



STAFF REPORT

SAUSALITO CITY COUNCIL

AGENDA TITLE:

Second Amendment to GTE Building Lease Agreement

RECOMMENDED MOTION:

Move to Adopt Resolution approving the Second Amendment to the GTE Building Lease Agreement

SUMMARY

In April, 2009, GTE MobileNet, commonly known as “Verizon” proposed a project to replace the generator and to install three antennas at the site of the Old Fire Station at 300 Spencer Avenue. After a lease and site audit, staff negotiated with Verizon a Second Amendment to the Building Lease Agreement to allow the project to move forward in consideration of additional monthly income in the amount of \$375 per month, commencing with construction of the antennas through May, 2012 – the remainder of the term of the original ground lease agreement.

DISCUSSION

It has been a City Council Priority Calendar item for staff to review the cell tower leases and to initiate negotiations with cell tower lessees for the purpose of lease enforcement and revenue maximization. Accordingly, the City Council Committee “Outreach, MLK, Information Technology and Transportation (“OMIT”) directed staff to prepare a comprehensive audit of all the existing cell tower leases and to audit the on-site equipment to ensure compliance with leases and land use permits. The lease review and site audit was completed. Staff will report to the City Council in a future agenda item on the design of an ongoing audit and enforcement program for all cell tower leases.

The lease review and site audit also further provided staff with the basis and necessary domain expertise from which to measure revenue maximization for future lease negotiations with cell tower providers.

In April, 2009, GTE MobileNet, commonly known as “Verizon” proposed a project to replace the generator and to install three antennas at the site of the Old Fire Station

at 300 Spencer Avenue. Specifically, they requested to amend the existing lease agreement to:

- Add 3 antennas and 9 coax cable runs to the antennas at the fire station at 300 Spencer Ave.
- Replace the existing generator.
- Extend the existing lease ending in May, 2012 to include 3 to 4 five-year renewal terms

Under the aegis of the First Amendment to the Building Lease Agreement executed by the City in May, 1999, Verizon rebuilt the tower and replaced the generator. Under the agreement, the tower and generator became the property of the City. On April 27, 2009, staff authorized the replacement of the replacement generator as it was necessary for continuity of operations on the site. This replacement generator will also become the property of the City.

The original agreement authorized 6 two foot antennas on the site. The May 1, 1999 First Amendment to the Building Lease Agreement authorized the replacement of the six 2 foot antennas with three 8 foot antennas.

Verizon now desires to add three additional antennas. This is a crucial upgrade for Verizon, because Long Term Evolution "LTE" is the industry name for their 4th generation data services. It is necessary for high speed data capability to phones for video and other high bandwidth use.

The proposed Second Amendment is contingent upon Verizon receiving the applicable Conditional Use Permit and Design Review approvals required in accordance with Chapter of the City's Zoning Ordinance.

Staff reviewed the proposal and equipment specifications and believes that with receipt of the applicable Zoning approvals the proposed replacement antennas are justified. Staff concluded that an extension of the term of the lease was not prudent with the City's overall lease enforcement and revenue maximization strategies.

Therefore staff's negotiating position was:

1. Additional monthly lease income in the range of \$250 to \$500 per month for the additional antennas with no added extension to the lease ending 2012; or
2. A complete re-opening and renegotiation of the entire lease agreement.

Verizon and the City settled on the mid-point of the City's range, an additional \$375 per month.

FISCAL IMPACT

The First Amendment to the Building Lease Agreement required an increase in the base rent from the initial rent of \$1,300 per month to \$1,850 per month. The lease requires an annual escalator of the base rent in the amount of CPI, with a cap of 5%. Verizon is currently paying rent in the amount of \$2,392.71.

Effective on the date of the issuance of a building permit for the commencement of construction of the new antennas, the monthly rent for the Premises shall increase in the monthly amount of an additional \$375.00 for a total of \$2,767.71.

STAFF RECOMMENDATIONS

Move to Adopt Resolution approving the Second Amendment to the GTE Building Lease Agreement

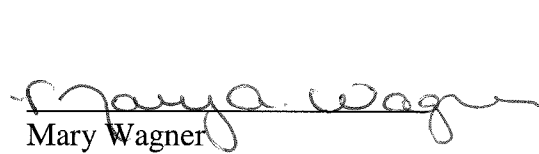
ATTACHMENTS

- Resolution
- Second Amendment to Building Lease Agreement
- Antenna Specifications and Design Drawings

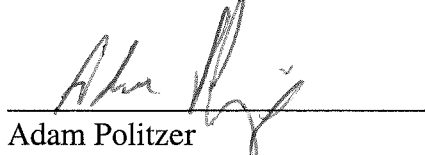
PREPARED BY:


Charlie Francis
Administrative Services Director

REVIEWED BY:


Mary Wagner
City Attorney

SUBMITTED BY:


Adam Politzer
City Manager

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF SAUSALITO
APPROVING THE SECOND AMENDMENT TO THE BUILDING LEASE
AGREEMENT WITH GTE MOBILNET (COMMONLY KNOWN AS "VERIZON")**

WHEREAS, GTE Mobilnet commonly known as "Verizon" has proposed a Second Amendment to the Building Lease Agreement with the City of Sausalito for the installation of additional antennas and the replacement of a generator, and

WHEREAS, the City has reviewed Verizon's proposal and has determined that the project is consistent with the terms of the lease agreement, and

WHEREAS, the City has determined that additional rents in the amount of three hundred and seventy five dollars per month, commencing from the date of construction, is adequate consideration for the additional antennas, and

WHEREAS, the City has determined that it is in the public's interest to amend the Building Lease Agreement with Verizon; and

WHEREAS, the approval of the Second Amendment to Building Lease Agreement is exempt from the application of the California Environmental Quality Act (California Public Resources Code Section 21000, et seq., "CEQA"), pursuant to Section 15301 (Class 1 Categorical Exemption) of the State CEQA Guidelines (Title 14, California Code of Regulations Section 15000, et seq.).

NOW, THEREFORE, the City Council of the City of Sausalito does hereby resolve as follows:

1. The City Council hereby finds that the Second Amendment to Building Lease Agreement (the "Second Amendment") is exempt from the application of CEQA pursuant to Section 15301 (Class 1 Categorical Exemption) of the State CEQA Guidelines and the Deputy City Clerk, or her designee, is directed to cause a Notice of Exemption to be posted in accordance with CEQA.
2. The Second Amendment which is attached hereto as Exhibit "A" is hereby approved and the Mayor is authorized to execute the Second Amendment on behalf of the City.
3. Upon execution of the Second Amendment by the Mayor, the City Manager (or his designee), is authorized, on behalf of the City, to approve and/or sign all documents necessary and appropriate to carry out and implement the

Item #: 439
Meeting Date: _____
Page #: 45

Second Amendment, and to administer the City's obligations, responsibilities and duties to be performed under the Second Amendment and related documents.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Sausalito on the ____ day of _____, 2009, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

MAYOR OF THE CITY OF SAUSALITO

ATTEST:

CITY CLERK

Item #: 489
Meeting Date:
Page #: 56

SECOND AMENDMENT TO BUILDING LEASE AGREEMENT

This Second Amendment to the Building Lease Agreement ("Second Amendment") is made this 20th day of October, 2009, by and between the City of Sausalito ("Lessor") and GTE Mobilnet of California Limited Partnership, a California limited partnership, dba Verizon Wireless, (formerly known as GTE Mobile Incorporated), its General Partner ("GTE")

RECITALS

- A. Lessor and GTE entered into that certain Building Lease Agreement dated May 1, 1992 (the "Original Agreement"), allowing GTE to install antennas and equipment on the site located at the Fire Station at 300 Spencer Ave., Sausalito, California which Premises.
- B. Lessor and GTE executed the First Amendment to the Original Agreement on May 18, 2009 (the "First Amendment") to modify the rent for the Premises to increase to the sum of \$22,200 as Base Rent payable in equal monthly installments on One Thousand Eight Hundred Fifty Dollars (\$1,850.00) for the replacement of existing antennas with three eight foot panel antennas. The Original Agreement as amended by the First Amendment shall be referred to collectively herein as the "Agreement." Capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Agreement.
- C. Lessor and GTE desire to enter into this Second Amendment to modify the rent in accordance with the terms set forth below and to provide for the addition of three new antennas and a replacement generator.

AGREEMENT

Now, therefore, for valuable consideration the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. Section 7. Rent. Effective on the date of the issuance of a building permit for the installation/construction of the new equipment as set forth in Section 2 below, the monthly rent for the Premises shall increase in the monthly amount of an additional Three Hundred and Seventy Five Dollars (\$375.00).
2. New Equipment. GTE shall add 3 antennas and associated cables and replace its existing generator as shown on Exhibit A which is attached hereto and

Item #: 489
Meeting Date: _____
Page #: 7

incorporated herein by this reference and which hereby replaces the existing Exhibit A to the Agreement.

- 3. GTE acknowledges and agrees that the effectiveness of this Second Amendment is expressly contingent upon the approval of a Conditional Use Permit and Design Review Permit from the City's Planning Commission in accordance with Chapter 10.45 of the City's Municipal Code.

In witness whereof, Lessor and GTE have executed this Second Amendment and the terms of the Agreement, the terms of the Amendment as of the date and the year first above written.

LESSOR:

CITY OF SAUSALITO, a municipal corporation

Dated: _____, 2009

By: _____
Jonathon Leone, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

TENANT:

GTE MOBILNET OF CALIFORNIA LIMITED PARTNERSHIP, a

Item #: 489
Meeting Date: _____
Page #: 18

California limited partnership, dba Verizon
Wireless

Dated: _____, 2009

By: _____
GTE Mobilnet Incorporated, its general
partner

Item #: 489
Meeting Date:
Page #: 89