4, 2000 Agreement, LESSEE may extend the term of the Agreement for three (3) additional five (5) year option periods for each site. Unless (a) CITY delivers to LESSEE written notice of non-renewal to LESSEE no later than Ninety (90) days prior to the expiration of the New Initial Term or applicable Option Period, or (b) LESSEE gives CITY written notice of its intention not to extend at least Ninety (90) days prior to the expiration of the New Initial Term or applicable Option Period, the applicable Option Period shall be deemed effective.

3. RENT. The LESSEE shall pay CITY 2013 rent equivalent to \$14,076.82 for each site adjusted to reflect the 2012 change in the Consumer Price Index for all Urban Customers (CPI-U) on or before January 1, 2013 for the year January 1, 2013 through December 31, 2013. The City will issue an invoice for each subsequent year's rent on or about March 1. The rental year shall run from January 1 to December 31 of each year and rent for each year will be due on or before January 1 of such year. The rental amount shall be adjusted annually based on the Consumer Price Index for All Urban Customers (CPI-U). Owner acknowledges receipt of all rents due and owing under the April 4, 2000 Agreement from March 1, 2000 through December 31, 2012.

2. Effective with the signing of this Amendment, Paragraphs 1 "PROPERTY", 2 "TERM", 3. "OPTION TERMS" and 4 "RENT" of the August 22, 2002 Agreement will be deleted in its entirety and replaced with the following:

1. PROPERTY. The property interests hereby leased (collectively, the "Leased Premises") and granted by CITY include the following:

North Park Water Tower Site: Located at 6380 Fairway Drive NW, Rochester, Minnesota. Real property comprised of approximately one-hundred (100) square feet of interior space within the water tower ("Structure") base for equipment, Structure exterior space for attachment of up to eighteen (18) antenna equivalents (three six-port antennas), space required for three (3) 1-1/4" hybrid cable runs (to connect equipment and antennas, non-exclusive easements required to run utility lines/cables, a non-exclusive easement across CITY's property (hereinafter defined) for access in or upon the CITY's real property ("CITY's Property"). CITY's property if legally described and Leased Premises are shown in relationship to CITY's property in Exhibit "G-1" Attached hereto, and the locations of the equipment and antennas on the Structure are depicted in Exhibit "H-1" attached hereto, which Exhibits replace

Exhibit A and Exhibit B to the August 22, 2002 Agreement, respectively. All existing LESSEE coax cables extending between ground and top of tower are to be removed. (An "antenna equivalent" is defined as follows: a single transmit/receive antenna, a single transmit antenna, or a single receive antenna is considered an antenna equivalent. For example, a dual-port antenna is two antenna equivalents, a triple-port antenna is three antenna equivalents, and a quad-port antenna is four antenna equivalents.)

2. TERM. The new initial term of this amended agreement shall begin on November 1, 2012, and shall terminate on December 31, 2020 ("New Initial Term").
 3. OPTION TERMS. Following the expiration of the New Initial Term, LESSEE may extend the term of the Agreement for three (3) additional five (5) year option periods (each an "Option Period"). Unless (a) CITY delivers to LESSEE written notice of non-renewal to LESSEE no later than Ninety (90) days prior to the expiration of the New Initial Term or applicable Option Period, or (b) LESSEE gives CITY written notice of its intention not to extend at least Ninety (90) days prior to the expiration of the New Initial Term or applicable Option Period, the applicable Option Period shall be deemed effective.
 4. RENT. The LESSEE shall pay CITY 2013 rent equivalent to \$14,076.82 adjusted to reflect the 2012 change in the Consumer Price Index for all Urban Customers (CPI-U) on or before January 1, 2013 for the year January 1, 2013 through December 31, 2013. The City will issue an invoice for each subsequent year's rent on or about March 1. The rental year shall run from January 1 to December 31 of each year and rent for each year will be due on or before January 1 of such year. The rental amount shall be adjusted annually based on the Consumer Price Index for All Urban Customers (CPI-U). CITY acknowledges receipt of all rents due and owing under the August 22, 2002 Agreement from September 1, 2002 through December 31, 2012.
3. Effective with the signing of this Amendment, Paragraphs 1 "PROPERTY", 2 "TERM", 3 "OPTION TERMS" and 4 "RENT" of the December 21, 2004 Agreement will be deleted in its entirety and replaced with the following:

1. PROPERTY. The property interests hereby leased (collectively, the "Leased Premises") and granted by CITY include the following:

Country Club Water Tower Site: Located at 4403 Meadow lakes Drive NW, Rochester, Minnesota. Real property comprised of approximately one-hundred (100) square feet of interior space within the water tower ("Structure") base for equipment, Structure exterior space for attachment of up to eighteen (18) antenna equivalents (three six-port antennas), space required for three (3) 1-1/4" hybrid cable runs (to connect equipment and antennas, non-exclusive easements required to run utility lines/cables, a non-exclusive easement across CITY's property (hereinafter defined) for access in or upon the CITY's real property ("CITY's Property"). CITY's property if legally described and Leased Premises are shown in relationship to CITY's property in Exhibit "I-1" Attached hereto, and the locations of the equipment and antennas on the Structure are depicted in Exhibit "J-1" attached hereto, which Exhibits replace Exhibit A and Exhibit B to the December 21, 2004 Agreement, respectively. All existing LESSEE coax cables extending between ground and top of tower are to be removed. (An "antenna equivalent" is defined as follows: a single transmit/receive antenna, a single transmit antenna, or a single receive antenna is considered an antenna equivalent. For example, a dual-port antenna is two antenna equivalents, a triple-port antenna is three antenna equivalents, and a quad-port antenna is four antenna equivalents.)

2. TERM. The new initial term of this amended agreement shall begin on November 1, 2012, and shall terminate on December 31, 2020 ("New Initial Term").
 3. OPTION TERMS. Following the expiration of the New Initial Term, LESSEE may extend the term of the Agreement for three (3) additional five (5) year option periods (each an "Option Period"). Unless (a) CITY delivers to LESSEE written notice of non-renewal to LESSEE no later than Ninety (90) days prior to the expiration of the New Initial Term or applicable Option Period, or (b) LESSEE gives CITY written notice of its intention not to extend at least Ninety (90) days prior to the expiration of the New Initial Term or applicable Option Period, the applicable Option Period shall be deemed effective.
 4. RENT. The LESSEE shall pay CITY 2013 rent equivalent to \$14,076.82 adjusted to reflect the 2012 change in the Consumer Price Index for all Urban Customers (CPI-U) on or before January 1, 2013 for the year January 1, 2013 through December 31, 2013. The City will issue an invoice for each subsequent year's rent on or about March 1. The rental year shall run from January 1 to December 31 of each year and rent for each year will be due on or before January 1 of such year. The rental amount shall be adjusted annually based on the Consumer Price Index for All Urban Customers (CPI-U). CITY acknowledges receipt of all rents due and owing under the December 21, 2004 Agreement from December 1, 2004 through December 31, 2012.
4. Effective with the signing of this Amendment, Paragraphs 1 "PROPERTY", 2 "TERM", 3 "OPTION TERMS" and 4 "RENT" of the November 15, 2006 Agreement will be deleted in its entirety and replaced with the following:

1. PROPERTY. The property interests hereby leased (collectively, the "Leased Premises") and granted by CITY include the following:

Willow High Water Tower Site: Located at 3807 10th Avenue SW, Rochester, Minnesota. Real property comprised of approximately one-hundred (100) square feet of interior space within the water tower ("Structure") base for equipment, Structure exterior space for attachment of up to eighteen (18) antenna equivalents (three six-port antennas), space required for three (3) 1-1/4" hybrid cable runs (to connect equipment and antennas, non-exclusive easements required to run utility lines/cables, a non-exclusive easement across CITY's property (hereinafter defined) for access in or upon the CITY's real property ("CITY's Property"). CITY's property if legally described and Leased Premises are shown in relationship to CITY's property in Exhibit "K-1" Attached hereto, and the locations of the equipment and antennas on the Structure are depicted in Exhibit "L-1" attached hereto, which Exhibits replace Exhibit A and Exhibit B to the November 15, 2006 Agreement, respectively. All existing LESSEE coax cables extending between ground and top of tower are to be removed. (An "antenna equivalent" is defined as follows: a single transmit/receive antenna, a single transmit antenna, or a single receive antenna is considered an antenna equivalent. For example, a dual-port antenna is two antenna equivalents, a triple-port antenna is three antenna equivalents, and a quad-port antenna is four antenna equivalents.)

2. TERM. The new initial term of this amended agreement shall begin on November 1, 2012, and shall terminate on December 31, 2020 ("New Initial Term").

3. **OPTION TERMS.** Following the expiration of the New Initial Term, LESSEE may extend the term of the Agreement for three (3) additional five (5) year option periods (each an "Option Period"). Unless (a) CITY delivers to LESSEE written notice of non-renewal to LESSEE no later than Ninety (90) days prior to the expiration of the New Initial Term or applicable Option Period, or (b) LESSEE gives CITY written notice of its intention not to extend at least Ninety (90) days prior to the expiration of the New Initial Term or applicable Option Period, the applicable Option Period shall be deemed effective.

4. **RENT.** The LESSEE shall pay CITY 2013 rent equivalent to \$14,076.82 adjusted to reflect the 2012 change in the Consumer Price Index for all Urban Customers (CPI-U) on or before January 1, 2013 for the year January 1, 2013 through December 31, 2013. The City will issue an invoice for each subsequent year's rent on or about March 1. The rental year shall run from January 1 to December 31 of each year and rent for each year will be due on or before January 1 of such year. The rental amount shall be adjusted annually based on the Consumer Price Index for All Urban Customers (CPI-U). CITY acknowledges receipt of all rents due and owing under the November 15, 2006 Agreement from December 1, 2006 through December 31, 2012.

5. LESSEE's notice addresses in the Agreements are deleted in their entirety and replaced with the following:

If to LESSEE:

Sprint Nextel Property Services
6391 Sprint Parkway
Mailstop: KSOPHT0101-Z2650
Overland Park, KS 66251-2650

With a mandatory copy to: Sprint Nextel Law Department
 Attn.: Real Estate Attorney
 6391 Sprint Parkway
 Mailstop: KSOPHT0101-Z2020
 Overland Park, KS 66251-2020

6. The terms and conditions of the Agreements are incorporated herein by this reference, and capitalized terms used in this Amendment shall have the same meanings such terms are given in the Agreements. Except as specifically set forth herein, this Amendment shall in no way modify, alter or amend the remaining terms of the Agreements, 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 Agreements and this Amendment, the terms and conditions of this Amendment will govern and control.

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

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

LEGAL DESCRIPTION OF CITY'S PROPERTY:

SITE NAME: John Adams Water Tower Site NW

EXHIBIT A-1

LEGAL DESCRIPTION OF CITY'S PROPERTY:

Real property located in Olmsted County, Minnesota and more particularly described as follows:

OUTLOT B, Tower Terrace Subdivision
CT PLAT PARCEL NO. 05 3835 200 (FPINPAR 23108)
Located in the NW ¼, SE ¼, SEC 22, T107N, R14W

Legal Description of the City's John Adams Water Tower site located at 3110 18th Ave NW, Rochester, Minnesota.



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve the attached First Amendment to the Northern PCS Services, LLC Site Agreements for the six sites listed below, and to request the Mayor and the City Clerk to execute that First Amendment.

- 1) John Adams Water Tower Site
- 2) Baihly High Water Tower Site
- 3) Airport Water Tower Site
- 4) North Park Water Tower Site
- 5) Country Club Water Tower Site
- 6) Willow High Water Tower Site

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 30th day of October, 2012.

President

Secretary