

RESOLUTION NO. R-14-09

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE THE FOURTH AMENDMENT TO THE WATER TOWER LEASE AGREEMENT WITH VERIZON WIRELESS, LLC FOR THE LINDEN WATER TOWER SITE.

WHEREAS, the City of Gladstone has previously entered into an antenna lease agreement and three amendments with Verizon Wireless, LLC and its predecessors in interest, for the Linden Water Tower; and

WHEREAS, Verizon has submitted a request to remove and replace six (6) tower mounted amplifiers, three (3) Remote Radio Units with three (3) hybridflex cable lines and three (3) distribution boxes; and

WHEREAS, Verizon has agreed to pay an additional Two Hundred Dollars (\$200.00) in monthly rent for the new equipment; and

WHEREAS, the city staff has reviewed the plans for the proposed changes provided by Verizon and has approved the project as presented; and

WHEREAS, the City Council finds that the terms of the proposed Amendment with Verizon are in the best interests of the City and promotes the general welfare of its citizens.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GLADSTONE, MISSOURI AS FOLLOWS:

THAT the City Manager is authorized to execute the Fourth Amendment to the Water Tower Lease Agreement for the Linden Water Tower and all other documents necessary to carry out the intent of the Council in concluding this matter.

INTRODUCED, READ, AND ADOPTED BY THE COUNCIL OF THE CITY OF GLADSTONE, MISSOURI THIS 10TH DAY OF FEBRUARY 2014.


Jean B. Moore, Mayor

ATTEST:


Cathy Swenson, City Clerk

**FOURTH AMENDMENT TO
ANTENNA SITE LEASE AT LINDEN WATER TOWER**

THIS FOURTH AMENDMENT TO ANTENNA SITE LEASE ("Amendment") is made this 15 day of MAY, 2014 by and between the City of Gladstone, Missouri, a municipal corporation, with a Taxpayer ID/Charter Number of 44-6005624 (hereinafter referred to as the "City"), and Verizon Wireless (VAW) LLC d/b/a Verizon Wireless, successor-in-interest to CMT Partners d/b/a Cellular One ("Lessee"), with reference to the facts set forth in the Recitals below:

RECITALS

WHEREAS, City and Lessee, or their predecessors-in-interest, are parties to an Antenna Site Lease at Linden Water Tower dated November 12, 1996, as amended by the Amendment to Antenna Site Lease Agreement at Linden Water Tower, dated February 21, 2002, by the Second Amendment to Antenna Site Lease at Linden Water Tower, dated October 29, 2004, and by Third Amendment to Antenna Site Lease at Linden Water Tower, dated March 25, 2008 (as amended, the "Lease"), for the purpose of leasing a portion of City's Property (as described in Exhibit A of the Lease) to construct, operate and maintain a communications facility, including required antennas and antenna support structure(s), as situated substantially as shown on Exhibit B attached to the Lease; and

WHEREAS, City and Lessee desire to amend the Lease to allow Lessee to modify its equipment on the Water Tower, and to otherwise amend the Lease as set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the facts contained in the Recitals above, the mutual covenants and conditions below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. EXHIBIT "B". Exhibit "B" is hereby deleted in its entirety and replaced with Exhibit "B" (Fourth Amendment) which is attached hereto. For all purposes under the Lease, all references to Exhibit "B" shall hereinafter mean and refer to Exhibit "B" (Fourth Amendment).

2. EXHIBIT "C". Exhibit "C" is hereby deleted in its entirety and replaced with Exhibit "C" (Fourth Amendment) which is attached hereto. For all purposes under the Lease, all references to Exhibit "C" shall hereinafter mean and refer to Exhibit "C" (Fourth Amendment).

3. RENT. As consideration for the equipment modifications contemplated by this Amendment, current rent shall be increased by \$200.00 per month commencing on the first day of the month following the date on which Lessee commences installation of the equipment modifications. The City and Lessee agree that they shall acknowledge in writing the date that installation was commenced. The City and Lessee further acknowledge and agree that the initial increased monthly Rent payment(s) shall not actually be sent by Lessee until 45 days after the written acknowledgement confirming the date on which Lessee commenced installation of the equipment modifications.

4. INSURANCE. Paragraph 11.a. of the Lease is hereby deleted in its entirety and replaced with the following:

(1) City and Lessee hereby waive and release any and all rights of action for negligence against the other which may hereafter arise on account of damage to the premises or to the Property, resulting from any fire, or other casualty of the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the parties, or either of them. These waivers and releases shall apply between the parties and they shall also apply to any claims under or through either party as a result of any asserted right of subrogation. All such policies of insurance obtained by either party concerning the premises or the Property shall waive the insurer's right of subrogation against the other party.

(2) City and Lessee each agree that at its own cost and expense, each will maintain commercial general liability insurance with limits not less than \$1,000,000 for injury to or death of one or more persons in any one occurrence and \$500,000 for damage or destruction to property in any one occurrence, or a combined single limit of \$2,000,000 per occurrence for bodily injury or property damage. City and Lessee each agree that it will include the other party as an additional insured.

(3) In addition, City shall obtain and keep in force during any Extension Term a policy or policies insuring against loss or damage to the Water Tower at full replacement cost, as the same shall exist from time to time without a coinsurance feature. City's policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and earthquake unless required by a lender or included in the base premium), including coverage for any additional costs resulting from debris removal and reasonable amounts of coverage for the enforcement of any ordinance or law regulating the reconstruction or replacement of any undamaged sections of the Water Tower required to be demolished or removed by reason of the enforcement of any building, zoning, safety or land use laws as the result of a covered loss, but not including plate glass insurance.

5. INDEMNIFICATION. Paragraph 18 of the Lease is hereby deleted in its entirety and replaced with the following:

Subject to Paragraph 11.a. above, each party shall indemnify and hold the other harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or willful misconduct of the indemnifying party, its employees, contractors or agents, except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of the other party, or its employees, contractors or agents.

6. LIMITATION OF LIABILITY. Paragraph 19 of the Lease is hereby deleted in its entirety and replaced with the following:

Except for indemnifications pursuant to Paragraphs 18 and 24, neither party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

7. PARAGRAPHS 20 and 21. Paragraphs 20 and 21 of the Lease are hereby deleted in their entirety.

8. ENVIRONMENTAL. Paragraph 24 of the Lease is hereby deleted in its entirety and replaced with the following:

City will be responsible for all obligations of compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or concerns as may now or at any time hereafter be in effect, that are or were in any way related to activity now conducted in, on, or in any way related to the Water Tower or Property, unless such conditions or concerns are caused by the specific activities of Lessee in the leased premises.

City shall hold Lessee harmless and indemnify Lessee from and assume all duties, responsibility and liability at City's sole cost and expense, for all duties, responsibilities, and liability (for payment of penalties, sanctions, forfeitures, losses, costs, or damages) and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is in any way related to: a) failure to comply with any environmental or industrial hygiene law, including without limitation any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene concerns or conditions as may now or at any time hereafter be in effect, unless such non-compliance results from conditions caused by Lessee; and b) any environmental or industrial hygiene conditions arising out of or in any way related to the condition of the Water Tower or Property or activities conducted thereon, unless such environmental conditions are caused by Lessee.

9. ASSIGNMENT. The first two sentences of Paragraph 29 of the Lease are hereby deleted in their entirety and replaced with the following:

This Lease may be sold, assigned or transferred by the Lessee without any approval or consent of the City to the Lessee's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of Lessee's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition or other business reorganization, or to any entity which acquires or receives an interest in the majority of communication towers of the Lessee in the market defined by the Federal Communications Commission in which the Property is located. As to other parties, this Lease may not be sold, assigned or

transferred without the written consent of the City, which such consent will not be unreasonably withheld, delayed or conditioned. No change of stock ownership, partnership interest or control of Lessee or transfer upon partnership or corporate dissolution of Lessee shall constitute an assignment hereunder.

10. CONTINUED EFFECT. Except as specifically modified by this Amendment, all of the terms and conditions of the Lease shall remain in full force and effect. In the event of a conflict between any term and provision of the Lease and this Amendment, the terms and provisions of this Amendment shall control. In addition, except as otherwise stated in this Amendment, all initially capitalized terms will have the same respective defined meaning stated in the Lease. All captions are for reference purposes only and shall not be used in the construction or interpretation of this Amendment. Except where otherwise expressly indicated herein, the terms and provisions of this Amendment shall be deemed effective from and after the date of this Amendment.

[SIGNATURE PAGE FOLLOWS]

In Witness Whereof, City and Lessee have caused this FOURTH AMENDMENT TO ANTENNA SITE LEASE AGREEMENT to be executed by each party's duly authorized representative effective as of the date first above written.

CITY:

LESSEE:

City of Gladstone

Verizon Wireless (VAW) LLC
d/b/a Verizon Wireless

By: 

Kirk Davis
City Manager

By: 

Lynn Ramsey
Area Vice President Network

Date: 5-15-14

Date: 4/21/14

Attest:

By: 

Cathy Swenson
City Clerk

RUTH BECKNING

Date: 5-15-14



EXHIBIT "B" (FOURTH AMENDMENT)

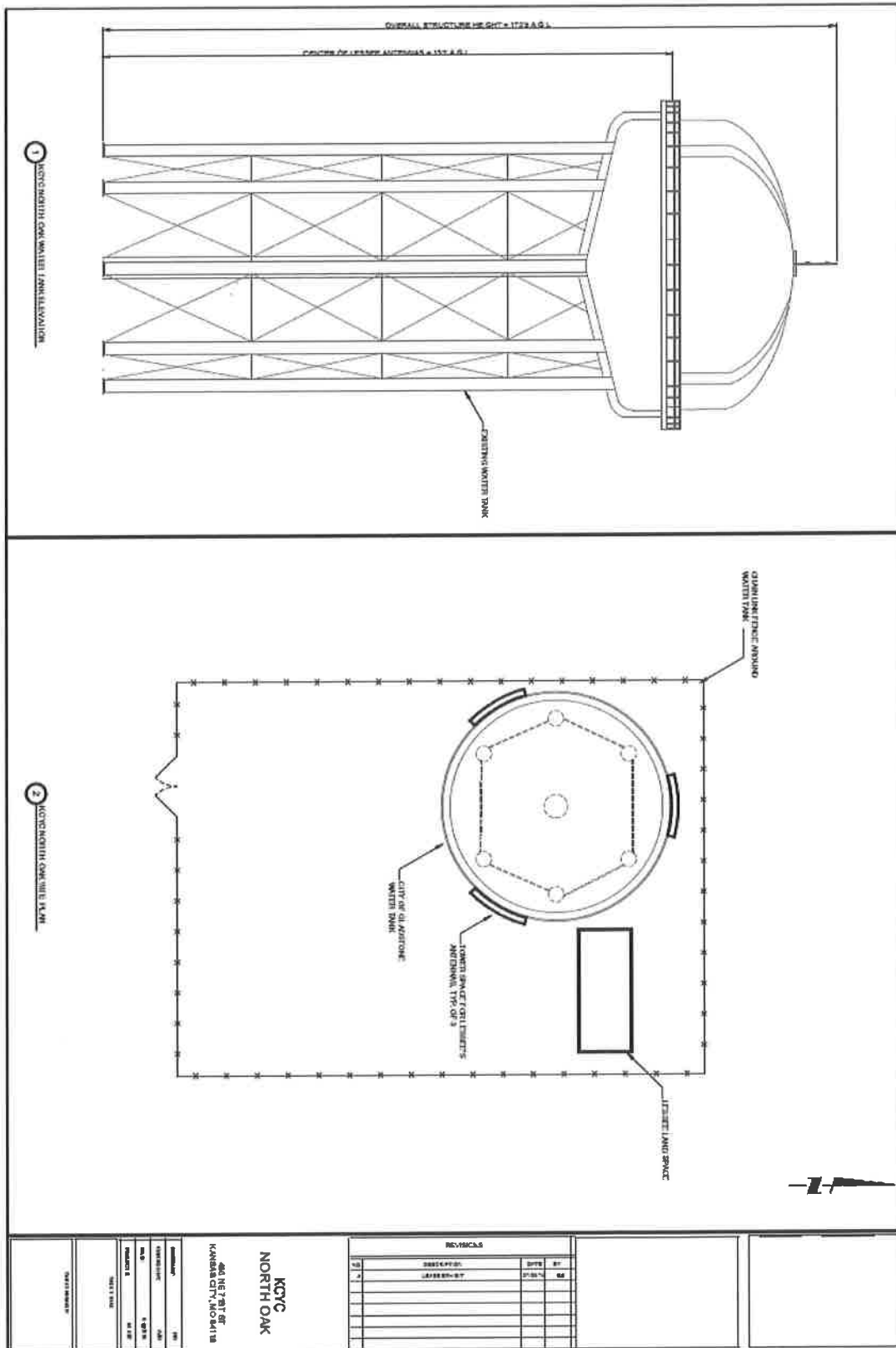


EXHIBIT "C" (FOURTH AMENDMENT)

Communications Equipment

Number of Antennas:	12
Number of Transmission Lines:	18
Diameter of Transmission Lines:	1 5/8"
Location of Antenna(s) (Approved RAD Center):	130'
Additional Equipment to be placed on Water Tower:	Six (6) tower mounted amplifiers Three (3) RRU's with Three (3) Hybriflex Cables Three (3) Distribution Boxes