

RESOLUTION NO. R-17-55

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE TOLLING AGREEMENTS AND GRANTING FURTHER AUTHORITY.

WHEREAS, the City has initiated audits to determine the existence or extent of possible underpayment of the gross receipts license tax by telephone companies operating in the City (“Audits”); and

WHEREAS, the City and T-Mobile Central, LLC (“T-Mobile”) desire to enter into a tolling agreement, as more fully described in Exhibit A attached hereto (“T-Mobile Tolling Agreement”), and the Council finds it in the best interest of the City to enter into such tolling agreement; and

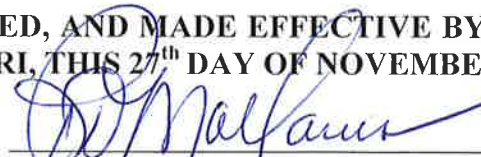
WHEREAS, in the course of conducting the Audits, the City may require additional tolling agreements with other telephone companies and the Council finds it in the best interest of the City to enter into such tolling agreements substantially the same as Exhibit A; and

WHEREAS, in the course of conducting the Audits, the City may be required, as authorized by law, to compel by subpoena the production of books, papers, and other evidence for the purpose of investigating the existence or extent of possible underpayment of the gross receipts license tax on telephone companies.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLADSTONE, as follows:

1. The City Council hereby authorizes the City Manager to execute on behalf of the City the T-Mobile Tolling Agreement, substantially in the form attached hereto as “Exhibit A”, and hereby further authorizes the City Manager to execute on behalf of the City tolling agreements substantially in the form of Exhibit A with other telephone companies as required during the course of the Audits.
2. The City Council hereby authorizes the City Manager to issue as necessary during the course of the Audits and compel by subpoena the production of telephone companies’ books, papers, and other evidence for the purpose of investigating the existence or extent of possible underpayment of the gross receipts license tax on telephone companies.
3. The City Council hereby authorizes the City Manager and Special Legal Counsel to take all such further actions as may be necessary to carry out the intent of this Resolution and the Audits.
4. This Resolution shall be effective upon passage and approval.

INTRODUCED, READ, PASSED, SIGNED, AND MADE EFFECTIVE BY THE COUNCIL OF THE CITY OF GLADSTONE, MISSOURI, THIS 27th DAY OF NOVEMBER 2017.



R.D. Mallams, Mayor

ATTEST:



Ruth Bocchino, City Clerk



*Department of Finance
Memorandum*

DATE: November 21, 2017
TO: Scott Wingerson – City Manager
FROM: Dominic Accurso -- Interim Director of Finance
RE: Tolling Agreement for Wireless Gross Receipts

Section 6.105.170 of the City Code states that “Every telephone company the operation of which shall extend into the city shall pay the city as an annual license tax of seven percent of the gross receipts derived from the furnishing of service within the city as determined and set forth in this article.” We receive a substantial percentage of the wireless gross receipt tax from the large four carriers, Verizon, AT&T, Sprint, and T-Mobile.

Since 2011, the City has noticed a substantial decline in wireless gross receipts revenue. In 2011, the City received \$686,000 from the 4 major carriers and it has decreased 37% or \$259,000 for a total of only \$427,500 in 2017 (see Appendix A). Amounts received from T-Mobile have decreased by almost half since 2011. In the 2017 fiscal year, T-Mobile receipts averaged \$7,900 per month. In the current year, monthly payments received have averaged \$4,700 per month, or a decrease of 40% over the previous year.

City staff has been advised to enter into a tolling agreement with the carriers that have had significant reductions in their gross receipts payments. A tolling agreement is an agreement to waive a right to claim that litigation should be dismissed due to the expiration of a statute of limitations. This will allow time to better assess and determine the additional amounts, if any, that are owed to the City. We are currently looking into auditing the records of T-Mobile and considering moving forward with auditing the records of additional carriers in the future.

A resolution will be on the November 27th agenda to authorize the City Manager to enter into a tolling agreement with T-Mobile and additional tolling agreements if deemed necessary in the future. Should you have any questions or concerns, please contact me at your convenience.

Wireless Gross Receipts Analysis From 2010 Through 2017

	2017	2016	2015	2014	2013	2012	2011	2010	Decrease from 2013 to 2016
Sprint	139,419.23	147,385.79	162,243.36	168,794.02	185,636.79	150,951.13	141,788.14	130,314.65	20.61%
Cingular	104,665.08	116,112.17	127,281.89	163,822.66	192,806.49	209,887.80	232,870.50	229,430.07	39.78%
Verizon	104,181.52	129,154.97	135,033.19	152,978.18	163,124.59	167,492.45	164,831.41	164,153.16	20.82%
Tmobile	79,288.70	95,760.97	130,228.12	127,925.65	132,880.19	143,291.11	147,072.84		27.93%
Total	427,554.53	488,413.90	554,786.56	613,520.51	674,448.06	671,622.49	686,562.89	523,897.88	
Total Wireless Gross receipts	430,811.83	496,691.26	557,911.79	646,602.58	696,709.48	689,450.31	730,754.43	575,422.77	28.71%
	99.24%	98.33%	99.44%	94.88%	96.80%	97.41%	93.95%	91.05%	Percentage of total gross receipts

Highlighted cells represent a decrease 10% or greater from previous year

EXHIBIT A

T-MOBILE TOLLING AGREEMENT

TOLLING AGREEMENT

THIS TOLLING AGREEMENT ("Agreement") is made by and between the City of Gladstone, Missouri (the "City") and T-Mobile Central, LLC ("T-Mobile" and together with the City, the "Parties").

Recitals

WHEREAS, the City has a license tax which requires "[e]very telephone company . . . shall pay the city as an annual license tax of seven percent of the gross receipts...." As set forth in Section 6.105.170 of the City Code ("License Tax");

WHEREAS, the City has commenced an audit to determine the existence or extent of possible underpayment of the License Tax by T-Mobile that the City believes would give rise to certain enforcement actions or claims against T-Mobile;

WHEREAS, the Parties wish to postpone or avoid the inconvenience, expense, and distraction of possible litigation by the City against T-Mobile, while fully preserving any rights of the City as to the Tolled Claims that may exist prior to the Tolling Period (all as defined below in this Agreement) to commence legal action against T-Mobile, which, but for this Agreement, might otherwise be time-barred or limited in any way by any applicable statute of limitations, laches, and other possible time-bars and defenses based in whole or in part on the time which may elapse during the Tolling Period established herein (all of which time-bars and defenses, including, the statute of limitations and laches, are referred to as "Time Defenses");

WHEREAS, neither T-Mobile nor the City, by entering into this Agreement, make any statement as to the merit or extent of merit of any claims, damages or defenses (including the Time Defenses) and the City and T-Mobile agree that both have the power and authority to enter into this Agreement and no other parties are necessary to join herein in order to toll the statute of limitations and other Time Defenses and make this Agreement enforceable; and,

NOW, THEREFORE, in consideration of the mutual commitments herein and other good and valuable mutual consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Terms and Conditions

1. With respect to any and all claims, causes of action or remedies of the City, known or unknown, relating to, arising out of, or in connection with the City's License Tax, including but not limited to claims for delinquent taxes, interest, penalties, and attorney fees, declaratory judgment and injunctive relief, accounting, violation of statute, or any other claims, offsets, or causes of action whatsoever (collectively, the "Tolled Claims"), the Parties hereby stipulate that any applicable statute of limitations or other Time Defenses applicable to the Tolled Claims shall be deemed tolled from the period of November 2, 2017 until the earlier of: (a) the termination of this Agreement by either the City or T-Mobile in accordance with the terms and conditions of this Agreement; or (b) November 2, 2018, unless extended in writing by the Parties, hereinafter such period to be known as the "Tolling Period." For purposes of clarity, the tolling of the statute of limitations and other Time Defenses during the Tolling Period shall survive the Tolling Period and

any termination hereof, such that any Tolled Claim which would have been barred or limited in any way by as a result of any statute of limitations or other Time Defense may be brought by the City without regard to any expiration of time that occurs during the Tolling Period and T-Mobile may not hereinafter assert in any action between the Parties or otherwise the expiration of the statute of limitation or other Time Defense occurring during or as to the passage of time within the Tolling Period as a defense to any such Tolled Claim brought by the City.

2. The City or T-Mobile may terminate the Tolling Period by giving the other Party thirty (30) days prior written notice by e-mail and physical delivery such as overnight delivery of the termination of the Tolling Period. Any applicable statute of limitations or other Time Defenses which apply to the Tolled Claims shall begin to run again from the effective date of termination of the Tolling Period. Prior to expiration or termination of this Agreement, which shall occur upon expiration or termination of the Tolling Period, the City and T-Mobile agree not to file any cause of action against the other relating to the Tolled Claims.

3. Nothing in this Agreement shall be construed as an admission of any fault, liability or wrongdoing by or relating to any person and nothing herein shall be deemed to limit any obligation or liability of either Party, or any defense other than Time Defense tolled during this Agreement, including during the Tolling Period, that may exist.

4. This Agreement may be signed in counterparts, each of which shall be deemed an original, and all such counterparts constituting one Agreement. The exchange of copies of this Agreement and of signature pages electronically or by physical delivery of hard copy shall constitute effective execution and delivery of this Agreement.

5. Any and all notices under this Agreement shall be in writing, and shall be addressed and provided to the Parties by email and physical delivery to the following:

To the City: Daniel G. Vogel
Margaret C. Eveker
Cunningham Vogel & Rost, P.C.
333, S. Kirkwood Rd., Suite 300
St. Louis, MO 63122
dan@municipalfirm.com
maggie@municipalfirm.com
Special Legal Counsel
City of Gladstone, Missouri

To
T-Mobile: Marie Harris
Senior Manager, Tax Audit
T-Mobile
12920 SE 38th St.
Bellevue, WA 98006
Marie.harris@t-mobile.com

6. The rights and obligations of the Parties created by this Agreement shall be governed by and construed in accordance with the laws of the State of Missouri, without regard to conflicts of law.

7. This Agreement may not be amended, modified, or supplemented, except in writing duly executed and delivered by both Parties to this Agreement.

8. This Agreement constitutes the full and complete agreement of the parties concerning the subject matter of the Agreement, and there are no covenants, conditions, or terms other than those expressly set forth in this Agreement.

9. This Agreement shall be effective on the date of the last signature below.

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals as of the date below written.

T-MOBILE

By: Chris Miller

Name: Chris Miller

Title: SVP Tax

Date: 11/7/17

CITY OF GLADSTONE

By: Scott Wingerski

Name: SCOTT WINGERSKI

Title: CITY MANAGER

Date: 11/27/17

R-17-55

TOLLING AGREEMENT EXTENSION

THIS TOLLING AGREEMENT EXTENSION ("Agreement") is made by and between the City of Gladstone, Missouri (the "City") and New Cingular Wireless PCS, LLC a/k/a AT&T Wireless PCS, LLC, a/k/a AT&T Mobility ("AT&T," and together with the City, the "Parties").

Recitals

WHEREAS, the Parties entered into a "Tolling Agreement," (attached hereto as Exhibit A) on November 15, 2017, which established a "Tolling Period";

WHEREAS, the Parties now desire to extend the Tolling Period, as defined in the Tolling Agreement;

NOW, THEREFORE, in consideration of the mutual commitments herein and other good and valuable mutual consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Terms and Conditions

1. The Tolling Period, as defined in the Tolling Agreement, is hereby extended by changing the existing ending date of "November 2, 2018" to now be on and including "May 31, 2019," subject to all other provisions of the Tolling Agreement remaining unchanged.

2. This Agreement shall be effective on the date of the last signature below.

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals as of the date below written.

AT&T
By: [Signature]
Name: GARY JOHNSON
Title: AVP. TAX
Date: 4/2/18

CITY OF GLADSTONE
By: [Signature]
Name: Scott M
Title: City Manager
Date: 4/12/18

Exhibit A

TOLLING AGREEMENT

THIS TOLLING AGREEMENT ("Agreement") is made by and between the City of Gladstone, Missouri (the "City") and New Cingular Wireless PCS, LLC a/k/a AT&T Wireless PCS, LLC, a/k/a AT&T Mobility ("AT&T," and together with the City, the "Parties").

Recitals

WHEREAS, the City has a license tax as set forth in Section 6.105.170 of the City Code ("License Tax");

WHEREAS, the City has commenced an audit to determine the existence or extent of possible underpayment of the License Tax by AT&T that the City believes would give rise to certain enforcement actions or claims against AT&T;

WHEREAS, the Parties wish to postpone or avoid the inconvenience, expense, and distraction of possible litigation by the City against AT&T, while fully preserving any rights of the City as to the Tolled Claims that may exist prior to the Tolling Period (all as defined below in this Agreement) to commence legal action against AT&T, which, but for this Agreement, might otherwise be time-barred or limited in any way by any applicable statute of limitations, laches, and other possible time-bars and defenses based in whole or in part on the time which may elapse during the Tolling Period established herein (all of which time-bars and defenses, including, the statute of limitations and laches, are referred to as "Time Defenses");

WHEREAS, neither AT&T nor the City, by entering into this Agreement, make any statement as to the merit or extent of merit of any claims, damages or defenses (including the Time Defenses) and the City and AT&T agree that both have the power and authority to enter into this Agreement and no other parties are necessary to join herein in order to toll the statute of limitations and other Time Defenses and make this Agreement enforceable; and,

NOW, THEREFORE, in consideration of the mutual commitments herein and other good and valuable mutual consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Terms and Conditions

1. With respect to any and all claims, causes of action, or remedies of the City, known or unknown, relating to, arising out of, or in connection with the City's License Tax, including but not limited to claims for delinquent taxes, interest, penalties, and attorney fees, declaratory judgment and injunctive relief, accounting, violation of statute, or any other claims, offsets, or causes of action whatsoever (collectively, the "Tolled Claims"), the Parties hereby stipulate that any applicable statute of limitations or other Time Defenses applicable to the Tolled Claims shall be deemed tolled from the period of November 2, 2017 until the earlier of: (a) the termination of this Agreement by either the City or AT&T in accordance with the terms and conditions of this Agreement; or (b) November 2, 2018, unless extended in writing by the Parties, hereinafter such period to be known as the "Tolling Period." For purposes of clarity, the tolling of the statute of limitations and other Time Defenses during the Tolling Period shall survive the Tolling Period and any termination hereof, such that any Tolled Claim which would have been barred or limited in

any way by as a result of any statute of limitations or other Time Defense may be brought by the City without regard to any expiration of time that occurs during the Tolling Period and AT&T may not hereinafter assert in any action between the Parties or otherwise the expiration of the statute of limitation or other Time Defense occurring during or as to the passage of time within the Tolling Period as a defense to any such Tolloed Claim brought by the City.

2. The City or AT&T may terminate the Tolling Period by giving the other Party thirty (30) days prior written notice by e-mail and physical delivery such as overnight delivery of the termination of the Tolling Period. Any applicable statute of limitations or other Time Defenses which apply to the Tolloed Claims shall begin to run again from the effective date of termination of the Tolling Period. Prior to expiration or termination of this Agreement, which shall occur upon expiration or termination of the Tolling Period, the City and AT&T agree not to file any cause of action against the other relating to the Tolloed Claims.

3. Nothing in this Agreement shall be construed as an admission of any fault, liability, or wrongdoing by or relating to any person and nothing herein shall be deemed to limit any obligation or liability of either Party, or any defense other than Time Defense tolled during this Agreement, including during the Tolling Period, that may exist.

4. This Agreement may be signed in counterparts, each of which shall be deemed an original, and all such counterparts constituting one Agreement. The exchange of copies of this Agreement and of signature pages electronically or by physical delivery of hard copy shall constitute effective execution and delivery of this Agreement.

5. Any and all notices under this Agreement shall be in writing, and shall be addressed and provided to the Parties by email and physical delivery to the following:

To the Daniel G. Vogel
City: Margaret C. Eveker
Cunningham Vogel & Rost, P.C.
333. S. Kirkwood Rd., Suite 300
St. Louis, MO 63122
dan@municipalfirm.com
maggie@municipalfirm.com
Special Legal Counsel
City of Gladstone, Missouri

To
AT&T: Seth Kaufman
Assistant Vice President - Senior Legal Counsel
AT&T
208 S. Akard St., Room 3153
Dallas, Texas 75202
sk201c@att.com

6. The rights and obligations of the Parties created by this Agreement shall be governed by and construed in accordance with the laws of the State of Missouri, without regard to conflicts of law.

7. This Agreement may not be amended, modified, or supplemented, except in writing duly executed and delivered by both Parties to this Agreement.

8. This Agreement constitutes the full and complete agreement of the parties concerning the subject matter of the Agreement, and there are no covenants, conditions, or terms other than those expressly set forth in this Agreement.

9. This Agreement shall be effective on the date of the last signature below.

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals as of the date below written.

AT&T

By: Linda Fisher

Name: Linda Fisher

Title: AVP - Tax

Date: 11-14-17

CITY OF GLADSTONE

By: Scott Weyers

Name: Scott Weyers

Title: City Manager

Date: 11-15-17

Page 3 of 3

TOLLING AGREEMENT EXTENSION

THIS TOLLING AGREEMENT EXTENSION ("Agreement") is made by and between the City of Gladstone, Missouri (the "City") and T-Mobile Central, LLC ("T-Mobile" and together with the City, the "Parties").

Recitals

WHEREAS, the Parties entered into a "Tolling Agreement," executed by T-Mobile on November 27, 2017, which established a "Tolling Period";

WHEREAS, the Parties now desire to extend the Tolling Period, as defined in the Tolling Agreement;

NOW, THEREFORE, in consideration of the mutual commitments herein and other good and valuable mutual consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Terms and Conditions

1. The Tolling Period, as defined in the Tolling Agreement, is hereby extended by changing the existing ending date of "November 2, 2018" to now be on and including "May 31, 2019," subject to all other provisions of the Tolling Agreement remaining unchanged.

2. This Agreement shall be effective on the date of the last signature below.

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals as of the date below written.

T-MOBILE

By: Chris Miller

Name: Chris Miller

Title: SVP Tax

Date: 3/14/18

CITY OF GLADSTONE

By: Seth Wingersen

Name: Seth

Title: City Manager

Date: 3/14/18