

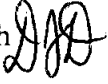


City of Bowie

2614 Kenhill Drive
Bowie, Maryland 20715

MEMORANDUM

To: City Council

From: David J. Deutsch 
City Manager

Subject: Cell Tower Extension of Lease Jericho Park - R-72-08

Date: October 7, 2008

The City has been having discussions with Crown Castle Atlantic Company about extending the lease on the cell tower arrangement that the City has with this company. The current lease terminates on May 31, 2013. Crown Castle Atlantic Company wants to have this lease extended before the termination date.

The City acquired this cell tower lease as part of the land acquisition of the Bogley property in 1987. The City began receiving payments on this lease in 2003 as part of the terms and conditions of this acquisition. The original lease was negotiated and entered into by a party other than the City.

The current lease has the following characteristics:

Monthly Lease	\$1,499.97
Yearly Payment	\$17,999.64 (\$1,499.97 x 12 months)
Annual Increase	\$400/year

The following terms have been agreed to for extending this lease beyond May 31, 2013:

Monthly Lease	\$2,709.14
Yearly Payment	\$32,509.68 (2,709.14 x 12 months)
Annual Increase	3%/year
Signing Bonus	\$8,000
Revenue sharing	25% of any increase for two additional tenants

MAYOR G. Frederick Robinson MAYOR PRO TEM Todd M. Turner

COUNCIL Dennis Brady ♦ James L. Marcos ♦ Diane M. Polangin ♦ Isaac C. Trough ♦ Geraldine Valentino-Smith CITY MANAGER David J. Deutsch
City Hall (301) 262-6200 FAX (301) 809-2302 TDD (301) 262-5013 WEB www.cityofbowie.org

One of the key elements of this lease extension is that the new lease payment amounts would begin with the extension of the lease. Therefore, the new lease payments will begin the first of the month following the execution of the lease by both parties. This will result in \$64,309.86 in additional revenues to the City from this lease over the next four and one half years (the period of time to when the current lease would have expired) calculated as follows:

	<u>Existing</u>	<u>Proposed</u>	<u>Difference</u>
Nov. 2008 – May 2009	\$8,999.80	\$16,254.84	\$7,255.04
May 2009 – 2010	\$18,399.64	\$32,997.32	\$14,597.68
May 2010 – 2011	\$18,799.64	\$33,991.30	\$15,191.66
May 2011 – 2012	\$19,199.64	\$35,011.04	\$15,811.40
May 2012 – 2013	\$19,599.64	\$36,053.72	\$16,454.08
Total Until May 2013	\$89,998.36	\$154,308.22	\$64,309.86

After May 2013, we would have a lease that would initially be \$36,053.72 per year as opposed to \$19,599.64. Also, instead of increasing at \$400 per year, it would increase at three percent per year or \$1,097.37 for the first year. As the base grows, the three percent would be calculated on a larger number, so the three percent amount will be higher from year to year over the \$36,053.72 starting amount. This contrasts with the static growth of \$400 per year under the current lease arrangement.

There will be no additional construction since the tower is already there. The lease extension would be for four (4), five (5) year extensions, or for 20 additional years from June 1, 2013 until May 31, 2033.

Staff Recommendation

Because of the more favorable terms from an economic perspective for the City by extending this lease and because no new construction is planned for this property, other than the addition of new tenants on this tower, from which the City will benefit, staff recommends that City Council approve Resolution R-72-08 to adopt the Fourth Amendment to Option to Lease Agreement and Memorandum of Fourth Amendment to Option to Lease Agreement in substantially similar form to that attached to Resolution R-72-08, which will extend the lease on this property between Crown Atlantic Company and the City of Bowie from June 1, 2013 until May 31, 2033.

DJD/JLF/adf

Attachments

**RESOLUTION OF THE COUNCIL OF THE CITY OF BOWIE, MARYLAND
APPROVING THE FOURTH AMENDMENT TO OPTION TO LEASE
AGREEMENT AND MEMORANDUM OF FOURTH AMENDMENT TO
OPTION TO LEASE AGREEMENT BETWEEN THE CITY OF BOWIE AND
CROWN ATLANTIC COMPANY LLC TO EXTEND THE CELLULAR
EQUIPMENT LEASE AT JERICHO PARK LOCATED OFF
JERICHO PARK ROAD**

WHEREAS, the City of Bowie (hereafter referred to as the 'City') is the owner of a property commonly known as Jericho Park; and

WHEREAS, Crown Castle Atlantic LLC would like to extend the lease set to expire on May 31, 2013 for four (4) additional five (5) year terms; and

WHEREAS, Section 90 of the Bowie City Charter authorizes the City to sell, lease or otherwise dispose of any property belonging to the City when this is to the City's advantage; and

WHEREAS, the tower where cellular equipment is installed at this location has already been constructed; and

WHEREAS, the monthly lease payment to the City will increase from \$1,499.97 per month to \$2,709.14 per month effective November 1, 2008; and

WHEREAS, the yearly increase in this lease payment will increase from \$400 per year to three percent annually; and

WHEREAS, should two additional cellular carriers locate on this monopole, the City will realize 25% of the revenues from additional carriers as well; and

WHEREAS, the term of this lease is for a five year period beginning June 1, 2013 with the option for three additional five year renewals to May 31, 2033.

NOW, THEREFORE, BE IT RESOLVED by the Bowie City Council that the City Manager is hereby authorized to execute the Fourth Amendment to Option to Lease Agreement and the Memorandum of Fourth Amendment to Option to Lease Agreement on behalf of the City substantially similar to the documents attached as Exhibit 1 and 2.

INTRODUCED AND PASSED by the Council of the City of Bowie, Maryland at a meeting on October 20, 2008.

ATTEST:

THE CITY OF BOWIE, MARYLAND

Pamela A. Fleming
City Clerk

G. Frederick Robinson
Mayor

FOURTH AMENDMENT TO OPTION TO LEASE AGREEMENT
(BU806729)

THIS FOURTH AMENDMENT TO OPTION TO LEASE AGREEMENT ("Fourth Amendment") is made effective this ____ day of _____, 2008, by and between the **City of Bowie** ("Lessor"), located at 2614 Kenhill Drive, Bowie, Maryland 20715, and **Crown Atlantic Company LLC, a Delaware limited liability company** ("Tenant"), with a mailing address of c/o Crown Castle USA Inc., 2000 Corporate Drive, Canonsburg, Pennsylvania 15317.

WHEREAS, S. Walter Bogley et. al. ("Bogley" and Chicago Title Insurance Company ("Chicago Title")) entered into an Option to Lease Agreement dated March 9, 1981 (as amended and assigned, the "Lease"), whereby Bogley leased to Chicago Title an approximately 430 feet by 430 feet portion of that property (said leased portion being the "Property", which defined term shall include, without limitation, any and all access, utility and/or maintenance easements and/or rights of way granted in the Lease) located on Map 22, Parcel 36 in Prince Georges County, Maryland; and

WHEREAS, Bogley and Chicago Title entered into that Addendum to Lease Agreement dated March 9, 1981 ("First Amendment"), whereby the parties amended various provisions in the Lease; and

WHEREAS, Bogley and Chicago Title entered into that Addendum to Option to Lease Agreement dated November 5, 1984 ("Second Amendment"), whereby the parties replaced and amended the plat attached to the Lease to illustrate the Property in red and the common entrance to the Property; and

WHEREAS, Chicago Title assigned all of its right, title and interest in the Lease to Bell Atlantic Mobile Systems, Inc., a Delaware corporation ("Bell Atlantic") pursuant to an Assignment and Assumption of Lease dated December 1, 1984; and

WHEREAS, Bogley and Bell Atlantic entered into that Agreement dated November 29, 1986 ("Third Amendment"), whereby the parties expanded the size of the Property and extended the term of the Lease, in addition to other changes; and

WHEREAS, Bell Atlantic, managing general partner of Cellco Partnership, managing partner of Washington D.C. SMSA Limited Partnership, assigned all of its right, title and interest in the Lease to Tenant pursuant to an Assignment dated March 31, 1999; and

WHEREAS, the Lease has an original term, including all renewal terms, that will expire on May 31, 2013 ("Original Term"), and Lessor and Tenant desire to amend the term of the Lease to provide for additional extension terms beyond the Original Term, in addition to other changes.

NOW THEREFORE, in exchange for the mutual promises contained herein, Lessor and Tenant agree to amend the Lease as follows:

1. Any capitalized terms not defined herein shall have the meanings ascribed to them in the Lease.

2. Upon expiration of the Original Term, the Lease shall automatically renew and Lessor leases to Tenant the Property, commencing on June 1, 2013, for four (4), five (5)-year extension terms, each said renewal being automatic unless Tenant terminates the Lease at the end of the Original Term or any subsequent five (5)-year extension term by giving the Lessor written notice of its intent to terminate the Lease at least six (6) months prior to the end of the Original Term or any subsequent five (5)-year extension term, or the Lease is otherwise terminated as provided in the Lease.

3. Effective the first of the month following the execution by both parties of the Fourth Amendment to Option to Lease Agreement, the annual rental shall be the amount of \$2,709.14 per month or \$32,509.68 annually. Each year thereafter the annual rental shall increase three percent (3%) from the previous year's annual rental, which shall be determined by multiplying (i) the annual rental during the immediately preceding year term by (ii) one hundred three percent (103%). Such rental shall be paid in accordance with the terms of the Lease. This three percent (3%) increase in annual rental is in lieu of (and not in addition to) the rent escalation described in Section 5 of the Lease.

4. Section 4 of the Lease is amended to replace "five (5)" with "nine (9)" to reflect the additional four (4) extension terms contemplated by this Fourth Amendment to Option to Lease Agreement.

5. Section 6 of the Lease is amended to replace "fifth (5th)" with "ninth (9th)."

6. Section 17 of the Lease is amended by deleting Tenant's and Lessor's notice addresses in their entirety and replacing them with the following:

TENANT: Crown Atlantic Company LLC
c/o Crown Castle International Corp.
E. Blake Hawk, General Counsel
Attn: Real Estate Department
2000 Corporate Drive
Canonsburg, PA 15317

LESSOR: City of Bowie
Attn: David J. Deutsch, City Manager
2614 Kenhill Drive
Bowie, MD 20715

7. If Tenant subleases, licenses or grants similar right of use or occupancy in the Property to an unaffiliated third party, Tenant agrees to pay to Lessor twenty-five percent (25%) of the rental, license or similar payments actually received by Tenant (excluding any reimbursement of taxes, construction costs, installation costs, revenue share reimbursement or other expenses incurred by Tenant) for two (2) customers within thirty (30) days after receipt of said payment by Tenant. Tenant shall have no obligation for payment to Lessor of such share of

rental, license or other similar payments if not actually received by Tenant. Non-payment of such rental, license or other similar payment by a sublessee, licensee or other occupant shall not be a default under this Agreement. Tenant shall have sole discretion as to whether, and on what terms, to sublease, license or otherwise allow occupancy of the Property and there shall be no express or implied obligation of Tenant to do so.

8. As additional consideration for amending the Lease in accordance with this Fourth Amendment, Tenant agrees to pay to Lessor the sum of Eight Thousand and No/100 Dollars (\$8,000.00) within sixty (60) days upon execution of this Fourth Amendment by both parties.

9. Lessor represents and warrants that it is seized of good and sufficient title and interest to the Property, and has full authority to enter into and execute this Fourth Amendment. Lessor further represents that to the best of its knowledge (a) there are no aspects of title that might interfere with or be adverse to Tenant's interests in and intended use of the Property, (b) there are no threatened or pending actions in the nature of foreclosure of any mortgage or other lien against the Property or Lessor's title thereto, and (c) there are no outstanding defaults on the part of Tenant under the Lease.

10. IRS Form W-9. Lessor agrees to provide Tenant with a completed IRS Form W-9, or its equivalent, upon execution of this Fourth Amendment and at such other times as may be reasonably requested by Tenant. In the event the Property is transferred, the succeeding Lessor shall have a duty at the time of such transfer to provide Tenant with a completed IRS Form W-9, or its equivalent, and other related paper work to effect a transfer in rent to the new Lessor. Lessor's failure to provide the IRS Form W-9 within thirty (30) days after Tenant's request shall be considered a default and Tenant may take any reasonable action necessary to comply with IRS regulations.

11. In all other respects, the remainder of the Lease shall remain in full force and effect. Any portion of the Lease that is inconsistent with this Fourth Amendment is hereby amended to be consistent. This document may be executed in two or more counterparts, each of which shall be treated as a fully executed original.

12. Tenant shall be responsible for any and all taxes, fees and special assessments which are directly attributable to the presence or installation of antenna facilities.

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IN WITNESS WHEREOF, Lessor and Tenant have caused this Fourth Amendment to be duly executed on the day and year first written above.

LESSOR:

City of Bowie

By: _____

Print Name: _____

Its: _____

TENANT:

Crown Atlantic Company LLC,
a Delaware limited liability company

By:  _____

Print Name: R. Christopher Mooney

Its: Director - Land Acquisition Operations

Prepared Out of State.

WAS DE 963521; BU806729

Return to:

MEMORANDUM OF FOURTH AMENDMENT TO OPTION TO LEASE AGREEMENT

THIS MEMORANDUM OF FOURTH AMENDMENT TO OPTION TO LEASE AGREEMENT ("Amended Memorandum") is made effective this ____ day of _____, 2008, by and between the **City of Bowie** ("Lessor"), located at 2614 Kenhill Drive, Bowie, Maryland 20715, and **Crown Atlantic Company LLC, a Delaware limited liability company** ("Tenant"), with a mailing address of c/o Crown Castle USA Inc., 2000 Corporate Drive, Canonsburg, Pennsylvania 15317.

WHEREAS, S. Walter Bogley et. al. ("Bogley" and Chicago Title Insurance Company ("Chicago Title")) entered into an Option to Lease Agreement dated March 9, 1981 (as amended and assigned, the "Lease"), whereby Bogley leased to Chicago Title an approximately 430 feet by 430 feet portion of that property (said leased portion being the "Property", which defined term shall include, without limitation, any and all access, utility and/or maintenance easements and/or rights of way granted in the Lease) located on Map 22, Parcel 36 in Prince Georges County, Maryland; and

WHEREAS, Bogley and Chicago Title entered into that Addendum to Lease Agreement dated March 9, 1981 ("First Amendment"), whereby the parties amended various provisions in the Lease; and

WHEREAS, Bogley and Chicago Title entered into that Addendum to Option to Lease Agreement dated November 5, 1984 ("Second Amendment"), whereby the parties replaced and amended the plat attached to the Lease to illustrate the Property in red and the common entrance to the Property; and

WHEREAS, Chicago Title assigned all of its right, title and interest in the Lease to Bell Atlantic Mobile Systems, Inc., a Delaware corporation ("Bell Atlantic") pursuant to an Assignment and Assumption of Lease dated December 1, 1984; and

WHEREAS, Bogley and Bell Atlantic entered into that Agreement dated November 29, 1986 ("Third Amendment"), whereby the parties expanded the size of the Property and extended the term of the Lease, in addition to other changes; and

WHEREAS, Bell Atlantic, managing general partner of Celco Partnership, managing partner of Washington D.C. SMSA Limited Partnership, assigned all of its right, title and interest in the Lease to Tenant pursuant to an Assignment dated March 31, 1999; and

WHEREAS, the Lease has an original term, including all renewal terms, that will expire on May 31, 2013 ("Original Term"), and Lessor and Tenant desire to amend the term of the Lease to provide for additional extension terms beyond the Original Term, in addition to other changes; and

WHEREAS, Lessor and Tenant made and entered into a Fourth Amendment to Option to Lease Agreement of even date herewith ("Fourth Amendment") and pursuant to the terms of, and for that consideration recited in, the Fourth Amendment, the parties wish to hereby amend certain provisions of the Lease, and provide this Amended Memorandum as notice thereof, as follows:

1. Lessor does hereby lease unto Tenant, its successors and assigns, the Property for an additional four (4), five (5) year extension terms, such that the total term of the Lease, with all extensions, is fifty (50) years, expiring on May 31, 2033, unless sooner terminated as provided in the Lease, provided that upon expiration of the extension terms the Lease shall automatically renew for one (1)-year terms unless either party provides notice of termination to the other party.

2. The Property is an approximately 430 feet by 430 feet portion of that property located on Map 22, Parcel 36 in Prince Georges County, Maryland, as more specifically described in the Lease.

3. This Amended Memorandum contains only selected provisions of the Fourth Amendment, and reference is made to the full text of the Lease and the Fourth Amendment for their full terms and conditions, which are incorporated herein by this reference. Except as otherwise provided in the Fourth Amendment and this Amended Memorandum, the terms and conditions of the Lease remain in full force and effect and each party ratifies the Lease, and agrees to be bound by the provisions thereof. This document may be executed in two or more counterparts, each of which shall be treated as a fully executed original.

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In Witness Whereof, the parties hereto have executed this Amended Memorandum as of the date first above written.

LESSOR:

City of Bowie

By: _____

Print Name: _____

Its: _____

STATE OF MARYLAND, _____ COUNTY: to wit:

I HEREBY CERTIFY, that on this _____ day of _____, 2008, before me, the subscriber, a Notary Public of the State of Maryland in and for _____ County/ _____ City personally appeared _____ who acknowledged himself/herself to be the _____ [title] of the **City of Bowie**, and that as such officer, being authorized so to do, he/she executed the within instrument for the purposes therein contained by signing in my presence the name of said company by himself/herself as _____ [title] and certified that this conveyance is not part of a transaction in which there is a sale, lease, exchange or other transfer of all or substantially all of the property and assets of said company.

IN TESTIMONY WHEREOF, I hereunto set my hand and affixed my Notarial seal.

Notary Public

My Commission Expires: _____

[affix stamp or seal]

TENANT:

Crown Atlantic Company LLC
a Delaware limited liability company

By: R. Christopher Mooney

Print Name: R. Christopher Mooney

Its: Director - Land Acquisition Operations

STATE OF TEXAS, HARRIS COUNTY: to wit:

I HEREBY CERTIFY, that on this 2ND day of OCTOBER, 2008, before me, the subscriber, a Notary Public of the State of TEXAS in and for HARRIS County/ — City personally appeared R. CHRISTOPHER MOONEY who acknowledged himself/herself to be the DIRECTOR [title] of Crown Atlantic Company LLC, a **Delaware limited liability company**, and that as such officer, being authorized so to do, he/she executed the within instrument for the purposes therein contained by signing in my presence the name of said company by himself/herself as DIRECTOR [title] and certified that this conveyance is not part of a transaction in which there is a sale, lease, exchange or other transfer of all or substantially all of the property and assets of said company.

IN TESTIMONY WHEREOF, I hereunto set my hand and affixed my Notarial seal.

[Signature]
Notary Public
My Commission Expires: 4-4-12
[affix stamp or seal]

