

JUL 30 2009



Chandler • Arizona
Where Values Make The Difference

Memorandum

CAPA COUNCIL MEMO NO. 9

DATE: July 20, 2009

TO: MAYOR AND CITY COUNCIL

THRU: W. MARK PENTZ, CITY MANAGER
RICH DLUGAS, ASSISTANT, CITY MANAGER RD
NACHIE MARQUEZ, CAPA DIRECTOR

FROM: MARGARET COULTER, COMMUNICATIONS MANAGER me

SUBJECT: Introduction of Ordinance No. 4160, amending a Wireless Telecommunications Use Agreement between New Cingular Wireless PCS, LLC and the City of Chandler

RECOMMENDATION: Staff recommends approval of Ordinance No. 4160.

BACKGROUND: Ordinance 4160 amends Ordinance 3720 by extending the agreement for additional five-year terms with provisions for the extensions. It also raises the new base rate from \$680 to \$824 per month with provisions for annual increases. The Police and Fire departments have not had any issues with interference to the City's public safety communication systems during New Cingular's operation of a wireless facility at this location. Staff has concluded that the proposed Amendment would be in the best interests of the City of Chandler and its citizens and would satisfy the License provisions.

FINANCIAL IMPLICATIONS: New Cingular Wireless PCS, LLC will also pay the City \$824 a month rent for the Thatcher & McQueen site with provisions for rent increases detailed in the Agreement. There will also be 2.75% privilege taxes applied on any non-interstate telecommunication services.

PROPOSED MOTION: Move to introduce and tentatively adopt Ordinance 4160, approving the First Amendment to the Wireless Telecommunications Use Agreement between New Cingular Wireless PCS, LLC and the City of Chandler for a site known as Thatcher & McQueen, as recommended by staff.

Attachments: Ordinance 4160; Amendment No. One

ORDINANCE NO. 4160

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE FIRST AMENDMENT TO THE WIRELESS TELECOMMUNICATIONS USE AGREEMENT BETWEEN NEW CINGULAR WIRELESS PCS, LLC AND THE CITY OF CHANDLER FOR A SITE KNOWN AS THATCHER & MCQUEEN

WHEREAS, the City of Chandler and New Cingular Wireless PCS, LLC now owned and operating as AT&T (hereinafter "COMPANY") entered into an Agreement authorized pursuant to Ordinance No. 3720 which was a wireless telecommunications use agreement; and

WHEREAS, the parties have agreed to amend the terms of the agreement related to extension provisions and for COMPANY to pay the City pursuant to an amended fee structure;

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AS FOLLOWS:

SECTION I: That the Mayor of the City of Chandler is herewith authorized to execute Amendment No. 1 to Agreement authorized pursuant to Ordinance No. 3720, a wireless telecommunications use agreement between COMPANY and the City of Chandler.

SECTION II: That the various City officers and employees be and they are hereby authorized and directed to perform all acts necessary to give effect to this Ordinance.

SECTION III: This Ordinance shall become effective thirty days from and after its final adoption: provided, however, that the agreement hereby granted shall not become effective unless and until COMPANY has accepted said agreement as provided herein and has carried out such other terms and conditions as may be required before said agreement shall become effective.

INTRODUCED AND TENTATIVELY ADOPTED by the City Council of the City of Chandler, Maricopa County, Arizona, this ___ day of _____, 2009.

ATTEST:

CITY CLERK

MAYOR

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona this ___ day of _____, 2009.

ATTEST:

CITY CLERK

MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. 4160 was duly passed and adopted by the City Council of the City of Chandler, at a regular meeting held on the ___ day of _____, 2009 and that a quorum was present thereat.

City Clerk

Published:

APPROVED AS TO FORM:



AMENDMENT NO. ONE

**TO WIRELESS TELECOMMUNICATIONS USE AGREEMENT BETWEEN
NEW CINGULAR WIRELESS PCS, LLC AND THE CITY OF CHANDLER
FOR AN ENCROACHMENT PERMIT
FOR A SITE KNOWN AS THATCHER & MCQUEEN**

This Amendment Number One is to the Wireless Telecommunications Use Agreement and Encroachment Permit between New Cingular Wireless PCS, LLC now owned and operating as AT & T (hereinafter "COMPANY") and the City of Chandler (hereinafter "CITY") executed on December 14, 2005 (hereinafter "Agreement").

WHEREAS, the City Council approved Ordinance 3720, authorizing CITY to enter into a Wireless Telecommunications Use Agreement and Encroachment Permit for COMPANY to install communication facilities at the SRP Cooper Substation at Cooper Rd. and Queen Creek Rd. and

WHEREAS, both the CITY and COMPANY wish to exercise the option to extend the Agreement with new provisions for term renewal and to establish a new rate structure,

NOW THEREFORE, the parties agree as follows:

1. Section 5.1 of the Agreement is amended as follows:

5.1 The term of this Agreement shall be extended five years as authorized pursuant to the Agreement executed on December 14, 2005. This extension runs from December 14, 2010 through December 13, 2015. This term shall automatically be extended for two (2) additional five-year terms on the anniversary date of the extension of the Agreement unless either party requests a change, in writing, to the Agreement that either party considers substantive in which case: 1) if the parties agree to change, in writing, a provision of the contract which either party considers substantive, the proposed amendment will be subject to City Council approval, or 2) if the parties cannot agree to a change, the contract will expire at the end of the then current term.
2. Section 4.3.1 of the Agreement is amended as follows:

4.3.1 Specifics as to monthly rent or other concessions given in lieu of rent. Rent as of the first day of the month following the extension of the agreement (January 1, 2010) will increase to Eight Hundred and Twenty-Four and 00/100 Dollars (\$824) per month ("Rent). In addition, rent will be increased by an amount equal to two and one-half percent (2.5%) each year on January 1 for the life of the Agreement.
3. Section 16.1 of the Agreement is amended to provide the following notice addresses for COMPANY:

If to COMPANY:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #: PHNXAZP707; Cell Site Name: Cooper and Queen Creek (AZ)
Fixed Asset No: 10093416
12555 Cingular Way, Suite 1300
Alpharetta, GA 30004

With a required copy of the notice sent to the addresses above to AT&T Legal at:

If sent via certified or registered mail:

New Cingular Wireless PCS, LLC
Attn: AT&T Legal Department
Re: Cell Site #: PHNXAZP707; Cell Site Name: Cooper and Queen Creek (AZ)
Fixed Asset No: 10093416
PO Box 97061
Redmond, WA 98073-9761

Or If sent via nationally recognized overnight courier:

New Cingular Wireless PCS, LLC
Attn: AT&T Legal Department
Re: Cell Site #: PHNXAZP707; Cell Site Name: Cooper and Queen Creek (AZ)
Fixed Asset No: 10093416
Redmond, WA 98052-7827

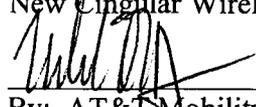
4. All other terms and conditions of the original Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names this ____ day of _____, 2009.

CITY OF CHANDLER:

MAYOR

New Cingular Wireless PCS, LLC



By: AT&T Mobility Corporation
Its: Manager

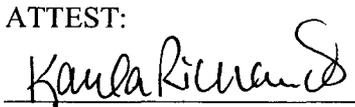
APPROVED AS TO FORM:

City Attorney

ATTEST

City Clerk

ATTEST:



(with evidence of notary)

TENANT ACKNOWLEDGEMENT

STATE OF ARIZONA)
) ss:
COUNTY OF MARICOPA)

On the 14th day of July, 2009, before me personally appeared Mike Helgerson, and acknowledged under oath that he is the Real Estate and Construction Manager of New Cingular Wireless PCS, LLC, the Delaware limited liability company named in the attached instrument, and as such was authorized to execute this instrument on behalf of the company.



Notary Public: Karla Richards
My Commission Expires: 2-5-2010