

FIRST AMENDMENT TO PCS ANTENNA CO-LOCATION AGREEMENT
COLUMBIA FIRE DEPARTMENT STATION NO. 5

This First Amendment is entered into on the date of the last signatory noted below (the "Effective Date"), by and between the City of Columbia, Missouri, a municipal corporation (hereinafter "City"), and Cellco Partnership d/b/a Verizon Wireless (hereinafter "Verizon Wireless").

Whereas, City and Verizon Wireless are parties to a certain PCS Antenna Co-Location Agreement, dated September 11, 2006 (hereinafter "Agreement"), for Verizon Wireless' use of a portion of real estate (hereinafter "Leased Premises") located at 1400 Ballenger Place, Columbia, Missouri, also known as Fire Station No. 5; and

Whereas, The Agreement commenced on September 11, 2006 and is scheduled to expire on September 10, 2021; and

Whereas, City and Verizon Wireless desire to extend the term of the Agreement and to otherwise amend and supplement the Agreement as provided herein.

NOW THEREFORE, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged the parties hereto agree to the following amendments, modifications, and supplements to the Agreement:

1. **Section 6. TERM**, of the Agreement is hereby amended by addition of the following as the second paragraph of said Section:

At the end of the second (2nd) additional five year term, this Agreement shall automatically be extended for three (3) additional renewal terms of five (5) years each (each, an "Additional Renewal Term"), with the first such Additional Renewal Term commencing on September 11, 2021; provided, however, either party may elect not to renew the Agreement for any subsequent Additional Renewal Term by giving written notice of its intention not to renew at least six (6) months prior to the end of the then-current Additional Renewal Term. Each Additional Renewal Term shall be on the same terms and conditions as set forth herein, except as provided in Section 7 of the Agreement (as amended).

2. **Section 7. RENT** of the Agreement is hereby amended as follows:

Commencing on September 11, 2021, the annual rent shall be increased to \$26,000.00. At the commencement of the next Additional Renewal Term on September

11, 2026, and at the commencement of each Additional Renewal Term thereafter, annual rent shall increase by an amount equal to twenty percent (20%) of the annual rent payable with respect to the immediately preceding five (5) year Additional Renewal Term.

3. **Section 9. TERMINATION.** The first two (2) sentences of the second (2nd) full paragraph of Section 9 of the Agreement are hereby deleted in their entirety and replaced with the following:

City shall have the right to terminate this Agreement in the event of a material default by Verizon Wireless which default is not cured within sixty (60) days of Verizon Wireless's receipt of written notice thereof; provided, however, in the event that Verizon Wireless has diligently commenced to cure a material default within sixty (60) days of Verizon Wireless's actual receipt of notice thereof and Verizon Wireless requires additional time to completely cure said default, time to cure said default may be extended upon mutual agreement of the parties. During the renewal terms (including Additional Renewal Terms), City may also terminate this Agreement at any time by giving Verizon Wireless twelve (12) months prior written notice of its intent to do so.

4. **Section 14. INSURANCE/INDEMNIFICATION** of the Agreement is deleted in its entirety and replaced with the following:

Verizon Wireless will procure and maintain a commercial general liability insurance policy with a limit of six million dollars (\$6,000,000.00) per occurrence, and seven million dollars (\$7,000,000.00) general aggregate. Coverage to be provided shall be an insurance company authorized to do business in the State of Missouri.

Verizon Wireless agrees to include City as an additional insured, as its interest may appear under this Agreement, on the commercial General Liability policy and to provide City with a Certificate of Insurance evidencing that all coverages, limits and endorsements required are maintained and in full force and effect.

To the fullest extent not prohibited by law, Verizon Wireless shall indemnify and hold harmless the City of Columbia, Missouri, its directors, officers, and employees, from and against all claims, damages, losses and expenses (including but not limited to attorneys' fees) arising by reason of any negligent act or failure to act, or willful misconduct, of Verizon Wireless or anyone directly employed by Verizon Wireless in connection with providing these services except as provided in this Agreement. This provision does not, however, require Verizon Wireless to indemnify, hold harmless or defend the City from its own negligence or willful misconduct, except as set out herein.

5. **Section 16. NOTICE.** The parties' notice addresses in Section 16 of the Agreement are hereby amended as follows:

If to City:
City Manager's Office
Attn: Legal Department
P.O. Box 6015
Columbia, MO 65205-6015
Phone: 1-573-874-7223

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

6. Except as specifically set forth in this Amendment, the Agreement is otherwise unmodified and remains in full force and effect and is hereby ratified and reaffirmed. In the event of any inconsistencies between the Agreement and this Amendment, the terms of this Amendment shall take precedence.

7. City represents and warrants to Lessee that the City is the sole owner of fee simple title to the Property under the Agreement and that consent or approval of no other person is necessary for the City to enter into this Amendment.

8. Nothing in the Agreement shall be deemed to be a waiver of either sovereign immunity or public official immunity by the City, nor any other immunity which may be granted by State or Federal statute or constitution.

9. The Agreement shall be deemed to meet the Commercial Lease safe harbor of the Bankruptcy Code. In the event Verizon Wireless files for bankruptcy relief, Verizon Wireless shall either affirm the Agreement and bring all payments current or reject the Agreement and remove all towers and equipment within the period allowed by applicable law.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their duly authorized officials and officers on the day and year written below.

CITY OF COLUMBIA, MISSOURI

By: _____
John Glascock, City Manager

Date: _____

ATTEST:

By: _____
Sheela Amin, City Clerk

APPROVED AS TO FORM:

By: _____
Nancy Thompson, City Counselor *sv*

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

By:  _____

Name: **Steve LeVar** _____

Title: **Director Network Field Engineering** _____

Date: **7/1/2021** _____