File No. 120069 | Committee Item No. 2
Board Item No. ____________

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Budget and Finance Sub-Committee **Date** May 16, 2012

Board of Supervisors Meeting **Date** ____________

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Completed by: Victor Young **Date** May 11, 2012
Completed by: Victor Young **Date** ____________

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document can be found in the file.

[Lease of Real Property - T-Mobile West Corporation - 720 Moscow Street]

Resolution authorizing the lease by T-Mobile West Corporation of approximately 160 rentable square feet of ground space located at 720 Moscow Street for the San Francisco Fire Department.

WHEREAS, The Real Estate Division has negotiated a lease for 160 rentable square feet within San Francisco Fire Department Station 43, located at 720 Moscow Street (the "Premises"); and,

WHEREAS, T-Mobile West Corporation as tenant ("Tenant"), and Tenant's predecessors-in-interest have operated a Communications Site at the Premises since 2003 without paying rent for such use of the Premises. Tenant and Landlord agree that all Landlord claims for rent and use of Landlord utilities for such pre-Commencement Date activities at the Premises by Tenant and Tenant's predecessors-in-interest shall be satisfied in full by Tenant's delivery of a one-time, non-refundable payment of Three Hundred and Three Thousand Seven Hundred and Sixty Two and 27/100 Dollars ($303,762.27) ("Accrued Rent") to City prior to the Commencement Date; and,

WHEREAS, The Accrued Rent shall be increased by an amount equal to One Hundred and Twenty Five and 84/100 Dollars ($125.84) multiplied by the number of days between February 1, 2012 and the actual Commencement Date; and,

WHEREAS, The Conditional Use Application was determined by the San Francisco Planning Department to be categorically exempt from the environmental review process, pursuant to Class 1 exemptions of Title 14 of the California Administrative Code; and,

WHEREAS, Under Motion No. 16547 unanimously approved by the San Francisco Planning Commission (Planning Commission) at their meeting of March 20, 2003 adopted the

Conditional Use Application No. 2002.0877CR, a copy of which is on file with the Clerk of the Board of Supervisors in File No. 120069 which authorized Tenant's use of Premises, subject to certain conditions, and are incorporated herein by reference; and,

WHEREAS, In accordance with the recommendation of the Fire Chief and the Director of Property, the Director of Property is hereby authorized to take all actions, on behalf of the City and County of San Francisco ("City"), as landlord, to execute a lease (the "Lease") with Tenant, for the Premises, a copy of which is on file with the Clerk of the Board of Supervisors in File No. 120069 and are incorporated herein by reference; and,

WHEREAS, The term of the Lease shall be five years with an estimated commencement date of May 1, 2012 (the "Commencement Date"); and,

WHEREAS, The monthly base rent of the Lease shall be Three Thousand Five Hundred Dollars ($3,500) per month and such rent shall be adjusted annually using the Consumer Price Index; and,

WHEREAS, The Lease shall provide three extension options of five years each, now therefore, be it

RESOLVED, That in accordance with the recommendation of the Fire Chief and Director of Property, the Board of Supervisors hereby approves the Lease and the transaction contemplated thereby in substantially the form of such agreement presented to the Board and authorizes the Director of Property to execute the Lease; and, be it

FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of Property to enter into any amendments or modifications to the Lease or Consent that the Director of Property determines, in consultation with the City Attorney, are in the best interest of the City, do not materially increase the obligations or liabilities of the City, are necessary or advisable to effectuate the purposes of the Lease and Consent and are in compliance with all applicable laws, including City's Charter.

Recommended:

Chief 04/06/12
San Francisco Fire Department

Acting Director of Property

Item 2 File 12-0069	Department: Real Estate Division, Fire Department

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would authorize a new five-year lease, with three additional five-year options, between the Fire Department and T-Mobile West Corporation (T-Mobile) for 160 square feet of ground space at the rear and on the roof at 720 Moscow Street, otherwise known as Fire Station 43, for specified mobile/wireless telecommunication equipment.

Key Points

- After receiving the required Planning Department and Department of Building Inspection approvals, Cingular Wireless (Cingular) installed antennas and related telecommunications equipment at Fire Station 43, located at 720 Moscow Street on September 1, 2003. As a condition of Cingular's merger with AT&T, Cingular transferred various telecommunications equipment sites, including 720 Moscow Street, to T-Mobile in January 2005.
- However, the City never entered into a lease with Cingular or T-Mobile, to use the subject City-owned Fire Department property at 720 Moscow Street, for locating and operating such telecommunications equipment.

Fiscal Impacts

- Prior to commencement of the proposed lease, T-Mobile will be required to make a one-time back rent payment of $318,989 to the Fire Department, which includes (a) $303,762 to cover the rent, including annual Consumer Price Index (CPI) adjustments, and utility expenses between September 1, 2003 and January 31, 2012, and (b) $15,227, based on a rental rate of $125.84 per day times approximately 121 days, for the period from February 1, 2012 through the actual commencement date of the proposed lease, which is estimated to be June 1, 2012.
- The proposed lease would have an initial rental rate of $3,500 per month. As shown in Table 2 below, based on a three to six percent increase in the monthly rent on February 1 each year, over the five-year initial term from June 1, 2012 through May 31, 2017, the proposed lease is estimated to generate a total of $225,200 to $241,508 for the Fire Department.

Policy Issues

- The proposed lease with T-Mobile was not awarded based on a competitive bid procedure because (a) Federal law currently requires co-locating cellular companies' equipment to encourage multiple uses on the same sites, and (b) each cellular company determines their own antennas and related equipment needs based on their own cellular companies' network.
- Regarding the fact that the subject property was inadvertently never under a City lease, the Director of Property is dependent on receiving accurate and timely reports about individual City properties from each department. Currently, the Director of Property has no authority over individual City departments to ensure receipt of such information.

Recommendations

- Amend the proposed resolution on page 2, line 20 to add: FURTHER RESOLVED, that the Board of Supervisors finds that competitive bidding procedures for award of the subject lease were impractical or impossible due to Federal law and individual cellular company network needs.

- Approve the proposed resolution, as amended.
- Request that the Director of Property provide input on possible amendments to the City's Administrative Code or other changes to improve centralized reporting and oversight of City properties, including identifying potential unauthorized uses of City properties, wherein the required City leases were never executed.

MANDATE STATEMENT / BACKGROUND

Mandate Statement

In accordance with Administrative Code Article IV, Section 23.30, the Board of Supervisors, by resolution, may authorize the lease of City property. Section 23.30 also provides that the Director of Property shall arrange for leases of City property to the highest responsible bidder in accordance with competitive bidding procedures, unless the Board of Supervisors, by resolution, finds that such competitive bidding procedures are impractical or impossible or authorizes the award of such lease to further a specific public purpose.

Background

On September 5, 2002, Cingular Wireless (Cingular), applied to the City's Planning Department for a Conditional Use to allow six antennas to be mounted in a faux fiberglass chimney on the roof and related communication equipment to be installed at the rear of the City-owned property at 720 Moscow Street, as part of a wireless telecommunication network which would transmit and receive radio signals for cellular telephones operated by Cingular. The proposed site at 720 Moscow Street, cross-street of France Avenue, adjacent to Crocker Amazon Playground, is the location of the City-owned Fire Department Station 43. According to Ms. Marta Bayol, the District General Manager of the Real Estate Division, telecommunications companies typically select equipment location sites based on their customers' needs and telecommunications' signal strength.

The Planning Department staff determined that the proposed Conditional Use application was categorically exempt from environmental review and on March 20, 2003, the Planning Commission approved Cingular's Conditional Use application for the specified communication equipment at 720 Moscow Street (Motion No. 16547). In July, 2003, Cingular received a building permit from the Department of Building Inspection (DBI) to construct the necessary antennas on the roof and install the related telecommunications equipment on the ground at the rear of 720 Moscow Street. On September 1, 2003, Cingular installed such antennas and related telecommunications equipment at Fire Station 43 located at 720 Moscow Street.

According to Mr. John Updike, the Director of the Real Estate Division, although Cingular received the appropriate Planning Department and DBI permits, and constructed the necessary antennas and installed the related equipment at Fire Station 43 located at 720 Moscow Street on September 1, 2003, the City never entered into a lease for Cingular to use the subject City Fire Department property. As a result, to date, the City has not received any revenues from leasing the subject approximately 160 square feet of space at 720 Moscow Street for Cingular's/T-

Mobile's[1] telecommunications equipment since September 1, 2003, or for more than eight years and eight months. Mr. Updike advises that the City inadvertently did not enter into a lease agreement with Cingular or T-Mobile, likely due to poor communications between the various City departments and related City staff changes that occurred[2].

According to Ms. Bayol, in 2009, a representative of T-Mobile approached Fire Department representatives, wanting to enter into a lease agreement and pay their back rent owed to the City for occupying City-owned property consisting of 160 square feet of space at 720 Moscow Street. Mr. Updike advises that lease negotiations commenced between T-Mobile and the Real Estate Division in 2009, and were only recently concluded due to (a) drafting of lease agreement parameters, (b) need to address the back rent owed to the City since September 1, 2003, and (c) T-Mobile's various levels of review and approvals.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would authorize a new lease between the City, on behalf of the Fire Department and T-Mobile West Corporation (T-Mobile) for approximately 160 square feet of ground space at the rear and on the roof at 720 Moscow Street, otherwise known as Fire Station 43, for specified mobile/wireless communication equipment, including equipment cabinets, five antennas, power amplifier, location messaging unit, utility panels and related coaxial cables and conduits. Under the proposed lease, the monthly rent would be set at $3,500 per month, or $21.88 per square foot per month for approximately 160 square feet of space. Under the proposed lease, with 24-hour notice to the Fire Department, T-Mobile personnel would have a non-exclusive license to physically access such communication equipment in order to operate, construct, maintain, restore, or replace the equipment. In accordance with the proposed lease, T-Mobile has installed a sub-meter on the building's electrical power, such that T-Mobile will pay the Fire Department for T-Mobile's actual electrical costs.

The proposed lease would extend for five years from approximately June 1, 2012 through May 31, 2017, and provide three additional five-year options to extend, or a total potential lease term of 20 years, or through May 31, 2032. Under the proposed lease, the initial monthly rent of $3,500 would be annually adjusted on February 1 of each year, by no less than three percent or more than six percent, based on the Bay Area Consumer Price Index (CPI). Prior to exercising each option to extend the subject lease, the base rent would be adjusted to the prevailing market rate for telecommunications space of comparable size and location, as specified in the lease.

In accordance with the proposed lease, prior to commencement of the subject lease, T-Mobile would be required pay the City back rent of (a) $303,762 to cover the rent, including annual Consumer Price Index (CPI) adjustments, and utility expenses between September 1, 2003 and January 31, 2012, and (b) $125.84 per day multiplied by the number of days between February 1, 2012 and the commencement of the proposed lease, or approximately June 1, 2012.

[1] Ms. Bayol advises that, to avoid antitrust issues, a condition of Cingular's merger with AT&T in 2005 was that Cingular was required to transfer a number of Cingular's existing telecommunications equipment sites, including 720 Moscow Street, to T-Mobile. Therefore, in January, 2005, the ownership and responsibility for the existing telecommunications equipment at Fire Station 43 located at 720 Moscow Street, was transferred from Cingular to T-Mobile.

[2] Real Estate's records indicate there are currently 18 different leases with cellular companies (AT&T, Sprint, T-Mobile, Metro PCS) to use City properties, including seven Fire Department leases.

FISCAL IMPACTS

As noted above, prior to commencement of the proposed lease, T-Mobile would be required to make a one-time $303,762 payment to the City to cover the rent, including annual Consumer Price Index (CPI) adjustments, and utility expenses between September 1, 2003 and January 31, 2012, as summarized in Table 1 below.

Table 1: Projected Rent, with Cost of Living Adjustments, and Utility Expenses Owed by T-Mobile to the City, from September 1, 2003 through January 31, 2012

Fiscal Year	Monthly Rental Rate	Monthly Rent Per Square Foot Based on 160 Square Feet	Annual CPI Adjustment	Annual Rent
FY 2003-04*	$2,500	$15.63	1.4%	$25,000
FY 2004-05	2,535	15.84	1.1%	30,420
FY 2005-06	2,563	16.02	3.9%	30,755
FY 2006-07	2,663	16.64	3.4%	31,954
FY 2007-08	2,753	17.21	4.2%	33,040
FY 2008-09	2,869	17.93	0.2%	34,428
FY 2009-10	2,875	17.97	1.1%	34,497
FY 2010-11	2,906	18.16	3.3%	34,877
FY 2011-12**	3,002	18.76	n/a	21,016
Subtotal				**$275,987**
Utilities* **				**27,775**
Total				**$303,762**

*Based on ten months from September 1, 2003 through June 30, 2004.

**Based on seven months from July 1, 2011 through January 31, 2012.

*** Based on average rate of $275 per month for the 101 months from September 1, 2003 through January 31, 2012.

Ms. Bayol advises that the original monthly rental rate, for the 160 square feet of space, of $2,500 for FY 2003-04, as shown in Table 1 above, was based on the then fair market value of comparable leases, based on location. The original monthly rental rate of $2,500 for FY 2003-2004 reflects an average rate of $15.63 per square foot per month for the 160 square feet of space. The FY 2011-12 monthly rental rate of $3,002 through January 31, 2012, as shown in Table 1 above, reflects an average rate of $18.76 per square foot per month. In addition, as noted above, prior to commencement of the proposed lease, T-Mobile would be required to pay the

Fire Department a rental rate of $125.84 per day[3] times approximately 121 days, or a total of approximately $15,227, for the period from February 1, 2012 through the actual commencement date of the proposed lease, which is estimated to be June 1, 2012. Therefore, prior to commencement of the subject lease, T-Mobile would be required to pay the Fire Department a total of approximately $318,989 in back rent ($303,762 as shown in Table 1 above plus $15,227).

In addition, as shown in Table 2 below, the proposed lease would have an initial rental rate of $3,500 per month, or $21.88 per square foot per month. Based on an estimated three to six percent increase in the base monthly rent on February 1 of each year, over the five-year initial term from June 1, 2012 through May 31, 2017, the proposed lease is estimated to generate a total of $225,200 to $241,508 for the Fire Department, as shown in Table 2 below.

Table 2: Anticipated Revenues for Initial Five Year Term of Lease

Time Period	Monthly Rental Rate	Minimum Monthly CPI Adjustment (3%)	Maximum Monthly CPI Adjustment (6%)	Total Rent
June 1, 2012 – January 31, 2013*	$3,500			$28,000
February 1, 2013 - January 31, 2014	$3,605 - 3,710	$105	$210	$43,260 - $44,520
February 1, 2014 – January 31, 2015	$3,713 – 3,933	108	223	$44,556 – $47,196
February 1, 2015 – January 31, 2016	$3,824 - 4,169	111	236	$45,888 - $50,028
February 1,2016 January 31, 2017	$3,939 – 4,419	115	250	$47,268 - $53,028
February 1, 2017 – May 31, 2017**	$4,057 – 4,684	118	265	$16,228 - $18,736
Total				**$225,200 - $241,508**

*Eight months until first CPI adjustment on February 1, 2013.

** Four months until end of initial lease term on May 31, 2017.

[3] Daily rental rate of $125.84 is based on the proposed monthly rental rate of $3,500 per month plus $275 per month for utilities divided by 30 days.

Based on an electrical sub-meter installed, T-Mobile will pay the Fire Department for actual monthly electrical utilities incurred.

All of the subject lease revenues will accrue to the Fire Department. According to Mr. Mark Corso, of the Fire Department, the Fire Department' budget assumed recovering $315,000 of revenues from the subject lease in FY 2011-12. If the proposed resolution is approved, the Fire Department would receive a total of approximately $322,489 in FY 2011-12, including $318,989 of back rent owed plus $3,500 for rent for June 2011.

POLICY ISSUES

Competitive Bidding of Lease Required Unless Impractical or Impossible

As noted above, Section 23.30 of the Administrative Code provides that the Director of Property shall arrange for leases of City property to the highest responsible bidder in accordance with competitive bidding procedures, unless the Board of Supervisors, by resolution, finds that such competitive bidding procedures are impractical or impossible or authorizes the award of such lease to further a specific public purpose. The proposed lease with T-Mobile was not awarded based on a competitive bid procedure. According to Mr. Updike, it is neither practical nor possible to award cellular company leases on a competitive basis because (a) Federal law currently requires the co-location of cellular companies' equipment at the same location in order to encourage multiple uses on the same sites, such that competitive bidding between companies at the same location to this Federal mandate, and (b) each cellular company conducts their own surveys to determine where each company wants to locate their own antennas and related equipment, such that the location is solely determined by the needs of each cellular companies' network. Therefore, the proposed resolution should be amended on page 2, line 20 to add: FURTHER RESOLVED, that the Board of Supervisors finds that competitive bidding procedures for award of the subject lease were impractical or impossible due to Federal law and individual cellular company network needs.

Unauthorized Uses of City Property Without Entering A Lease Agreement

As discussed above, although Cingular/T-Mobile installed and operated telecommunications equipment at Fire Station 43, located at 720 Moscow Street since September 1, 2003, the City inadvertently never entered into a lease agreement for use of this City-owned property, likely due to poor communications between the various City departments. On March 23, 2012, the Budget and Legislative Analyst's Office issued a report to Supervisor Farrell regarding an evaluation of potential surplus City property. This report found that the Director of Property is dependent on receiving accurate and timely reports about individual City properties from each department, but has no authority over the departments to ensure receipt of such information. As a result, this report documented that the City lacks centralized oversight and controls over its properties.

Therefore, the Budget and Legislative Analyst recommended that the Board of Supervisors request that the Director of Property provide input on possible amendments to the City's Administrative Code or other changes to improve centralized reporting and oversight of the City's properties, including identifying surplus and underutilized properties for possible disposal and ensuring that an accurate inventory of properties is maintained. In addition, the Budget and

Legislative Analyst now further recommends that these possible Administrative Code amendments should include identifying potential unauthorized uses of City properties, wherein the required City leases were never executed.

RECOMMENDATIONS

1. Amend the proposed resolution on page 2, line 20 to add: FURTHER RESOLVED, that the Board of Supervisors finds that competitive bidding procedures for award of the subject lease were impractical or impossible due to Federal law and individual cellular company network needs.

2. Approve the proposed resolution, as amended.

3. Request that the Director of Property provide input on possible amendments to the City's Administrative Code or other changes to improve centralized reporting and oversight of City properties, including identifying potential unauthorized uses of City properties, wherein the required City leases were never executed.

COMMUNICATIONS SITE LEASE

between

CITY AND COUNTY OF SAN FRANCISCO,
as Landlord

and

T-MOBILE WEST CORPORATION,
as Tenant

For the lease of

a Communications Equipment Site at San Francisco Fire Station 43
720 Moscow Street
San Francisco, California

February 1, 2012

** Complete copy of document is located in
File No. 120069

SF03298

File No. 120069

FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)

City Elective Officer Information *(Please print clearly.)*	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors

Contractor Information *(Please print clearly.)*	
Name of contractor: **T-Mobile West Corporation**	
Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. ***Use additional pages as necessary.*** 1. Not applicable 2. Philipp Humm, CEO and President; Jim Alling, Chief Operations Officer; Michael Morgan, Chief Financial Officer. 3. Not applicable 4. Not applicable 5. Not applicable	
Contractor address: c/o T-Mobile USA, Inc; 12920 SE 38th Street; Bellevue, WA 98006; Attn: Lease Administrator; Re: Site SF03298	
Date that contract was approved: *(By the SF Board of Supervisors)*	Amount of contracts: $42,000.00 annually for five years.
Describe the nature of the contract that was approved: Communications Site Lease for wireless facilities on a building owned by the City and County of San Francisco, The San Francisco Fire Station #43.	
Comments: The lease includes a one-time payment of $329,279.00 by T-Mobile for use of the premises prior to commencement.	

This contract was approved by (check applicable):

☐ the City elective officer(s) identified on this form

☑ a board on which the City elective officer(s) serves: San Francisco Board of Supervisors
Print Name of Board

☐ the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

____
Print Name of Board

Filer Information *(Please print clearly.)*	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

______________________________ ______________
Signature of City Elective Officer (if submitted by City elective officer) Date Signed

______________________________ ______________
Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk) Date Signed