

City of Fayetteville Staff Review Form

2020-1069

Legistar File ID

1/5/2021

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

Tim Nyander

12/2/2020

WATER SEWER (720)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Staff recommends approval of the Second Amendment to the Tower Attachment Lease Agreement with Alltel Corporation d/b/a Verizon Wireless to allow for communications equipment modifications on the Township water tank and to increase their monthly rental amount to \$2,400.00.

Budget Impact:

5400.720.4000-6450.00	Water/Sewer
Account Number	Fund
N/A	N/A
Project Number	Project Title
Budgeted Item? <u>NA</u>	Current Budget \$ -
	Funds Obligated \$ -
	Current Balance \$ -
Does item have a cost? <u>NA</u>	Item Cost
Budget Adjustment Attached? <u>No</u>	Budget Adjustment
	Remaining Budget \$ -

V20180321

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF JANUARY 5, 2021

TO: Mayor and City Council

THRU: Susan Norton, Chief of Staff

FROM: Tim Nyander, Utilities Director

DATE: December 2, 2020

SUBJECT: Verizon Wireless – Second Amendment to Lease Agreement for Communications Equipment on the Township Water Tank

RECOMMENDATION:

Staff recommends approval of the Second Amendment to the Tower Attachment Lease Agreement with Alltel Corporation d/b/a Verizon Wireless to allow for communications equipment modifications on the Township water tank and to increase their monthly rental amount to \$2,400.00.

BACKGROUND:

The City of Fayetteville entered into a Tower Attachment Lease Agreement dated October 26, 1994 to allow Verizon to attach communications equipment on the Township water tank. That lease and its First Amendment dated October 12, 2010 detailed a monthly payment to City of Fayetteville in the amount of \$500.00 with no renewal term increases. Verizon is currently requesting communications equipment modifications to update their outdated equipment on the water tank.

DISCUSSION:

This Second Amendment to the lease agreement will allow for Verizon to update their equipment, as well as providing agreeable terms for the transfer of their equipment from the current Township water tank to the new Township water tank to be constructed on a nearby parcel owned by the City. That tank will be constructed within the next two years.

City staff also negotiated a fair market rental price from \$500.00 per month to \$2,400.00 per month. This Second Amendment will make the increased rental amount effective on the commencement date of this renewal term. There is no rental amount increase outlined in this amendment because the agreement expires in 2024 at the end of the current term. The City will negotiate a fair market rental amount and a 20% renewal term increase at that time.

BUDGET/STAFF IMPACT:

Verizon will pay the City \$2,400.00 per month for their equipment on the Township water tank.

Attachments:

Second Amendment to Tower Attachment Lease Agreement

**SECOND AMENDMENT TO
TOWER ATTACHMENT LEASE AGREEMENT**

THIS SECOND AMENDMENT TO TOWER ATTACHMENT LEASE AGREEMENT (the "Second Amendment") is made and entered into this ____day of _____ 20__, by and between **THE CITY OF FAYETTEVILLE, ARKANSAS**, acting through duly authorized officials of the City of Fayetteville, Arkansas ("**Lessor**") and **ALLTEL CORPORATION** d/b/a Verizon Wireless ("**Lessee**"). Lessor and Lessee are at times collectively referred to hereinafter as the "**Parties**" or individually as the "**Party**."

WITNESSETH:

WHEREAS, Lessor and Lessee entered into a Tower Attachment Lease Agreement dated October 26, 1994, as amended by that certain First Amendment to Tower Attachment Lease Agreement dated October 12, 2010 (collectively, the "**Agreement**"), whereby Lessee leases from Lessor certain space on Lessor's water tower and certain ground space on Lessor's Property for the construction of a structure to house Lessee's equipment.

WHEREAS, the Parties desire to amend the Agreement to modify Lessee's equipment, provide for the transfer of Lessee's equipment to a new water tower, and establish the fair market value of rent for the renewal term;

NOW THEREFORE, in consideration of the premises and the mutual undertakings herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Any capitalized terms used in this Amendment that are not defined herein have the meanings given those terms in the Agreement.

2. Exhibit "B-1" of the Agreement is hereby replaced and superseded by **Exhibit "B-2"** attached hereto and incorporated herein by reference. In the event of any discrepancies between Exhibit "B-1" and Exhibit "B-2", Exhibit "B-2" shall control.

3. Lessee acknowledges and understands that the City intends to purchase a parcel of land for installation of a new water tower (the "**New Tower**") and the existing water tower (the "**Existing Tower**") will be removed from the Property upon completion of the New Tower. Lessee agrees to remove its equipment from the Existing Tower within 25 business days after Lessee's receipt of written notice that construction of the New Towers has been completed. Lessee may install its equipment on the New Tower, provided the New Tower is fully compatible for Lessee's use, in Lessee's sole discretion, and the Parties amend this Agreement to memorialize the location of the New Tower. Lessee may also install a temporary Cell of Wheels ("**COW**") in a mutually agreeable location on the

Property during the relocation so Lessee's use is not interrupted or diminished during the relocations. If the New Tower is not fully compatible for Lessee's use, Lessee may continue using the COW until such time as Lessee notifies Lessor that Lessee is removing the COW, in which case Lessee may terminate the Lease. Notwithstanding the foregoing, Lessee may not operate the COW on the Property beyond the expiration of the current five (5) year renewal term. Lessee shall bear the costs related to removing and transferring its equipment from the Existing Tower.

4. Section 5 of the Agreement (Consideration) is hereby replaced and superseded by the following:

Lessee shall pay to Lessor, as monthly rental, the sum of Two Thousand Four Hundred Dollars (\$2,400.00) which shall include Lessee's right to use and occupy the ground space surrounding Lessor's tower. Lease payments shall be paid monthly in advance with the first such monthly payment due on the commencement date of this renewal term.

5. Lessor and Lessee each hereby warrant to the other that the person executing this Amendment on behalf of the warranting Party has the full right, power and authority to enter into, and execute, this Amendment on that 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.

6. Except as specifically provided in this Second Amendment, the Agreement shall remain in full force and effect and shall continue to be binding upon, and enforceable against, Lessor and Lessee in accordance with its terms. All covenants, terms and obligations of the Agreement not modified by this Amendment are hereby ratified and affirmed. The terms and provisions of this Second Amendment shall control in the event of any inconsistency or discrepancy between the Agreement and this Second Amendment.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Second Amendment effective as of the day and year first above written.

LESSOR:

CITY OF FAYETTEVILLE, ARKANSAS

Acting by and through duly authorized officials of the City of Fayetteville, Arkansas

By: _____

Name: _____

Title: _____

Date: _____

WITNESS

LESSEE:

**ALLTEL CORPORATION D/B/A
VERIZON WIRELESS**

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT "B-2"

LESSEE is authorized to install and maintain the following equipment:

Six (6) Quintel USA QS8656-5_V3 antennas at 124' AGL, center of radiation

Three (3) Amphenol BXA-70063-4CF antennas at 124' AGL, center of radiation

Three (3) AHBCC AirScale Dual RRH 4T4R B5/13 320w remote radio heads

Three (3) AHFIC AirScale Dual RRH 4T4R B2/B66a 320w remote radio heads

One (1) RVDC-6627-PF-48 box

Three (3) RHSDC-1064-PF-48 OVP/HTTA box

Six (6) transmission lines; diameter 7/8"

One (1) hybrid cable; diameter 1.43"

Three (3) hybrid 2 x 4 cables

Equipment Shelter: 12' x 28' Pre Fab Shelter by Fiberbond