

**City of Fayetteville Staff Review Form**

**2019-0600**

**Legistar File ID**

**10/1/2019**

City Council Meeting Date - Agenda Item Only  
N/A for Non-Agenda Item

Tim Nyander

9/12/2019

WATER SEWER (720)

**Submitted By**

**Submitted Date**

**Division / Department**

**Action Recommendation:**

Staff recommends the approval of the Fourth Amendment to the Water Tower Attachment Communications Site Agreement with Cellco Partnership d/b/a Verizon Wireless to renew the lease terms and increase the rental amount of the lease for cellular communications equipment on the Gulley Water Tank.

**Budget Impact:**

N/A	N/A
Account Number	Fund
N/A	N/A
Project Number	Project Title
<b>Budgeted Item?</b> <u>NA</u>	Current Budget    \$    -
	Funds Obligated    \$    -
	Current Balance <span style="border: 1px solid black; padding: 2px;">\$    -</span>
<b>Does item have a cost?</b> <u>NA</u>	Item Cost    \$    -
<b>Budget Adjustment Attached?</b> <u>NA</u>	Budget Adjustment    \$    -
	Remaining Budget <span style="border: 1px solid black; padding: 2px;">\$    -</span>

V20180321

**Purchase Order Number:** \_\_\_\_\_

**Previous Ordinance or Resolution #** \_\_\_\_\_

**Change Order Number:** \_\_\_\_\_

**Approval Date:** \_\_\_\_\_

**Original Contract Number:** \_\_\_\_\_

**Comments:**



**MEETING OF OCTOBER 1, 2019**

**TO:** Mayor and City Council

**THRU:** Don Marr, Chief of Staff  
Water & Sewer Committee

**FROM:** Tim Nyander, Utilities Director

**DATE:** September 12, 2019

**SUBJECT:** **Verizon Wireless – Fourth Amendment to the Lease for Cellular Communications Equipment on the Gulley Water Tank**

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**RECOMMENDATION:**

Staff recommends the approval of the Fourth Amendment to the Water Tower Attachment Communications Site Agreement with Cellco Partnership d/b/a Verizon Wireless to renew the lease terms and increase the rental amount of the lease for cellular communications equipment on the Gulley Water Tank.

**BACKGROUND:**

On October 20, 1999, the City of Fayetteville made an agreement with Fayetteville MSA Limited Partnership (a subsidiary of Alltel Communications, which later became Verizon Wireless) to allow them to place cellular communications equipment on the Gulley Water Tank located at 3265 North Gulley Road. The First, Second, and Third Amendments to the original agreement regarded changes to equipment, renewal terms and rental amount increases.

**DISCUSSION:**

The Fourth Amendment to the Water Tower Attachment Communications Site Agreement will continue the lease with Verizon Wireless for two (2) additional terms of five (5) years each, commencing on October 20, 2019. The rental price of the lease will also increase 20% from \$2,022.84 to \$2,427.41. Each renewal term, the rental amount will automatically increase 20% from the previous term's amount.

**BUDGET/STAFF IMPACT:**

The rental amount that Verizon Wireless currently pays the City will increase to \$2,427.41 upon execution of this Amendment.

**Attachments:**

1. Fourth Amendment to Water Tower Attachment Communications Site Agreement
2. Memorandum of Fourth Amendment to Water Tower Attachment Communications Site Agreement

## FOURTH AMENDMENT TO WATER TOWER ATTACHMENT COMMUNICATIONS SITE AGREEMENT

This Fourth Amendment to Water Tower Attachment Communications Site Agreement (this "Amendment") is made this \_\_\_ day of \_\_\_\_\_, 201\_\_, by and between **City of Fayetteville**, hereinafter "Owner", and **Cellco Partnership d/b/a Verizon Wireless**, hereinafter "Tenant". Owner and Tenant are at times collectively referred to hereinafter as the "Parties" or individually as the "Party".

**WHEREAS**, Owner and Tenant, as successor in interest to Fayetteville MSA Limited Partnership, are Parties to that certain Water Tower Attachment Communications Site Agreement dated October 20, 1999, as amended by that certain First Amendment to Water Tower Attachment Communications Site Agreement dated January 19, 2010, as amended by that certain Second Amendment to Water Tower Attachment Communications Site Agreement dated November 16, 2010, as amended by that certain Third Amendment to Water Tower Attachment Communications Site Agreement dated July 19, 2011 (collectively, the "Agreement"), whereby Tenant leases from Owner certain space located at 3265 Gulley Road, Fayetteville, Arkansas 72703 Agreement;

**WHEREAS**, Owner and Tenant desire to amend the Agreement in order to extend the term as hereinafter described.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree to be legally bound to this Amendment as follows:

1. Renewal. Tenant shall have the right to extend this Agreement for two (2) additional terms of five (5) years each (the "Renewal Term (s)") on the same terms and conditions as set forth in the Agreement, with the first of such Renewal Terms commencing on the 20th day of October, 2019. Unless Tenant notifies Owner of its election not to exercise any Renewal Term at least 30 days prior to the expiration of the then-current Renewal Term, each Renewal Term shall automatically be exercised without notice or other action by any kind by Tenant.
2. Rent. Beginning on October 20, 2019, Tenant shall pay Owner the sum of \$2,427.41 per month as rental. Rent shall continue to increase at the inception of any Renewal Term by twenty percent (20%).
3. Notice. Tenant's Notice Address shall be amended as follows:

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

4. All remaining provisions of the Agreement shall remain in full force and effect as to all other terms and conditions, and shall remain binding on the parties hereto.
5. The Agreement and Amendment contain all agreements, promises or understandings between Owner and Tenant and no verbal or oral agreements, promises or understandings shall be binding upon either the Owner or Tenant in any dispute, controversy or proceeding at law, and any addition, variation or modification to the Agreement and Amendment shall be void and ineffective unless made in writing and signed by the parties. In the event any provision of the Agreement and Amendment is found to be invalid or unenforceable, such a finding shall not affect the validity and enforceability of the remaining provisions of the Agreement and Amendment. Each of the Parties hereto warrants to the other that the person or persons executing this Amendment on behalf of such party has the full right, power and authority to enter into and execute this Amendment on such Party's behalf and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this Amendment.

(SIGNATURES TO FOLLOW)

Owner Site Name/Location: Gulley Road Water Tank  
3265 Gulley Road, Fayetteville, AR 72703

Tenant Site Name/Location: Mall West Beta Offload / 228754

IN WITNESS WHEREOF, the parties have set forth their hand and seal as of the date indicated above.

OWNER:

**City of Fayetteville**


\_\_\_\_\_  
WITNESS

By: \_\_\_\_\_  
Print Name:  
Title: Mayor  
Date: \_\_\_\_\_

TENANT:

**Cellco Partnership d/b/a Verizon  
Wireless**

  
\_\_\_\_\_  
WITNESS

By:   
Name: Jason Leiker  
Title: Director - Network Field  
Engineering  
Date: 8-30-19

Owner Site Name/ Location: Gulley Road Water Tank  
3265 Gulley Road. Fayetteville, AR 72703

Tenant Site Name: Mall West Beta Offload  
Tenant Location Code: 228754

PREPARED BY AND  
AFTER RECORDING RETURN TO:

BAKER DONELSON BEARMAN CALDWELL & BERKOWITZ P.C.  
1501 MAIN STREET, SUITE 310  
COLUMBIA, SOUTH CAROLINA 29201

STATE OF ARKANSAS            )  
  )  
COUNTY OF WASHINGTON    )

**MEMORANDUM OF FOURTH AMENDMENT TO  
WATER TOWER ATTACHMENT COMMUNICATION SITE AGREEMENT**

This Memorandum of Third Amendment to Water Tower Attachment Communication Site Agreement (“Memorandum”) is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between **CITY OF FAYETTEVILLE** (hereinafter “OWNER”) and **CELLCO PARTNERSHIP** d/b/a Verizon Wireless (hereinafter “TENANT”).

WHEREAS, OWNER and TENANT (and/or their respective predecessors in interest) Owner and Tenant, as successor in interest to Fayetteville MSA Limited Partnership, are Parties to that certain Water Tower Attachment Communications Site Agreement dated October 20, 1999, as amended by that certain First Amendment to Water Tower Attachment Communications Site Agreement dated January 19, 2010, as amended by that certain Second Amendment to Water Tower Attachment Communications Site Agreement dated November 16, 2010, as amended by that certain Third Amendment to Water Tower Attachment Communications Site Agreement dated July 19, 2011 (collectively, the “Agreement”), whereby Tenant leases from Owner certain space located at 3265 Gulley Road, Fayetteville, Arkansas 72703 Agreement, being the same parcel described in Instruments No. 2010-00003533 and Instrument No. 2011-00022300, both filed in the records of the Circuit Clerk of Washington County, Arkansas;

WHEREAS, this Memorandum is not intended to supersede, replace, or release TENANT's rights under any prior recorded Memorandum;

1. OWNER and TENANT entered into a Fourth Amendment to Water Tower Attachment Communication Site Agreement (the "Amendment") dated \_\_\_\_\_, 20\_\_, which amends that certain Water Tower Attachment Communication Site Agreement dated October 20, 1999 (the "Agreement"), between OWNER and TENANT and/or their respective predecessors-in-interest, whereby OWNER leases space to TENANT at a certain parcel located in Washington County, Arkansas as described in the Agreement.

2. Pursuant to the Amendment, commencing October 20, 2019, the Lease shall be automatically extended for two (2) additional five (5) year renewal terms, unless the TENANT elects not to renew at the end of the then current term by giving the OWNER written notice of the same thirty (30) days prior to the end of the then current term.

3. The terms, covenants and provisions of the Agreement and this Amendment shall extend to and be binding upon the respective administrators, successors and assigns of OWNER and TENANT.

IN WITNESS WHEREOF, hereunto OWNER and TENANT have caused this Memorandum to be duly executed on the day and year first written above.

**OWNER:**

**CITY OF FAYETTEVILLE**


\_\_\_\_\_  
Witness

By: \_\_\_\_\_ (Seal)  
Name: \_\_\_\_\_  
Title: Mayor  
Date: \_\_\_\_\_

**TENANT:**

**Cellco Partnership**

  
\_\_\_\_\_  
Witness

By:  \_\_\_\_\_ (Seal)  
Name: Jason Leiker  
Title: Director - Network Field Engineering  
Date: 8-30-19



STATE OF ARKANSAS

:  
:  
:

**OWNER ACKNOWLEDGEMENT**

COUNTY OF WASHINGTON

I, \_\_\_\_\_, a Notary Public for the aforesaid State and County, do hereby certify that \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that he is the Mayor, of **CITY OF FAYETTEVILLE**, and that he, as Mayor, being authorized to do so, executed the foregoing Instrument on behalf of **CITY OF FAYETTEVILLE**.

WITNESS my hand and official Notarial Seal, this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

STATE OF TEXAS

TENANT ACKNOWLEDGEMENT

COUNTY OF HARRIS

I, Lisa L. Wood, a Notary Public for said County and State, do hereby certify that Jason Leiker, to me personally known, who, being by me duly sworn, did say that he is Director - Network Field Engineering of **CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS**, and that he, as Director - Network Field Engineering, being authorized to do so, executed the foregoing Instrument on behalf of **CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS**.

WITNESS my hand and official Notarial Seal, this 30 day of August, 2019.

Lisa L. Wood  
Notary Public

My Commission Expires:  
10/29/19

