



**Item:** Public Hearing for Renewal of Cedar TowerCo, LLC (SPRINT) Cell Site Lease Agreement

**From:** Public Works Department, Water Treatment Division

**Initiated By:** Public Works Department, Water Treatment Division

**Presented By:** Jim Rearden, Public Works Director

**Action Requested:** Conduct Public Hearing and approve Lease Agreement with CedarCo. LLC

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**Public Hearing:**

1. Mayor conducts public hearing, calling three times each for proponents and opponents.
2. Mayor closes public hearing and asks the will of the Commission.

**Suggested Motion:**

1. Commissioner moves:

“I move that the City Commission (approve/not approve) the lease agreement with Cedar TowerCo, LLC (SPRINT) on the City owned Ella water storage tank located in Clara Park, located in Block 6 of the Sunrise Terrace Addition.”

2. Mayor requests a second to the motion, Commission discussion, and calls for the vote. (4/5 vote required)
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**Staff Recommendation:** Staff recommends the City Commission conduct a public hearing and approve a lease agreement for the Cedar TowerCo, LLC (SPRINT) on Ella water storage tank.

**Summary:** This item is a ten (10) year lease with options to renew in five (5) year increments.

**Background:** Ella storage tank is one of four sites that have been utilized for cell service providers over the past several years. This lease agreement will continue the revenue currently being provided to the City.

The lease is for ten (10) years with the first payment totaling \$15,660.00 with a 3% increase each year thereafter ending with a final payment of \$20,432.74 for the tenth year. The total revenue for the City for the ten year lease is \$179,524.37

**Fiscal Impact:** Revenue for the City with no anticipated budget expenditures

**Alternatives:** The alternative would be to deny the lease agreement which would result in loss of a revenue source.

**Attachments/Exhibits:**

Cedar TowerCo, LLC (SPRINT) lease agreement/Certificate of Insurance  
Notice of Public Hearing



# ELLA TANK SITE AGREEMENT

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Cedar TowerCo, LLC License Agreement

City of Great Falls

4/1/2016

## LICENSE AGREEMENT – ELLA TANK

**This License Agreement** (“Agreement”) is made and entered into this 18<sup>th</sup> day of April 2016 by and between the City of Great Falls (“CITY”), and Cedar TowerCo, LLC a Delaware limited liability company, a wholly owned subsidiary of Sprint Spectrum L.P., whose address is 6391 Sprint Parkway, Kansas 66251-2650 (“Cedar”).

**WHEREAS**, The CITY owns and operates an elevated water storage tank located at approximately 4110 Ella Avenue South, commonly known as the ELLA Tank (more particularly described in Exhibit A), which includes appropriate ground space for the placement of radio receiving and reception equipment, (hereinafter referred to as “Water Tower”) and;

**WHEREAS**, Cedar finds the Water Tower a desirable location for the installation of equipment, including antennas, cabling, base station transceivers and related equipment (the “Equipment”), for the receiving and transmission of radio communications,

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Purpose.** The CITY agrees to grant permission, revocable and terminable as provided herein, to Cedar for the right to use space on the Water Tower and its surrounding property for the installation, operation, and maintenance of the Equipment, provided such use is in conformance with federal, state and local regulations.
2. **Period.** The period of this Agreement is for ten (10) years. This Agreement may be renewable for an additional two (2), five (5) year periods (each, a “Renewal Period”). This Agreement shall automatically renew for each Renewal Period unless either party, not less than ninety (90) days prior to the end of the Initial Period or any Renewal Period (as applicable), gives the other party notice of intent not to renew. Any Renewal Period shall be on the same terms and conditions as the Initial Period, except that payment shall be increased as described in Paragraph 10 below.
3. **Construction.** For equipment that is installed by Cedar during this Agreement, including any Renewal Periods:
  - (a). Cedar agrees that the Equipment it installs on the Water Tower will be installed in a workmanlike manner, shall be in conformance with all applicable laws, shall not interfere with the current operation of the Water Tower, and shall cause no damage to the Water Tower or contamination of the water therein. Cedar further agrees that, prior to installation of any Equipment, it shall provide details of the Equipment installation to the CITY and the CITY shall have the right to reasonably refuse to allow any installation which the CITY feels may damage the Water Tower, cause a hazard to personnel in the proper performance of their duties, or have negative effect on the CITY’s ability to utilize the Water Tower in the manner for which it is intended. Cedar shall utilize clamps and bands to attach equipment to the Water

Tower to the greatest extent possible and shall not drill, cut, grind, weld or perform similar work anywhere on the Water Tower without the express written permission of the CITY.

(b). The CITY reserves the right to require a structural engineering analysis of proposed modifications or attachments to the Water Tower and that this analysis be performed at the expense of Cedar. If required, structural analysis shall be performed by an engineering firm having experience in the design of water storage structures similar to the Water Tower. All improvements installed on the Water Tower by Cedar shall be painted or otherwise colored to match the adjacent tower as nearly as is practical. The installation shall be as inconspicuous as is practical and shall not be used to advertise Cedar products or services in any manner. Should the CITY choose to paint the Water Tower, Cedar will change the color of the Equipment mounted on the Water Tower to match the new color.

4. **Nuisance.** Cedar agrees to take measures necessary to prevent any nuisance caused by the installation or operation of its Equipment including, but not limited to, interference with electrical or electronic devices, noise, or unsightliness.
5. **Electrical Meter/Ground.** Cedar agrees to maintain separately metered electrical service to its equipment. All of Cedar's Equipment shall have a separate electrical ground such that the Water Tower will be electrically isolated from this Equipment.
6. **City Maintenance.** The CITY's needs and maintenance requirements will supersede all other considerations. The CITY will use its best efforts to provide Cedar with notice at least 48 hours in advance of any maintenance that may affect or impact Cedar.
7. **Tank Improvements.** Cedar is aware of the CITY's future needs to sandblast and paint the Water Tower, re-level the Water Tower and modify its foundation and agrees to cooperate fully with the CITY and its contractors in performance of this work at no cost to the CITY so as not to impede the progress of this work. Cedar shall be responsible to protect its own Equipment during this work, including removal from the Water Tower, if necessary. The CITY will not be responsible for damage to Cedar's Equipment during this work including lost revenue caused by physical damage to the equipment.
8. **Vandalism.** The CITY will not be responsible for the security of the site or protection of Cedar's Equipment from vandalism. Should vandalism occur, Cedar will make the required repairs to restore its installation aesthetically so as not to maintain a nuisance. Cedar understands the CITY's position that damage caused by vandalism, if it is not repaired, serves to attract further vandalism and Cedar will therefore work expeditiously to repair damage to its equipment caused by vandalism to protect the Water Tower from being a target for further vandalism. Cedar may provide reasonable protection from vandalism.

**Environmental.** The CITY is not aware of any substance, chemical or waste on the property that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation, however, the CITY believes there is a possibility that a lead primer may exist on the Water Tower under the paint coating. To the fullest extent permitted by law and subject to the limitations set forth in Mont. Code Ann. §2-9-108, each party agrees to defend, indemnify, and

hold the other harmless from any claim, administrative or judicial action, other cause of action, or other liability ("Claim") resulting from the indemnifying party's actions on the Water Tower site except to the extent that any such Claim is due to the negligence or intentional act of the indemnified party, or its respective employees, independent contractors, or agents.

**9. Compensation.**

(a). Cedar agrees to compensate the CITY Fifteen Thousand Six Hundred and Sixty dollars and Zero cents (\$15,660.00) per year, starting April 18 2016 ("Commencement Date"), for the use of the facility. Rent shall be paid one time per year, upon the fifth day of the month in which the anniversary of the Commencement Date falls. For the Initial Period of the Agreement and any subsequent Renewal Period(s), Rent shall be as set forth immediately below. Rent for any Renewal Period shall be subject to a three percent (3%) annual increase which is included in the annual amounts set forth immediately below:

2016	1st Year	\$15,660.00	11 <sup>th</sup> Year	\$21,045.73
	2nd Year	\$16,129.80	12 <sup>th</sup> Year	\$21,677.10
	3rd Year	\$16,613.70	13 <sup>th</sup> Year	\$22,327.41
	4 <sup>th</sup> Year	\$17,112.10	14 <sup>th</sup> Year	\$22,997.23
	5 <sup>th</sup> Year	\$17,625.50	15 <sup>th</sup> Year	\$23,687.15
	6 <sup>th</sup> Year	\$18,154.23	16 <sup>th</sup> Year	\$24,397.76
	7 <sup>th</sup> Year	\$18,698.86	17 <sup>th</sup> Year	\$25,129.69
	8 <sup>th</sup> Year	\$19,259.82	18 <sup>th</sup> Year	\$25,883.58
	9 <sup>th</sup> Year	\$19,837.62	19 <sup>th</sup> Year	\$26,660.10
	10 <sup>th</sup> Year	\$20,432.74	20 <sup>th</sup> Year	\$32,848.08

10. **Access.** The CITY agrees to allow Cedar routine access to the Water Tower balcony between 8:00 a.m. and 4:00 p.m. on the CITY's normal working days, and 24 hour, 7 days a week access to the Water Tower in case of emergencies. Cedar shall obtain access by calling the Water department at (406) 727-1325. Cedar shall provide notice to the CITY prior to accessing the site. Cedar agrees that it will not allow access to the Water Tower to anyone other than employees of Cedar without express permission from the CITY. The required notices hereunder may be made verbally. The CITY, at its sole discretion, may provide Cedar unlimited access to its equipment located on the ground (by providing a key to the gate in the fence) but this will not include access to the Water Tower balcony.

11. **Fall Protection.** Cedar agrees to provide all fall protection equipment necessary to climb the tower and access equipment it owns. Cedar represents to the CITY that it is fully familiar with laws and practices relating to fall protection requirements, utilizes equipment necessary to provide adequate fall protection, provides training to its employees in the proper use of this equipment and will have only Cedar employees that are trained and experienced in the use of fall protection equipment on the Water Tower.

12. **Assignment.** Cedar agrees that it will not assign or transfer this Agreement or sublicense all or any portion of its use of the Water Tower without prior written consent of the CITY, provided that Cedar may (a) assign this Agreement to a parent, affiliate, or purchaser of all or substantially all of Cedar's assets upon written notice to the CITY and (b) mortgage, grant a security interest in or collectively assign its interests in and to this Agreement and/or any of Cedar's Equipment on the Water Tower which is hereby deemed to be Cedar's personal property and not fixtures to secure any indebtedness in favor of its lenders and their assignees.
13. **Notice.**
- (a). Written correspondence to the CITY shall be addressed to Wayne Lovelis, WTP Manager, City of Great Falls, P.O. Box 5021, Great Falls, 59403.
- (b). Written correspondence to Cedar shall be addressed to Cedar TowerCo, LLC, c/o Sprint Property Services, Site No. SP67XC138, Mailstop KSOPHT0101-Z2650, 6391 Sprint Parkway, Overland Park, Kansas 66251-2650, with a mandatory copy addressed to Sprint Law Department, Site No. SP67XC138, Mailstop KSOPHT0101-Z2020, 6391 Sprint Parkway, Overland Park, Kansas 66251-2020.
14. **Improvements.** CITY agrees that Cedar may make such minor improvements to Equipment it owns, as it deems necessary from time to time. Significant modifications, defined here as improvements that affect exterior appearance, or require additional equipment to be attached to the Water Tower, must be approved by the CITY prior to installation, with such approval not to be unreasonably withheld, conditioned or delayed. All improvements shall meet all terms of this Agreement.
15. **Interference.** Cedar agrees to resolve any frequency disputes or interference caused by its Equipment. The CITY will not install, or allow to be installed on the Water Tower, any equipment that will result in interference problems with Cedar's Equipment existing at the time of such installation. The CITY does not intend to allow Cedar exclusive use of the Water Tower and, to the degree practical, Cedar will not design its equipment or its installation to prohibit location of active cellular antennas and associated equipment by other entities.
16. **Termination.** Cedar may terminate this Agreement by notice to the CITY without further liability if: (a) Cedar is unable to obtain all permits or other approvals required from any governmental authority or any easement required from any third party to operate the cellular antenna or other Equipment, (b) if any permit or other approval is canceled, expires or is withdrawn or terminated, (c) if Cedar determines that the Water Tower, or the communications system to which Cedar's site at the Water Tower belongs, becomes unacceptable under Cedar's design and engineering specifications. Either party may terminate this Agreement for material breach by the other. Upon termination, the CITY shall retain all payments made by Cedar. Upon termination, Cedar agrees to remove all equipment owned by Cedar from the tower within 30 days. Improvements made by Cedar to the Water Tower that may benefit the CITY may be left in place upon approval by the CITY.

17. **Police Power.** If Cedar's use of its license under this Agreement: (a) creates a definable risk to the health, safety or welfare of the public; or (b) is declared by a court of competent jurisdiction to be in violation of any federal, state or city statutes or regulations, and Cedar cannot remedy such violations within a reasonable period of time, then the City may terminate this Agreement upon ninety days' prior written notice. The City reserves the right to revoke or terminate the license granted by this Agreement, at its discretion, any time upon 180 days prior written notice to Cedar Tower Co, LLC. Upon such revocation or termination of the license hereby given, the CITY shall retain all payments made by Cedar. Upon such termination, Cedar shall quietly and peacefully surrender the portion of the Water Tower occupied by Cedar, within a reasonable time thereafter, and in substantially the condition existing as of the Commencement Date of this Agreement.

19. **Insurance.** Cedar shall purchase and maintain insurance coverage as set forth below. The insurance policy must, unless not available from the insured, name the City as an additional insured and be written on a "primary—noncontributory basis." Each coverage shall be obtained from an insurance company that is authorized to transact insurance business and write insurance within the state of Montana, with a minimum of "A.M. Best Rating" of A-, VI, as will protect Cedar, the various acts of its agents and representatives, the City and its officers, employees, agents, and representatives from claims for bodily injury and/or property damage which may arise from Cedar's actions under this Agreement. All insurance coverage shall remain in effect throughout the life of this Agreement. All insurance policies must contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least thirty (30) days prior written notice has been given to City.

**Required Insurance Coverage:**

1. Commercial General Liability (Bodily injury and property damage)	\$1,000,000 per occurrence \$2,000,000 aggregate
2. Products and Completed Operations	\$2,000,000
3. Automobile Liability (all owned, hired, non-owned)	\$1,000,000 per accident
4. Workers' Compensation	Not less than statutory limits
5. Employers' Liability	\$1,000,000

An Additional Insured Endorsement shall also be provided as evidence that the City is included or named as an additional or named insured on the commercial general policy. The insurance must be in a form suitable to City.

20. **Indemnification.** Cedar does hereby indemnify defend and save the City, its officers, agents and employees harmless from any and all losses, damage, claims, demands or liability ("Liability") occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act on the part of Cedar or its agents or employees, except to the extent that such Liability arises from or is due to the negligence or intentional acts of the City, its employees, contractors, or agents.



## 21. Miscellaneous

- (a) This Agreement applies to and binds the heirs, successors, executors, and assigns of the parties to this Agreement.
- (b) This Agreement is governed by the state in which the site is located.
- (c) This Agreement supersedes all prior written and verbal Agreements, representations, promises, or understandings between parties.
- (d) Any amendments to the Agreement must be in writing and executed by both parties.
- (e) If any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of the Agreement shall remain valid and enforceable, if the application of such provision to the person other than those as to whom it is held invalid or unenforceable, will not be affected and each provision of the Agreement will be valid and enforceable to the fullest extent permitted by law.
- (f) Each individual executing this Agreement on behalf of a party to this Agreement represents and personally warrants that he has authority to enter into this Agreement on behalf of such party and that this Agreement is binding on such party.

Cedar TowerCo, LLC



BY: Shawn Goettsche

Its: Market Manager

City of Great Falls  
(Owner)

(SEAL & ATTEST)

By \_\_\_\_\_  
Greg Doyon, City Manager

By \_\_\_\_\_  
Lisa Kunz, City Clerk

APPROVED FOR LEGAL CONTENT\*:

By \_\_\_\_\_  
Sara Sexe, City Attorney

\* By law, the City Attorney may only advise or approve contract or legal document language on behalf of the City of Great Falls, and not on behalf of other parties. Review and approval of this document was conducted solely from the legal perspective, and for the benefit, of the City of Great Falls. Other parties should not rely on this approval and should seek review and approval by their own respective counsel.

**EXHIBIT A**

**Legal description of Water Tower site**

The property that is described as the water storage tank located in Clara Park, in block 6 of the Sunrise Terrace Addition to the City of Great Falls, Montana.

Note that a parcel of property exists in Block 3 of the Second Supplement to Sunrise Terrace Addition to the City of Great Falls, Montana also described as Clara Park, which is not a subject of this agreement.

Attention Legal Ads

## NOTICE OF PUBLIC HEARING

Notice is hereby given that the City Commission of the City of Great Falls will conduct a public hearing on August 16, 2016, at 7:00 o'clock p.m. in the Commission Chambers Room 206, Civic Center Building, 2 Park Drive South, Great Falls, Montana, for the purpose of considering a Cell Site Lease Agreement for use of city-owned property (Ella Water Storage Tank) located in Clara Park, Block 6 of Sunrise Terrace Addition. Any interested person may provide public comment at the public hearing or may provide written comment prior to or during said Commission meeting by addressing said comments to the City Clerk, City of Great Falls, P.O. Box 5021, Great Falls, MT 59403.

/s/ Lisa Kunz  
City Clerk

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DO NOT PUBLISH BELOW THIS LINE:

Publication date: July 24, 2016