GG
6/19/14
Item No. 29

AN ORDINANCE 2014-06-19-0464

APPROVING AMENDMENTS TO TWO STANDARD TOWER LEASE AGREEMENTS BETWEEN THE CITY OF SAN ANTONIO AND SAN ANTONIO MTA, L.P. D/B/A VERIZON WIRELESS, FOR WIRELESS TOWER LOCATED AT FIRE STATION 43 AND O.P. SCHNABEL SITES.

* * * * *

WHEREAS, in 1997 the City executed two Standard Tower Lease Agreements ("Tower Leases") with the predecessor in interest of San Antonio MTA, L.P., d/b/a Verizon Wireless, authorizing the installation of wireless equipment and facilities on wireless towers located on City property at 2059 W. Bitters Road, San Antonio, Texas 78248 (Fire Station 43 Site) and at 10100 Belga Street, San Antonio, Texas 78240 (O.P. Schnabel Site); and

WHEREAS, in accordance with Chapter 37 of the City Code, Verizon Wireless submitted applications to undertake network upgrades of its telecommunications equipment and facilities at both sites, which resulted in contract negotiations between the parties to amend the existing Tower Leases ("Lease Amendments"), both of which are attached as Exhibits A and B; and

WHEREAS, the proposed network upgrades authorized by the Lease Amendments would allow Verizon Wireless to provide enhanced broadband data coverage to customers in the areas served by the wireless towers located at the Fire Station 43 and O.P. Schnabel Sites; and

WHEREAS, under the proposed Lease Amendments, Verizon Wireless would be able to make future network upgrades by simply providing notice and complying with local regulations for obtaining a work permit without reopening the Tower Leases to renegotiation, and the City would receive increases in annual rent from $10,700.00 to $40,000.00 for the Fire Station 43 Site and from $19,100.00 to $40,000.00 for the O.P. Schnabel Site, in addition to a 3% annual escalation factor for the revised term of the two Tower Leases; and

WHEREAS, the Tower Leases, which are scheduled to expire in 2017, would be extended under the proposed Lease Amendments by an initial 5 years, and three optional 5 year terms, potentially extending the Tower Leases through 2037; and

WHEREAS, City staff from the Information Technology Services Department has reviewed the engineering design documents attached to both Lease Amendments, and find that the proposed network upgrades are in compliance with applicable City Code regulations; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The terms and conditions of the Lease Amendments attached to this Ordinance as **Exhibits A and B** are hereby approved and Verizon Wireless is authorized to obtain work permits from the Development Services Department to undertake network upgrades of its

telecommunications facilities at the Fire Station 43 and O.P. Schnabel Sites in compliance with the engineering design documents incorporated into the Lease Amendments.

SECTION 2. The City Manager or her designee is authorized to execute the Lease Amendments attached hereto as **Exhibits A and B**.

SECTION 3. Funds generated by this Ordinance will be deposited into General Fund 11001000, Internal Order 209000000042 and General Ledger 4401170.

SECTION 4. The financial allocations in this ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 5. This Ordinance shall be effective immediately upon passage by eight affirmative votes; otherwise, it shall be effective on the tenth day after passage.

PASSED AND APPROVED this 19th day of June, 2014.

M A Y O R
Julián Castro

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

Robert F. Greenblum, City Attorney

Agenda Item:	**29 (in consent vote: 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 18, 19, 20, 21, 24, 27, 28, 29, 30, 31, 32, 35, 36, 37, 38A, 38B, 39A, 39B, 40A, 40B, 40C)**
Date:	06/19/2014
Time:	10:29:56 AM
Vote Type:	Motion to Approve
Description:	An Ordinance approving amendments to two Standard Tower Lease Agreements between the City of San Antonio and San Antonio MTA, L.P., d/b/a Verizon Wireless, for wireless towers located at Fire Station 43 and O.P. Schnabel sites. [Ben Gorzell, Chief Financial Officer; Hugh Miller, Director, Information Technology Services]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				x
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x			x	
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

EXHIBIT A

FIRST AMENDMENT TO STANDARD TOWER LEASE AGREEMENT

This First Amendment to Standard Tower Lease Agreement (this "**Amendment**") is entered into effective as of _____, 2014, by and between **THE CITY OF SAN ANTONIO, TEXAS, Texas municipal corporation** ("**City**"), and **SAN ANTONIO MTA, L.P.** d/b/a Verizon Wireless ("**Tenant**"), and is as follows:

WHEREAS, City and Tenant previously entered into that certain Standard Tower Lease Agreement dated June 26, 1997 (the "**Lease**") pursuant to which City granted Tenant the right to lease a portion of the City's property for the installation and operation of a communications facility, as more particularly described therein;

WHEREAS, City and Tenant now desire to amend the Lease to clarify and amend certain provisions of the Lease; and

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

1. City and Tenant hereby agree that the initial twenty (20) year term of the Agreement expires on June 25, 2017.

2. Section 4.02 of the Lease is hereby rewritten in its entirety to read as follows:

   4.02 TENANT is hereby granted and shall, if not at that time in default of this Lease, have, for good and valuable consideration give, an option to extend the term of this Lease for four (4) additional consecutive periods of five (5) years after the expiration date of the initial term of this Lease for a final expiration date of June 25, 2037, on the same terms, covenants and conditions and subject to the same exceptions and reservations herein contained, yearly rental excepted.

3. Section 4.03 of the Lease is hereby rewritten in its entirety to read as follows:

   4.03 TENANT shall be deemed to have exercised its option to extend the term of this Lease for each additional five (5) year term unless TENANT terminates it at the end of the then current term by giving the CITY written notice of the intent to terminate at least six (6) months prior to the end of the then current term.

4. The following sentences are hereby added to the end of Section 5.01 of the Lease:

   "Notwithstanding anything in the Lease to the contrary, effective as of the date of the First Amendment to Standard Tower Lease Agreement between the CITY and TENANT (the "First Amendment"), TENANT's total annual rent for 2014 shall be $40,000.00 (regardless of the number of Providers on the Tower), with rent payable in 2014 prorated based on the number of days after January 1, 2014 on which the First Amendment is dated. TENANT shall have thirty (30) days after the effective date of the First Amendment in which to pay to the CITY the prorated amount of such annual rental (taking into account any payment of rent made by TENANT to the CITY for 2014 prior to the date of the First Amendment)."

5. Section 5.03 of the Lease is hereby rewritten in its entirety to read as follows:

   "5.03 The total annual rental for each year of the term of the Lease after 2014, and for each year of any Lease extension term pursuant to Section 4.02 hereof, shall equal 103% of the total annual rental for the immediately preceding year."

6. Section 5.04 of the Lease is hereby deleted in its entirety.

7. Section 5.06 of the Lease is hereby deleted in its entirety.

8. Section 5.07 of the Lease is hereby deleted in its entirety.

9. The following provision is hereby added at the end of Section 14.02:

"Notwithstanding anything herein to the contrary, on and after the effective date of the First Amendment, TENANT shall have the right to sublease the TENANT SUB-PREMISES and the COMMON TOWER AREA, to sublessees who are not already on said Premises or Tower, herein leased and as shown in Exhibit B for market rate only after receiving the CITY's approval. In the event of any such sublease: (a) Sections 14.03 through 14.06 shall not be applicable to such sublease. However, TENANT is responsible for submitting to CITY an updated Exhibit B showing the installation proposed by any sublessee and a structural analysis of the installation by any potential subleases that meets the CITY's standards prior to entering into any sublease and for submission of timely updates to the CITY of any upgrades to sublessee's installed facilities; (b) any gross rental paid by any sublessee(s) shall be divided between the LESSOR and the LESSEE in the following manner: 90% to the CITY and 10% to TENANT. Any sublessee shall be instructed to pay the foregoing percentage amounts directly to the CITY and TENANT respectively. (c) TENANT is responsible to the CITY for the collection or payment of rents by the sublessee to the CITY, and TENANT is liabile to the CITY in the event of failure of payment by sublessee as well as the timely removal of sublessee's facilities in accordance with the terms of the Lease: and (d) TENANT will ensure that sublessee's follow any and all safety and security procedures required by CITY at the SUB-PREMISES and the COMMON TOWER AREA. In this event: (i) TENANT has no obligation to the CITY to sublet all or any part of the premises to any or all potential sublessee(s); and (ii) at the CITY's request, TENANT will provide the CITY with a tri-party agreement to be executed by TENANT, its sublessee, and the CITY to confirm direct payment obligation from the sublessee to the CITY and to indicate the CITY has been notified of the sublease prior to entering into any sublease.

10. Section 15.01 of the Lease is hereby rewritten in its entirety to read as follows:

"15.01. TENANT shall have the right to construct, install, modify, replace, repair, or remove any and all of its antennas, equipment and other improvements on TENANT's COMMON TOWER AREA, TENANT's tower, or TENANT's SUB-PREMISES without the CITY's consent or approval provided that TENANT provides to the CITY prior written notice of such construction, installation. modification, replacement, repair or removal."

11. The Parties' addresses set forth in in Section 22.01 of the Lease are hereby amended and restated to read as follows:

If to the CITY: City of San Antonio
Information and Technology Services Department
Attention:
Post office Box: 839966
San Antonio, TX 78283-3966

If to the TENANT: San Antonio MTA, L.P.
d/b/a Verizon Wireless
180 Washington Valley Road
Bedminster, New Jersey 07921
Attention: Network Real Estate

12. Miscellaneous.

a. Recitals. All recitals to this Amendment are incorporated within the body of this Amendment as if specifically set forth herein. Capitalized terms used herein have the meanings assigned thereto in the Lease, unless the context hereof otherwise requires or provides.

b. Entire Agreement. This Amendment, together with the Lease, sets forth the entire understanding of the parties and supersedes all prior agreements or understandings, whether written or oral, with respect to the subject matter hereof. No amendments or modifications hereto shall be valid unless made in writing and signed by all parties hereto.

b. Binding Effect. This Amendment will extend to and be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

c. Governing Law. This Amendment will be governed by and construed in accordance with the laws of the State of Texas.

d. Affirmation of Lease. City and Tenant agree that, except as modified hereby, the Lease remains valid, binding, and in full force and effect. If there is any conflict or inconsistency between this Amendment and the Lease, this Amendment will control and modify the Lease.

[The remainder of this page is intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Amendment to be effective as of the date first set forth above.

CITY:

THE CITY OF SAN ANTONIO,
a Texas municipal corporation

By: _____
Name: _____
Its: _____

Date: _____

TENANT:

SAN ANTONIO MTA, L.P.
d/b/a Verizon Wireless

By: Verizon Wireless Texas, LLC,
Its General Partner

By: _____
Name: Aparna Khurjekar
Title: Area Vice President Network

Date: 5.6.14

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EXHIBIT B

FIRST AMENDMENT TO STANDARD TOWER LEASE AGREEMENT

This First Amendment to Standard Tower Lease Agreement (this "**Amendment**") is entered into effective as of _____, 2014, by and between **THE CITY OF SAN ANTONIO, a Texas municipal corporation** ("**City**"), and **SAN ANTONIO MTA, L.P.** d/b/a Verizon Wireless ("**Tenant**"), and is as follows:

WHEREAS, City and Tenant previously entered into that certain Standard Tower Lease Agreement dated August 20, 1997 (the "**Lease**") pursuant to which City granted Tenant the right to lease a portion of the City's property for the installation and operation of a communications facility, as more particularly described therein;

WHEREAS, City and Tenant now desire to amend the Lease to clarify and amend certain provisions of the Lease; and

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

1. City and Tenant hereby agree that the initial twenty (20) year term of the Agreement expires on August 19, 2017.

2. Section 4.02 of the Lease is hereby rewritten in its entirety to read as follows:

   4.02 TENANT is hereby granted and shall, if not at that time in default of this Lease, have, for good and valuable consideration give, an option to extend the term of this Lease for four (4) additional consecutive periods of five (5) years after the expiration date of the initial term of this Lease for a final expiration date of August 19, 2037, on the same terms, covenants and conditions and subject to the same exceptions and reservations herein contained, yearly rental excepted.

3. Section 4.03 of the Lease is hereby rewritten in its entirety to read as follows:

   4.03 TENANT shall be deemed to have exercised its option to extend the term of this Lease for each additional five (5) year term unless TENANT terminates it at the end of the then current term by giving the CITY written notice of the intent to terminate at least six (6) months prior to the end of the then current term.

4. The following sentences are hereby added to the end of Section 5.01 of the Lease:

   "Notwithstanding anything in the Lease to the contrary, effective as of the date of the First Amendment to Standard Tower Lease Agreement between the CITY and TENANT (the "First Amendment"), TENANT's total annual rent for 2014 shall be $40,000.00 (regardless of the number of Providers on the Tower), with rent payable in 2014 prorated based on the number of days after January 1, 2014 on which the First Amendment is dated. TENANT shall have thirty (30) days after the effective date of the First Amendment in which to pay to the CITY the prorated amount of such annual rental (taking into account any payment of rent made by TENANT to the CITY for 2014 prior to the date of the First Amendment)."

5. Section 5.03 of the Lease is hereby rewritten in its entirety to read as follows:

   "5.03 The total annual rental for each year of the term of the Lease after 2014, and for each year of any Lease extension term pursuant to Section 4.02 hereof, shall equal 103% of the total annual rental for the immediately preceding year."

6. Section 5.04 of the Lease is hereby deleted in its entirety.

7. Section 5.06 of the Lease is hereby deleted in its entirety.

8. Section 5.07 of the Lease is hereby deleted in its entirety.

9. Parties' addresses set forth in Section 22.01 of the Lease is hereby amended and restated to read as follows:

If to the CITY: City of San Antonio
Information Technology Services Department
Attention:
Post Office Box: 839966
San Antonio, TX 78283-3966

If to the TENANT: San Antonio MTA, L.P.
d/b/a Verizon Wireless
180 Washington Valley Road
Bedminster, New Jersey 07921
Attention: Network Real Estate

10. Any and all references to the City's Department of Asset Management are to be replaced and updated to the City's Information Technology Services Department.

11. Exhibit D of the Lease is revised to reflect that TENANT shall have the right to install up to twelve (12) antennas on the tower at the 120' centerline elevation of the tower. Subject to existing City of San Antonio regulations as amended from time to time, TENANT shall have the right to construct, install, modify, replace, repair, or remove any and all of its antennas, equipment and other improvements at the PREMISES, provided that TENANT provides to the CITY prior written notice of such construction, installation, modification, replacement, repair or removal together with final engineering design drawings and structural analysis of the proposed installation, to be reviewed by CITY for approval, which will not be unreasonably denied. The revised engineering design drawings shall be incorporated into Exhibit D.

12. Miscellaneous.

a. Recitals. All recitals to this Amendment are incorporated within the body of this Amendment as if specifically set forth herein. Capitalized terms used herein have the meanings assigned thereto in the Lease, unless the context hereof otherwise requires or provides.

b. Entire Agreement. This Amendment, together with the Lease, sets forth the entire understanding of the parties and supersedes all prior agreements or understandings, whether written or oral, with respect to the subject matter hereof. No amendments or modifications hereto shall be valid unless made in writing and signed by all parties hereto.

c. Binding Effect. This Amendment will extend to and be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

d. Governing Law. This Amendment will be governed by and construed in accordance with the laws of the State of Texas.

e. Affirmation of Lease. City and Tenant agree that, except as modified hereby, the Lease remains valid, binding, and in full force and effect. If there is any conflict or inconsistency between this Amendment and the Lease, this Amendment will control and modify the Lease.

IN WITNESS WHEREOF, the parties have executed this Amendment to be effective as of the date first set forth above.

CITY:

THE CITY OF SAN ANTONIO,
a Texas municipal corporation

By: _____
Name: _____
Its: _____

Date: _____

TENANT:

SAN ANTONIO MTA, L.P.
d/b/a Verizon Wireless

By: Verizon Wireless Texas, LLC,
Its General Partner

By: _____
Name: Aparna Khurjekar
Title: Area Vice President Network

Date: 3.6.14