



## Item No. 12 Town of Atherton

### CITY COUNCIL STAFF REPORT – CONSENT AGENDA

**TO:** HONORABLE MAYOR AND CITY COUNCIL  
GEORGE RODERICKS, CITY MANAGER

**FROM:** ROBERT OVADIA, PUBLIC WORKS DIRECTOR

**DATE:** SEPTEMBER 15, 2021

**SUBJECT:** THIRD AMENDMENT TO THE LEASE AGREEMENT WITH  
NEW CINGULAR WIRELESS PCS RELATED TO WIRELESS  
TELECOMMUNICATION FACILITIES AT THE ATHERTON  
TOWN CENTER

#### **RECOMMENDATION**

Approve the third amendment to the Lease with New Cingular Wireless related to wireless telecommunication facilities at the Town Center for a 15-year initial term (broken up into three (3) 5-year renewals), plus the option for an additional 5-year term upon written agreement of both parties; direct the City attorney to prepare and authorize the City Manager to execute the Amendment.

#### **BACKGROUND**

The Town entered into a Lease agreement with Bay Area Cellular Telephone Company (BATC) on November 1, 1986, for the placement of communication facilities at 91 Ashfield Road, which included floor space and usage of the communications tower. The initial term of the lease was ten (10) years, with two successive extensions of five (5) years each.

The first amendment to the lease, dated October 30, 1997, replaced Exhibit B describing the lease area and Section 22, “NOTICES AND OTHER COMMUNICATIONS”, of the Lease.

The second amendment to lease, dated October 23, 2007, with New Cingular Wireless PCS, successor to Bay Area Cellular Telephone Company, provided a new 5-year term beginning on October 1, 2007, with an automatic renewal for two additional 5-year terms for a total of 15 years.. The amendment also extended additional rights to modify, supplement, replace, upgrade, expand or refurbish its facilities within the lease premises. The amendment modified Section 22 regarding Notices, and Section 16 regarding Warranties and Covenants (insurance). As outlined in the amendment, the Lease is set to expire on September 30, 2022.

The Town's construction of the new Town Center includes the demolition and replacement of the existing building which includes a portion of the Lease premises, Town communications facilities,

as well as facilities owned and maintained by Atherton Fiber. Relocation of the telecommunications equipment within the building, operated under the lease, is required to allow for the demolition and replacement of the building. As the Council may recall, during the discussions of replacement of the facilities, staff discussed the ongoing negotiations with Cingular Wireless PCS to pay their fair share of the cost of the new communications that would be incorporated in the pending lease renewal.

In addition to use by Cingular Wireless PCS, the communications tower is used by the Town for its 911 and dispatch communications, as well as repeater and communications services through the County of San Mateo Sheriff's Office and Menlo Park Fire Protection District.

### **ANALYSIS**

In response to the demolition of the existing communications building and its replacement, New Cingular Wireless PCS (Cingular), operating as AT&T, has, at its cost, temporarily relocated facilities to a temporary enclosure along the existing driveway leading out to Fair Oaks Avenue. The Town has also procured the new building to house its communications equipment, hub facilities for Atherton Fiber, as well as space for cellular communications equipment to be leased by Cingular.

The proposed lease amendment includes the following terms:

**Extension of the Lease:** the amendment would provide a new initial term of 5 years, commencing on October 1, 2021, the term of which would automatically renew for up to two (2) additional 5-year terms without further action by Lessor. The term could be extended by an additional 5-years upon mutual written agreement.

**Temporary Facilities:** the amendment formally authorizes the installation of temporary facilities, along the driveway to Fair Oaks Lane, to accommodate the demolition of the existing communications building and replacement with the new building. However, as was noted, this work has already occurred in earnest and anticipation of the final agreement.

**Lease Premises:** replace the exhibit outlining the lease premises to include the space in the new permanent building.

**Construction Cost Reimbursement:** Cingular would reimburse Town 25% (up to \$300,000) of Town's actual costs associated with site preparation, construction and directly related activities required to provide the new communications building that will partially serve as the premises.

**Antenna Tower:** allows Cingular to modify and expand its facilities on the existing tower, clarifies that the Town does not warrant the tower to accommodate Cingular's usage, that tower upgrade or replacement to accommodate such usage would be Cingular's responsibility. Cingular would be responsible to comply with Town Zoning and Wireless Telecommunications Ordinances and

building requirements associated with the use of the tower and the use of the telecommunications building.

Notices: updates the parties to be noticed pursuant to the agreement.

Rent: incorporates an annual rent escalator of 4% per year.

### **FISCAL IMPACT**

The Lease amendment provides cost reimbursement of 25% of the Town's cost to construct the new communications building associated with the Town Center up to \$300,000. The current lease rate paid by AT&T for the lease premises provides revenue of \$63,920 per year. This rate will be annually adjusted by 4% per year.

### **POLICY FOCUS**

The policy focus should center on the desire cost share the construction of the new communications building, retain cellular facilities within the Town Center, and its associated income.

### **PUBLIC NOTICE**

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting in print and electronically. Information about the project is also disseminated via the Town's electronic News Flash and Atherton Online. There are approximately 1,200 subscribers to the Town's electronic News Flash publications. Subscribers include residents as well as stakeholders – to include, but be not limited to, media outlets, school districts, Menlo Park Fire District, service providers (water, power, and sewer), and regional elected officials. The Town maintains an active and up to date Project Website at <http://ca-atherton.civicplus.com/index.aspx?NID=290>.

### **COMMISSION/COMMITTEE FEEDBACK/REFERRAL**

This item \_\_\_ has or  X  has not been before a Town Committee or Commission.

- Audit/Finance Committee (meets every other month)
- Bicycle/Pedestrian Committee (meets as needed)
- PMC & Civic Center Advisory Committee (meets as needed)
- Environmental Programs Committee (meets every other month)
- Park and Recreation Committee (meets each month)
- Planning Commission (meets each month)
- Rail Committee (meets every other month)
- Transportation Committee (meets every other month)