



## **STAFF REPORT TO THE CITY COUNCIL**

**DATE:** Regular Meeting of June 27, 2017

**TO:** Members of the City Council

**SUBMITTED BY:** Holly Smyth, AICP, Planning Director

**SUBJECT:** Amended and Restated Site Lease Agreement between City of Hercules and New Cingular Wireless PCS, LLC (AT&T) at the Refugio Valley/ Falcon Site

### **RECOMMENDED ACTION:**

Approve an Amended & Restated Site Lease Agreement and Memorandum of Lease between City of Hercules and New Cingular Wireless PCS, LLC (AT&T) and Authorize the City Manager to Execute Related Documents.

### **COMMISSION/SUBCOMMITTEE ACTION AND RECOMMENDATION:**

None

### **FISCAL IMPACT OF RECOMMENDATION:**

Current monthly lease revenue for this particular site is now at \$2,078 per month with an annual increase of the Consumer Price Index (CPI) for the San Francisco – Oakland – San Jose Metropolitan Statistical Area not exceed 4% on the “then current base rent”. Over the initial 9-year total lease period the City will have received approximately \$211,442 in total.

The proposed new initial five year Lease is from April 1, 2018 through March 31, 2023 with the right to extend the lease for one additional 5 year period. The new lease proposes to set the escalator to a floor of 3% or the annual increase in the CPI with a maximum cap of 4%, whichever is the higher, thereby guaranteeing a 3% minimum if the CPI is below 3% as it has been in the past. The total revenue to the City at a minimum over the new 10 year lease period would be \$346,495.75 or an increase in revenue of \$58,354.34 over the current lease terms if the existing lease were allowed to extend without modification.

The time spent by the City’s consultant for the lease negotiations is paid for through a deposit account funded by the lease to cover the actual time and material costs of the Center for Municipal Services (CMS), plus any attorney review fees, plus a 20% administration charge.

## DISCUSSION:

On January 27, 2009, the City Council passed Resolution No. 09-014 authorizing the City Manager to execute the initial “Site Lease Agreement” and “Memorandum of Lease” with AT&T to install their ground equipment for a cellular facility on City Property with the cellular arrays being added onto the existing PG&E power poles (which are under a separate private party lease). On March 11, 2009, the City then executed the Site Lease with Option with Cingular Wireless PCS, with the initial base lease rent of \$1,800 per month beginning in June 2009, with annual CPI increase for the preceding year period (with a maximum cap of 4%) with a maximum term of 9 years. The current lease rate is now at \$2,078 per month, or \$24,936 annually.

New Cingular Wireless PCS, LLC approached the City over six months ago to try to lower the existing lease contract for an AT&T Cellular Facility. The City’s consultant, Center for Municipal Solutions (CMS), negotiated a higher rate agreement for the City and a new lease for an initial 5 year period with the right to extend automatically for another five year period. The base rent is proposed at \$2,500 per month with an annual CPI increase (with a maximum cap at 4% increase) or 3%, whichever is higher. A comparison of the key differences between the 2 agreements is summarized as follows.

	<i>Existing Lease</i>	<i>New Lease:</i>
Initial Base Rent	\$1,800/month	
Current Rent t Paid	\$2078/month	\$2,500/month (20.31% increase)
Term	5 Years, plus 5 one-year extensions (9)	5 years with one 5 year extension (10)
Early Termination Fee	None	<b>12 months’ rent</b> as penalty for early termination
Expansion: Previous Lease	No limit & No renegotiation	<b>Rent increase allowed</b> Lease to be renegotiated at the time, depending upon the amount/size of expansion

## ATTACHMENTS:

1. Resolution with Amended and Restated Site Lease and Memorandum of Lease

### ***Financial Impact***

**Description:**

Amended and Restated Site Lease between the City and New Cingular Wireless PCS (AT&T) at site CNU 4617 at Refugio & Falcon. Currently booked to account “100-0000-352.01-04 Cell Tower / AT&T “

**Funding Source:**

Lease revenues to the City anticipated to start at \$30,900 annually to \$39,143 based on annual escalator of 3% or CPI (with maximum not to exceed 4%) whichever is the higher. Commencement date would be April 1, 2018

**Budget Recap:**

Total Estimated cost:	\$	New Revenue: \$6,000 additional annually
		to start
Amount Budgeted:	\$	Lost Revenue: \$
New funding required:	\$	New Personnel: \$
Council Policy Change:	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	