



RESOLUTION

APPROVING A FIRST AMENDMENT TO TOWER REPLACEMENT AGREEMENT WITH VERIZON WIRELESS

CITY OF NASHUA

In the Year Two Thousand and Seventeen

RESOLVED by the Board of Aldermen of the City of Nashua that the attached First Amendment to Tower Replacement Agreement between the City of Nashua and Cellco Partnership doing business as Verizon Wireless for the purpose of establishing a deadline for tenants to amend their own leases with the City and join the “opt-in group” is approved.

LEGISLATIVE YEAR 2017

RESOLUTION: R-17-099

PURPOSE: Approving a First Amendment to Tower Replacement Agreement with Verizon Wireless

ENDORSERS: Mayor Jim Donchess

COMMITTEE ASSIGNMENT:

FISCAL NOTE: None.

ANALYSIS

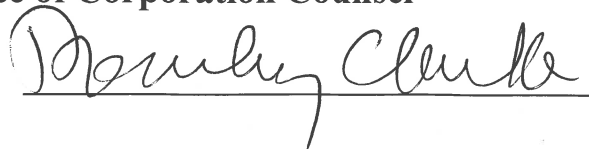
This resolution approves a First Amendment to the Tower Replacement Agreement between the City of Nashua and Cellco Partnership doing business as Verizon Wireless. The City and Verizon entered into a Tower Replacement Agreement in 2015, whereby Verizon agreed to construct a new 180' tall monopole tower to support wireless telecommunications facilities at Mine Falls Park. This Replacement Tower was intended to replace the existing tower located there. At the time the Agreement was executed, the Original Tower supported communications equipment owned and operated by five commercial wireless communications companies, pursuant to lease agreements with the City. The Replacement Tower was necessary because the Original Tower could not support the existing tenants' equipment and the wireless communications equipment proposed by Verizon. The City and Verizon anticipated that the existing tenants would amend their leases with the City to move their equipment from the original tower to the replacement tower. In order to encourage the existing tenants to amend their leases sooner and to reimburse Verizon for the cost of the replacement tower, the Agreement obligated the City to include language in such amendments pursuant to which each Tenant would either (i) join the "Opt-In Group" and pay \$27,000 to Verizon, or (ii) pay its pro rata share of the Remaining Project Costs to Verizon. Tenants that wanted to join the "Opt-In Group" needed to amend their leases consistent with the Agreement by the time Verizon had established the costs of constructing the Replacement Tower. All other Tenants would be considered in the "Opt-Out Group" and pay their pro rata share. The City and Verizon wish to amend the Tower Replacement Agreement to establish a hard deadline of September 1, 2017 by which Tenants must amend their leases to join the Opt-In Group.

This resolution should be referred to the Board of Public Works.

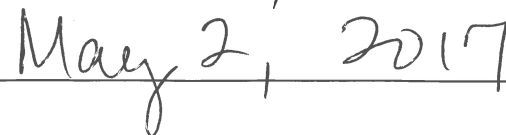
Approved as to form:

Office of Corporation Counsel

By:



Date:



FIRST AMENDMENT TO TOWER REPLACEMENT AGREEMENT

THIS FIRST AMENDMENT TO TOWER REPLACEMENT AGREEMENT (the "Amendment"), effective as of the later of the dates on which it is signed below (the "Effective Date"), is made by and between Cellco Partnership d/b/a Verizon Wireless, with its principal offices at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey, 07920 ("Verizon"), and the City of Nashua, New Hampshire, a municipal corporation in the state of New Hampshire, with a mailing address of 229 Main Street, Nashua, New Hampshire, 03061 ("City"); City and Verizon are at times collectively referred to hereinafter as the "Parties" or individually as the "Party", with reference to the following facts:

- A. The City and Verizon entered into a certain Tower Replacement Agreement dated February 24, 2015 (the "Agreement"), whereby Verizon agreed to construct a new 180' tall monopole tower to support wireless telecommunications facilities (the "Replacement Tower") at Mine Falls Park, located at 10 Whipple Street, Nashua, Hillsborough County, New Hampshire, and shown on the tax maps of the City at Sheet E, Lot 1487, (the "Property"). The Replacement Tower was intended to replace the existing 180' tall monopole tower located at the Property (the "Original Tower").
- B. At the time the Agreement was executed, the Original Tower supported communications equipment owned and operated by the following commercial wireless communications companies, pursuant to lease agreements with the City: AT&T, Sprint, MetroPCS, U.S. Cellular, and T-Mobile (collectively, the "Tenants"). The Replacement Tower was necessary because the Original Tower could not support the Tenants' equipment and the wireless communications equipment proposed by Verizon.
- C. The Parties anticipated that the Tenants would amend their leases to move their equipment from the Original Tower to the Replacement Tower and to increase the load each could install on the Replacement Tower. In order to encourage the Tenants to amend their leases sooner and to reimburse Verizon for the cost of the Replacement Tower, the Agreement obligated the City to include language in such amendments pursuant to which each Tenant would either (i) join the "Opt-In Group" and pay \$27,000 to Verizon per terms established

in Section 5.1 of the Agreement, or (ii) pay its pro rata share of the Remaining Project Costs (as defined in the Agreement) to Verizon.

D. Tenants that wanted to join the Opt-In Group needed to amend their leases consistent with the Agreement by the time Verizon had established the costs of constructing the Replacement Tower. All other Tenants would be considered in the “Opt-Out Group” and pay their pro rata share.

E. The City and Verizon wish to amend the Agreement to establish a hard deadline by which Tenants may amend their leases and join the Opt-In Group.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and in the Agreement, and intending to be legally bound hereby, the Parties agree that the Agreement shall be amended as follows:

1. OPT-IN GROUP. Section 5.1 of the Agreement is hereby deleted in its entirety and replaced with the following:

5.1 Each existing Tenant shall amend its lease agreement with the City to address the Tower Replacement Project. If any such amendment is fully executed on or before September 1, 2017, the relevant Tenant shall be given the option to include in such amendment a provision that when the Tenant amends its lease to increase its tower load on the Replacement Tower it shall pay to Verizon the amount of Twenty Seven Thousand Dollars (\$27,000.00). Tenants that amend their leases as described in the previous sentence shall be defined as being in the “Opt-In Group”, those which do not as being in the “Opt-Out Group”.

2. RELOCATION OF EXISTING TOWER TENANTS’ EQUIPMENT. Verizon shall pay the cost of moving and installing Existing Tower tenants’ equipment on the Replacement Tower (the “Replacement Costs”); however, the Replacement Costs shall not be included in the Project Costs.

3. SURVIVAL OF AGREEMENT; RATIFICATION. In the event of any inconsistencies between the Agreement and this Amendment, the terms of this Amendment shall control. Except as expressly set forth in this Amendment, the Agreement is otherwise unmodified and remains in full force and effect. Each reference in the Agreement to itself shall be deemed also to refer to this Amendment, where appropriate.

4. CAPITALIZED TERMS. All capitalized terms used but not defined in this Amendment shall have the same meanings as defined in the Agreement.

5. COUNTERPARTS. This Amendment may be executed in counterparts each of which, when taken together, shall constitute a single agreement.

[Signature Page Immediately Follows]

IN WITNESS WHEREOF, the parties have executed this Amendment on the dates indicated below.

CITY OF NASHUA

By: _____

Name: James W. Donchess

Title: Mayor

Dated: _____

CELLCO PARTNERSHIP
d/b/a VERIZON WIRELESS

By: _____

Name: _____

Title: _____

Dated: _____