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OFFICE OF THE CITY CLERK
OAKLAND

2014 MAY -8 PM 1:29

AGENDA REPORT

TO: FRED G. BLACKWELL
INTERIM CITY ADMINISTRATOR

FROM: Osborn K. Solitei

SUBJECT: First Amendment to License Agreement
Between Coliseum Authority and AT&T

DATE: April 30, 2014

City Administrator
Approval

Date

5/7/14

RECOMMENDATION

Staff recommends that the City Council adopt City of Oakland Resolution approving and authorizing the execution of the First Amendment to License Agreement between New Cingular Wireless PCS (AT &T) and the Oakland Alameda County Coliseum Authority ("Authority") and certain related matters.

OUTCOME

Adoption of this resolution will authorize the City Administrator to execute First Amendment to the License Agreement with New Cingular Wireless PCS (AT&T) on behalf of the City of Oakland, in conjunction with parallel approvals from the County of Alameda, to allow the Oakland Alameda County Coliseum Authority to amend Wireless License Agreement with New Cingular Wireless PCS (AT&T).

Item: _____
City Council
May 20, 2014

BACKGROUND/LEGISLATIVE HISTORY

In July 2010, the Board of Commissioners approved a License Agreement with New Cingular Wireless PCS (AT&T) to permit it to install a Distributed Antenna System (DAS) at the Oakland Coliseum Complex. Under the License Agreement, the Authority permitted AT&T to install a total of up to 280 antennae to enhance wireless communications within the Coliseum Complex. AT&T now desires to replace a portion of the existing antennae with smaller versions and to install additional antennae. This installation would increase the total number of antennae by 46, which exceeds the allowed installation capacity under the current License Agreement. It is anticipated that this additional installation would enhance wireless services to patrons in the Coliseum Complex and on the surrounding Coliseum property. Anschutz Entertainment Group (AEG), which manages the Coliseum Complex, has reviewed and approved the installation plans under the proposed First Amendment to the License Agreement.

ANALYSIS

The proposed First Amendment to the License Agreement with New Cingular Wireless PCS (AT&T) is included in Attachment A to this staff report. The following is a summary of key terms of the proposed Amendment:

1. The number of permissible antennae would increase by 46, from 280 to 326;
2. As compensation for this additional capacity, AT&T will pay the Authority an additional \$6,000 per year;
3. AT&T will pay full rental amount annually in advance (currently, rent is paid monthly);
4. The annual rent amount will be \$38,782 and will escalate at 3% per year.

COORDINATION

Staff from the City Administrator's Office, the Controller's Office and the Office of the City Attorney has reviewed this report.

COST SUMMARY/IMPLICATIONS

There is no direct cost to the City of Oakland from the adoption of these resolutions. Additional annual fees from the amended license agreements with New Cingular Wireless PCS (AT&T) will be applied to the Authority's annual operating expenses, thereby reducing any cost to the City of Oakland to fund its share of the Authority's operating costs.

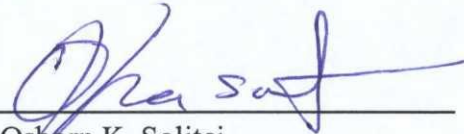
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City Council
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SUSTAINABLE OPPORTUNITIES

There are no sustainable opportunities which have been identified from this action.

For questions regarding this report, please contact Osborn K. Solitei, Finance Director/Controller, at (510) 238-3809.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Osborn K. Solitei", is written over a horizontal line.

Osborn K. Solitei
Finance Director/Controller

Attachment A: Proposed First Amendment to the License Agreement with New Cingular Wireless PCS (AT&T)

Market: Sacramento/ San Francisco
Venue Name: Oakland Coliseum / Ingress-Egress-Expansion
Fixed Asset Number: 10135544

FIRST AMENDMENT TO LICENSE AGREEMENT

THIS FIRST AMENDMENT TO LICENSE AGREEMENT ("**First Amendment**"), dated as of the latter of the signature dates below (the "**Effective Date**"), is entered into by Oakland-Alameda County Coliseum Authority, a California joint powers authority organized and existing under applicable provisions of the California Government Code and an Amended and Restated Joint Exercise of Powers Agreement, dated December 17, 1996, by and between the County of Alameda (the "County") and the City of Oakland (the "City"), having a mailing address of 7000 Coliseum Way, Oakland, CA 94621-1918 ("**Owner**") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 575 Morosgo Drive, Suite 13-F West Tower, Atlanta, GA 30324 ("**Licensee**").

WHEREAS, Owner and Licensee entered into a License Agreement dated July 29, 2010, whereby Owner leased to Licensee certain Licensed Space, therein described, that are a portion of the Stadium located at 7000 Coliseum Way, Oakland, CA 94621-1918 ("**Agreement**"); and

WHEREAS, Owner and Licensee desire to amend the Agreement to increase the number of antennas; and

WHEREAS, Owner and Licensee desire to amend the Agreement to properly reflect changes in the Equipment approved by Owner for installation within the Licensed Space; and

WHEREAS, Owner and Licensee, in their mutual interest, wish to amend the Agreement as set forth below accordingly.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and Licensee agree as follows:

- Licensed Space.** Owner hereby consents to increase the number of antennas installed on the Premises by 46, and to Licensee's use of the additional Antenna Space as allowed by Section 2(a)(B) of the Agreement, all as shown on Exhibit 1-A, attached hereto and incorporated by reference, and the additional area shall be considered a part of the Premises for all purposes of the Agreement
- License Fee.** Commencing with the commencement of installation of the additional antennas, Licensee shall pay Licensor an additional surcharge of Five Hundred and 00/100 Dollars (\$500.00) per month as additional License Fees. This License Fee surcharge shall increase annually on each anniversary of the License Fee Commencement Date in the same percentage amount as other antennas as set forth in Section 5(c) of the Agreement. The increased License Fee will be prorated for the initial partial month. Within sixty (60) days after the commencement of installation of the additional antennas, Licensee will also pay to Licensor the surcharge for the period of time from the commencement of installation until the date Licensee starts making regular payments of the additional \$500 License Fees.
- Annual Payment of License Fee.** The parties desire to change from monthly payments to annual payments of the License Fee, commencing at the same time that the next annual increase in the License Fee occurs. Therefore, the parties agree as follows:

(a) Commencing on the next annual anniversary of the License Fee Commencement Date following the Effective Date of this First Amendment, Licensee shall pay Owner an annual License Fee in an amount equal to the sum of all of the License Fees that would have been paid monthly over the following twelve (12) months.

(b) The annual License Fee payment shall be due on or before each annual anniversary of the License Fee Commencement Date.

(c) The License Fee shall continue to increase on an annual basis as set forth in Section 5(c) of the Agreement.

(d) The annual License Fee payment will not be discounted or reduced due to the advance payment of the License Fee.

(e) If the annual License Fee is reduced or eliminated for any reason, Licensee shall be entitled to a pro-rata refund of the prepaid License Fee, which shall be paid within thirty (30) days after the reduction or elimination of the License Fee.

The terms of this Section 3 shall apply notwithstanding anything to the contrary in the Agreement.

4. **Notices.** Section 18 of the Agreement is amended in part by deleting Licensee's address and replacing it with the following:

“For notices to Licensee:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: ASG ID#21414; Oakland Coliseum, FA# 10135544
575 Morosgo Drive, Suite 13-F, West Tower
Atlanta, GA 30324

With a copy to:

New Cingular Wireless PCS, LLC
AT&T Legal Department – Network Operations
Attn: Network Counsel
Re: ASG ID#21414; Oakland Coliseum-, FA# 10135544
208 S. Akard Street
Dallas, TX 75202-4206”

5. **Other Terms and Conditions Remain.** In the event of any inconsistencies between the Agreement and this First Amendment, the terms of this First Amendment shall control. Except as expressly set forth in this First Amendment, the Agreement otherwise is unmodified and remains in full force and effect. Each reference in the Agreement to itself shall be deemed also to refer to this First Amendment.

6. **Capitalized Terms.** All capitalized terms used but not defined herein shall have the same meanings as defined in the Agreement.

IN WITNESS WHEREOF, the parties have caused this First Amendment to be effective as of the last date written below on this signature page.

OWNER:
Oakland-Alameda County Coliseum
Authority

LICENSEE:
New Cingular Wireless PCS, LLC,

a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

By: _____
Print Name:
Its:
Date:

By: _____
Print Name:
Its:
Date:

[ACKNOWLEDGMENT AND APPROVAL OF CITY, COUNTY AND AEG APPEAR ON FOLLOWING PAGE]

ACKNOWLEDGED AND APPROVED:

CITY OF OAKLAND

By: _____
Print Name: _____
Its: _____
Date: _____, 2014

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

By: _____
Print Name: _____
Its: _____
Date: _____, 2014

ACKNOWLEDGED AND APPROVED:

COUNTY OF ALAMEDA

By: _____
Print Name: _____
Its: _____
Date: _____, 2014

APPROVED AS TO FORM:

OFFICE OF THE COUNTY COUNSEL

By: _____
Print Name: _____
Its: _____
Date: _____, 2014

ACKNOWLEDGED AND APPROVED:

AEG MANAGEMENT OAKLAND, LLC
a California limited liability company

By: _____
Print Name: _____
Its: Authorized Representative
Date: _____, 2014

[NOTARIAL ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGES]

CITY OF OAKLAND ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____ before me, _____, the undersigned, a Notary Public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

Name _____

(typed or printed)

(Seal)

COUNTY OF ALAMEDA ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____ before me, _____, the undersigned, a Notary Public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

Name _____

(typed or printed)

(Seal)

AEG MANAGEMENT OAKALND ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____ before me, _____, the undersigned, a Notary Public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

Name _____

(typed or printed)

(Seal)

EXHIBIT 1-A

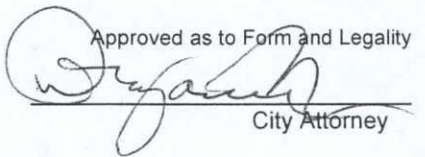
**DESCRIPTION OF PREMISES, ANTENNA MODEL CHANGES, NEW ANTENNAS AND
EQUIPMENT**

Page 1 of 31

to the License Agreement dated July 29, 2010, by and between Oakland-Alameda County Coliseum Authority, a California joint powers authority organized and existing under applicable provisions of the California Government Code and an Amended and Restated Joint Exercise of Powers Agreement, dated December 17, 1996, by and between the County of Alameda (the "County") and the City of Oakland (the "City"), having a mailing address of 7000 Coliseum Way, Oakland, CA 94621-1918, as Owner, and New Cingular Wireless PCS, LLC, as Licensee.

[See Attached]

2014 MAY -8 PM 1:29

Approved as to Form and Legality

City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

**RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION
OF A FIRST AMENDMENT TO LICENSE AGREEMENT BETWEEN
NEW CINGULAR WIRELESS PCS AND THE OAKLAND ALAMEDA
COUNTY COLISEUM AUTHORITY AND CERTAIN RELATED
MATTERS**

WHEREAS, New Cingular Wireless PCS (“AT&T”) has requested that the Oakland Alameda County Coliseum Authority (the “Authority”) enter into a First Amendment to License Agreement (the “Amendment”) increasing the number of antennae permitted under the License Agreement previously approved by the Authority that allowed AT&T to install a Distributed Antenna System (“DAS”) within the stadium located at the Oakland Alameda County Coliseum Complex to enhance AT&T cellular service within the Coliseum Complex;

WHEREAS, the Authority’s agent, AEG Oakland Management, LLC (“AEG”), has approved the additional antennae project; and

WHEREAS, AT&T will pay all the costs of installation and an increase in license fees as consideration for installation of additional antennae; and

WHEREAS, the Management Agreement between the Authority, the City of Oakland (the “City”) and the County of Alameda (the “County”) requires that the Authority obtain the approval of the City and County prior to entering into any license agreement or amendment thereto; and

WHEREAS, the Authority desires to enter into the Amendment; and

WHEREAS, the Authority determines that entering into the Amendment is in the best interest of the Authority; and

WHEREAS, staff has provided the staff report which accompanies this proposed resolution, recommending to the Oakland City Council that it approve and authorize the execution of the Amendment; and

WHEREAS, staff has provided a true and correct copy of the First Amendment to the License Agreement; and

WHEREAS, implementation of the First Amendment to the License Agreement will not have a negative impact on the City of Oakland finances; and

WHEREAS, City of Oakland finances will benefit because revenues generated by the First Amendment to the License Agreement will be applied to Authority operating expenses, thereby reduce the corresponding amount of funds that the City of Oakland must allocate to fund Authority expenses; now, therefore be it

RESOLVED: That the City of Oakland finds, determines, and declares that all the recitals above set forth are true and correct; and be it

FURTHER RESOLVED: That the City of Oakland approves and authorizes the execution and delivery by the Authority's Chair of the First Amendment to the License Agreement, in substantially the form as presented in the proposed License Agreement attached to the Staff Report accompanying this Resolution, with only those changes that the Authority shall approve; and be it

FURTHER RESOLVED: That the Authority's secretary is hereby authorized to attest to, to the extent required, the First Amendment to the License Agreement; and be it

FURTHER RESOLVED: That the City of Oakland authorizes the Authority to do any and all things and take any and all actions and execute and deliver any and all agreements, and other documents which the Authority may deem necessary or advisable in order to effectuate the purposes of this resolution; and be it

FURTHER RESOLVED: That the City of Oakland authorizes and directs the City Administrator, for and on behalf of the City of Oakland, to do any and all things and take any and all actions and execute and deliver any and all agreements and other documents which may be deemed necessary or advisable in order to effectuate the purposes of this resolution.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF, and
PRESIDENT KERNIGHAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California