

CITY OF HIGH POINT

AGENDA ITEM



Title: Second Amendment to License Agreement – SprintCom, Inc.

From: Meghan Maguire, Assistant City Attorney

Meeting Date: September 16, 2019

Public Hearing: N/A

Advertising Date:

Advertised By:

Attachments: Second Amendment to License Agreement

Purpose/Background:

SprintCom, Inc. (“Licensee”) has requested a second amendment to the current license agreement with the City that allows them to use space at the Howard Water Tank for communication equipment. The amendment would result in the following changes:

1. Extend the term of the License by 8 additional Renewal Terms of 36 months each, with future escalations of 9% every 3 years; and
2. Requiring Licensee to pay a base fee in advance of monthly installment of \$2,700.00; and
3. Changing the address of the Licensee.

Budget Impact:

Annual Revenue of approximately \$32,400.00.

Recommendation:

The City Attorney’s Office is recommending that City Council approve the Second Amendment to License Agreement with SprintCom, Inc. and to authorize the City Manager to execute the agreement.

SECOND AMENDMENT TO LICENSE AGREEMENT

This Second Amendment to License Agreement (this "Second Amendment"), effective as of the date last signed below ("Effective Date"), amends a certain License Agreement dated September 16, 1999, between SprintCom, Inc., a Kansas corporation ("Licensee"), and City of High Point, a municipal corporation ("Licensor"), as amended by First Amendment to License Agreement dated September 14, 2009 (collectively, the "Agreement").

BACKGROUND

WHEREAS, the Agreement is set to expire on September 15, 2019, and Licensee and Licensor desire to extend the term of the Agreement.

WHEREAS, Licensee and Licensor desire to modify certain provisions of the Agreement as provided below.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are acknowledged, Licensor and Licensee agree as follows:

1. **Term.** Section 3 of the Agreement is amended by adding the following:

The current term of the Agreement will expire on September 15, 2019. Notwithstanding anything to the contrary in the Agreement, commencing on September 16, 2019, the term of the Agreement is extended for eight (8) additional Renewal Terms of thirty-six (36) months each (each a "New Renewal Term"). The Agreement will continue to renew per the terms of the Agreement. All references in the Agreement to the term shall include the New Renewal Terms.

2. **Modification to Initial Term and Rental.** Section 2 of the Agreement is amended by adding the following:

Starting on the first day of the New Renewal Term and on the first day of every month thereafter, Licensee will pay Base Fee in advance in equal monthly installments of Two Thousand Seven Hundred and No/100 Dollars (\$2,700.00). Base Fee for any partial months will be prorated based upon a 30-day month.

Commencing on September 16, 2024 and every New Renewal Term thereafter, the Base Fee will be increased by nine percent (9%) of the monthly installment of Base Fee payable during the previous New Renewal Term. If the New Renewal Terms commences on any day other than the first day of a calendar month, then the Base Fee will not be increased until the first day of the first calendar month following the commencement of each New Renewal Terms.

Licensee's obligation to pay Base Fee is contingent upon Licensee's receipt of an IRS-approved W-9 form setting forth the tax identification number of Licensor or of the person or entity to whom payment is to be made payable as directed in writing by Licensor. Licensor agrees to enroll for automated payment no less than thirty (30) days prior to the commencement of the New Renewal Term. All of Licensee's payment obligations set forth in the Agreement are conditioned upon Licensor's timely enrollment for automated payment. Licensor may obtain electronic payment enrollment forms by contacting Landlord solutions at 800-357-7641 or by submitting a ticket for direct deposit via the landlord portal at <https://landlordsolutions.sprint.com/>.

3. **Notice Address.** The notice addresses in Section 14 of the Agreement or referenced therein for the party or parties listed below are hereby deleted in their entirety and replaced with the following:

“To Licensor: City of High Point
Attn: City Manager
P.O. Box 230
High Point, North Carolina 27261

With a copy to: City of High Point
Attn: City Attorney
P.O. Box 230
High Point, North Carolina 27261

To Licensee: Sprint Property Services
Sprint Site ID: GB03XC354-A
Mailstop KSOPHT0101-Z2650
6391 Sprint Parkway
Overland Park, Kansas 66251-2650

With a mandatory copy to: Sprint Law Department
Sprint Site ID: GB03XC354-A
Attn.: Real Estate Attorney
Mailstop KSOPHT0101-Z2020
6391 Sprint Parkway
Overland Park, Kansas 66251-2020”

4. **General Terms and Conditions.**

- a. All capitalized terms used in this Second Amendment, unless otherwise defined herein, will have the same meaning as the terms contained in the Agreement.
- b. In case of any inconsistencies between the terms and conditions contained in the Agreement and the terms and conditions contained in this Second Amendment, the terms and conditions herein will control. Except as set forth herein, all provisions of the Agreement are ratified and remain unchanged and in full force and effect.
- c. This Second Amendment may be executed in duplicate counterparts, each of which will be deemed an original.
- d. Each of the parties represents and warrants that it has the right, power, legal capacity and authority to enter into and perform its respective obligations under this Second Amendment.
- e. Licensor agrees to execute concurrently with this Second Amendment a recordable Memorandum of Amendment attached to this Second Amendment as Attachment 1, which Memorandum of Amendment Licensee may record at its own expense in the real property records where the Site is located.

SIGNATURES ON FOLLOWING PAGE

The parties have executed this Second Amendment as of the Effective Date.

Licensors:
City of High Point,
a municipal corporation

Licensee:
SprintCom, Inc.,
a Kansas corporation

By: _____
(please use blue ink)

Printed Name: _____

Title: _____

Date: _____, 201____
(Date must be completed)

By: _____

Printed Name: Silvia J. Lin

Title: Manager, Real Estate

Date: _____, 201_____
(Date must be completed)

ATTACHMENT 1
(MEMORANDUM OF AMENDMENT)

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

Sprint Property Services
Mailstop KSOPHT0101-Z2650
6391 Sprint Parkway
Overland Park, Kansas 66251-2650

[space above this line for Recorder's use]

MEMORANDUM OF SECOND AMENDMENT TO LICENSE AGREEMENT

THIS MEMORANDUM OF SECOND AMENDMENT TO LICENSE AGREEMENT ("Second Amended Memorandum"), by and between City of High Point, a municipal corporation ("Licensor") and SprintCom, Inc., a Kansas corporation ("Licensee"), evidences the License Agreement made and entered into between Licensor and Licensee dated September 16, 1999, as may have been previously amended (collectively, the "Agreement") has been amended by written agreement between the parties (the "Second Amendment"). The term "Agreement" hereinafter refers to and includes the Second Amendment.

This Second Amended Memorandum amends that certain Amended Memorandum recorded with the Office of County Recorder, County of Guilford, State of North Carolina, as document number 2009070109 on November 16, 2009.

The Agreement provides in part that Licensor leases to Licensee certain real property owned by Licensor and located at 906 Howard Place, City of High Point, County of Guilford, State of North Carolina ("Property") for the purpose of installing, operating and maintaining a communications facility and other improvements. The Property is legally described in Exhibit A attached hereto. The portion of the Property leased to Licensee together with non-exclusive utility and access easements (the "Site") is further described in the Agreement.

The new term(s) of Licensee's lease and tenancy under the Agreement, as amended by the Second Amendment, is commencing on September 16, 2019, and is subject to eight (8) renewal terms of thirty-six (36) months each that may be exercised by Licensee.

IN WITNESS WHEREOF, the parties have executed this Second Amended Memorandum as of the day and year indicated below.

Licensor:
City of High Point,
a municipal corporation

Licensee:
SprintCom, Inc.,
a Kansas corporation

By: _____ (NOT FOR EXECUTION)
(please use blue ink)

Printed Name: _____

Title: _____

Date: _____

By: _____ (NOT FOR EXECUTION)

Printed Name: Silvia J. Lin

Title: Manager, Real Estate

Date: _____

EXHIBIT A
TO MEMORANDUM OF SECOND AMENDMENT TO LICENSE AGREEMENT

PROPERTY LEGAL DESCRIPTION (Per Deed Book 1336, page 290 and Deed Book 1110, Page 334)

Tract 1: BEING Lot Nos. 43, 44 and 48 as laid out on the map or plat of property known as North Park, which map is duly recorded in the Office of the Register of Deeds for Guilford County, NC, Plat Book 3, page 79.

Tract 2: BEING Lot No. 45, 46, 47, 51, 52, 125, 126, 135 and 136 of the North Park Subdivision, a plat of which is duly recorded in Plat Book No. 3 at page 79 in the Office of the Register of Deeds of Guilford County, NC to which plat reference is hereby made for further description.

The above described property was conveyed to the party of the first part by B. T. Ward, Commissioner, by deed duly recorded in Book 715, page 423, and being the lands formerly listed for taxation in the name of High Point Savings and Trust Company, Trustee.

SPRINT LEASE AREA:

THAT certain tract or parcel of land lying or being in Guilford County, North Carolina, being a portion of that certain tract of land as, in Deed Book 1336, page 290 and Deed Book 1110, page 334, in the Office of the Register of Deeds for Guilford County, and being more particularly described as follows:

BEGINNING at a point, the southern most corner of the proposed lease area tract; said point having North Carolina Grid Coordinates of: X=1701778.13 and Y=811016.96, said point also being N 19° 11' 29" W 138.58 feet from an existing iron located on the southern most corner of the above mentioned property. Thence from said beginning point the following courses and distances: N 31° 49' 19" W 25 feet to a point; thence N 58° 10' 41" E 26.50 feet to a point; thence S 31° 49' 19" E 25 feet to a point; thence S 58° 10' 41" W 26.50 feet to a point, the point and place of beginning.

ACCESS AND UTILITY EASEMENT: TOGETHER with a utility easement across the lands of the Lessor in a location reasonably designated by the Tenant, or the utility provider installing the service, so as to provide electrical service to the Lease Site sufficient to operate the improvements of Tenant on the Lease Site.

TOGETHER with a non-exclusive right and easement for ingress and egress at all times, on foot or by motor vehicle, including trucks, and for the installation and maintenance of utility wires, cables, conduits and pipes, and equipment, over, under, or along the existing entrance(s), driveway(s), parking area(s), roof, tower, elevator(s), stairway(s), landscaped area(s), and open area(s) located on the property of which the Lease Site is a part extending to and from the Lease Site as described above to and from the adjoining public right of way, as such adjoining public right of way is shown and designated on the Lease Exhibit.