



CITY OF MILES CITY

AGENDA

Special Council Meeting
City Council Chambers

April 18, 2016
6:00 p.m.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

1. **REQUEST OF CITIZENS & PUBLIC COMMENT**

2. **NEW BUSINESS**
 - A. **RESOLUTION NO. 3910: A Resolution Authorizing the City of Miles City to Enter Into a First Amendment to Headend Site Lease Agreement With the Miles City Airport Commission and Pinnacle Towers LLC.**
 - B. **ADJOURNMENT**

Public comment on any public matter that is not on the agenda of this meeting can be presented under Request of Citizens, provided it is within the jurisdiction of the City to address. Public comment will be entered into the minutes of this meeting. The City Council cannot take any action on a matter unless notice of the matter has been made on an agenda and an opportunity for public comment has been allowed on the matter. Public matter does not include contested cases and other adjudicative proceedings

RESOLUTION NO. 3910

A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO ENTER INTO A FIRST AMENDMENT TO HEADEND SITE LEASE AGREEMENT WITH THE MILES CITY AIRPORT COMMISSION AND PINNACLE TOWERS LLC.

WHEREAS, Pinnacle Towers LLC, a Delaware limited liability company, is the Lessee under a certain Headend Site Lease Agreement dated January 21, 2009, for the lease of certain property owned by the City and operated by the Miles City Airport Commission;

AND WHEREAS, the parties wish to amend said lease agreement;

NOW THEREFORE BE IT RESOLVED by the City Council of Miles City, Montana, as follows:

1. The "First Amendment To Headend Site Lease Agreement," attached hereto as Exhibit "A", and made a part hereof, is hereby approved and adopted by this Council.
2. The Mayor of the City of Miles City is hereby empowered and authorized to execute said Agreement on behalf of the City of Miles City and bind the City of Miles City thereto; and
3. The Mayor of the City of Miles City is hereby empowered and authorized to execute such further documents as are necessary to carry out the terms of said Agreement and bind the City of Miles City thereto.

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, AT A DULY CALLED MEETING THIS 18TH DAY OF APRIL, 2016.

John Hollowell, Mayor

ATTEST:

Lorrie Pearce, City Clerk

**FIRST AMENDMENT TO
HEADEND SITE LEASE AGREEMENT**

THIS FIRST AMENDMENT TO HEADEND SITE LEASE AGREEMENT (the "First Amendment") is entered into this ____ day of _____, 2016 (the "Effective Date"), by and between MILES CITY AIRPORT COMMISSION ("Lessor"), CITY OF MILES CITY ("City") and PINNACLE TOWERS LLC, a Delaware limited liability company ("Lessee").

RECITALS

WHEREAS, Lessor and Lessee entered into a Headend Site Lease Agreement dated January 21, 2009 (the "Agreement") whereby Lessee leased certain real property, together with access and utility easements, located in Custer County, Montana from Lessor (the "Leased Premises"), all located within certain real property owned by City and administered by Lessor ("Lessor's Property"); and

WHEREAS, the Leased Premises may be used for the purpose of constructing, maintaining and operating a communications facility, including tower structures, equipment shelters, cabinets, meter boards, utilities, antennas, equipment, any related improvements and structures and uses incidental thereto; and

WHEREAS, the Agreement had an initial term that commenced on August 1, 2008 and expires on July 31, 2018; and

WHEREAS, Lessor and Lessee desire to amend the Agreement on the terms and conditions contained herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, Lessor and Lessee agree as follows:

1. Recitals; Defined Terms. The parties acknowledge the accuracy of the foregoing recitals. Any capitalized terms not defined herein shall have the meanings ascribed to them in the Agreement.

2. Term. Section 2 of the Agreement is hereby deleted in its entirety and the following is inserted in its place:

The initial term of this Agreement shall be for ten (10) years, commencing on August 1, 2008, and ending on July 31, 2018 (the "Initial Term"), with the right of Lessee to extend the Agreement for five (5) additional renewal terms of five (5) years each (each a "Renewal Term") with the final Renewal Term expiring on July 31, 2043. The Agreement shall automatically be extended for each successive five (5) year Renewal Term unless Lessee notifies Lessor, in writing, of its intention not to renew at least sixty (60) days prior to the expiration of the then-current Renewal Term. The Initial Term and each Renewal Term are collectively referred to hereinafter as the "Term".

Lessor and Lessee hereby acknowledge that Lessee has exercised zero (0) Renewal Terms, leaving a balance of five (5) Renewal Terms, with the final Renewal Term expiring on July 31, 2043.

3. Pre-Payment Period. Lessee will pay to Lessor a one-time payment of Thirty-Eight Thousand and No/100 Dollars (\$38,000.00) within sixty (60) days after full execution of the First Amendment by the parties, which sum shall be deemed to be the rent for that ten (10) year period of the Agreement Term beginning on the first day of the month following full execution of this First Amendment ("Pre-Payment Period"). During the Pre-Payment Period, Lessor and Lessee agree that the obligation of Lessee to pay rent to Lessor shall be suspended; provided, however, prior rent payments made to Lessor shall not be refunded or credited against the one-time payment. Upon expiration of the Pre-Payment Period, rent payments will resume and shall be paid in accordance with the terms of the Agreement, taking into account any increases in rent that may have occurred during the Pre-Payment Period, and any subsequent increases in rent shall continue in accordance with the terms of the Agreement, notwithstanding the Pre-Payment Period. During the period for which advance rent has been paid, Lessor shall have no right to terminate the Agreement for any reason and waives its right to declare a default for non-payment of rent. In addition, Lessor waives any right to consent to any sublease of all or a portion of the leased area and any alteration or modification to the facilities, equipment or appurtenances on or within the Leased Premises as may be provided in the Agreement.

4. Rent Escalation. Commencing on August 1, 2018; August 1, 2023; and August 1, 2028, the base monthly rental amount shall increase by an amount equal to ten percent (10%) of the base monthly rental amount in effect for the immediately preceding year. Commencing on August 1, 2029, and on the anniversary of that date each year thereafter (each an "Adjustment Date"), the base monthly rental amount shall increase by an amount equal to two percent (2%) of

the base monthly rental amount in effect for the year immediately preceding the Adjustment Date. Such escalations shall replace and be in lieu of any rent escalations currently in the Agreement.

5. Conditional Signing Bonus. Lessee will pay to Lessor a one-time amount of Ten Thousand and 00/100 Dollars (\$10,000.00) for the full execution of this First Amendment (the “Conditional Signing Bonus”). Lessee will pay to Lessor the Conditional Signing Bonus within sixty (60) days of the full execution of this First Amendment. In the event that this First Amendment (and any applicable memorandum) is not fully executed by both Lessor and Lessee for any reason, Lessee shall have no obligation to pay the Conditional Signing Bonus to Lessor.

6. Right of First Refusal. If Lessor receives an offer from any person or entity that owns towers or other wireless telecommunications ~~facilities~~ facilities (or is in the business of acquiring Lessor’s interest in the Agreement) to purchase fee title, an easement, a lease, a license, or any other interest in Lessor’s Property, or Lessor’s interest in the Agreement, or an option for any of the foregoing, Lessor shall provide written notice to Lessee no later than thirty (30) days prior to Lessor accepting said offer. Lessor’s notice shall include the prospective buyer’s name, the purchase price and/or other consideration being offered, the other terms and conditions of the offer, the due diligence period, the proposed closing date and, if a portion of Lessor’s parent parcel is to be sold, leased or otherwise conveyed, a description of said portion.

7. Revenue Share. If, after full execution of this First Amendment, Lessee enters into any future sublease or license with an unaffiliated Broadband Tenant not already a subtenant on the Leased Premises (each a “Future Broadband Sublease”), Lessee shall pay to Lessor a one-time amount of Five Thousand and No/100 Dollars (\$5,000.00) for such Future Broadband Sublease (“Future Broadband Sublease Fee”). Payment of the Future Broadband Sublease Fee shall be due on the first day of the month following the commencement date of the applicable Future Broadband Sublease. If, after full execution of this First Amendment, Lessee enters into any future sublease or license with an unaffiliated Non-Broadband Tenant not already a subtenant on the Premises (each a “Future Non-Broadband Sublease”), Lessee shall pay to Lessor a one-time amount of One Thousand and No/100 Dollars (\$1,000.00) for such Future Non-Broadband Sublease (“Future Non-Broadband Sublease Fee”). Payment of the Future Non-

Broadband Sublease Fee shall be due on the first day of the month following the commencement date of the applicable Future Non-Broadband Sublease. Notwithstanding anything in this section to the contrary, Lessor shall not be entitled to a Future Broadband Sublease Fee or Future Non-Broadband Sublease Fee for any sublease or license to any subtenant of Lessee or any successors and/or assignees of such subtenant who commenced use of the Leased Premises or executed a sublease or license prior to the effective date of this First Amendment. Lessee shall have sole discretion as to whether, and on what terms, to sublease, license or otherwise allow occupancy of the Leased Premises and there shall be no express or implied obligation of Lessee to do so. As used herein, "Broadband Tenant" shall mean any subtenant which is a Commercial Mobile Radio Service ("CMRS") provider (as defined in 47 C.F.R. §20.3) engaged primarily in the business of providing wireless telephony services to its customers, and "Non-Broadband Tenant" shall mean all other subtenants.

8. Termination of Additional Rent. The second to last full paragraph of Section 4 of the Agreement is hereby deleted in its entirety.

9. Governmental Approvals. If requested by Lessee, Lessor will execute, at Lessee's sole cost and expense, all documents required by any governmental authority in connection with any development of, or construction on, the Leased Premises, including documents necessary to petition the appropriate public bodies for certificates, permits, licenses and other approvals deemed necessary by Lessee in Lessee's absolute discretion to utilize the Leased Premises for the purpose of constructing, maintaining and operating communications facilities, including without limitation, tower structures, antenna support structures, cabinets, meter boards, buildings, antennas, cables, equipment and uses incidental thereto. Lessor agrees to be named applicant if requested by Lessee. Lessor shall take no action that would adversely affect the status of the Leased Premises with respect to Lessee's permitted use. Lessor shall be entitled to no further consideration with respect to any of the foregoing matters.

10. Ratification.

a) Lessor and Lessee agree that Lessee is the current lessee under the Agreement, the Agreement is in full force and effect, as amended herein, and the Agreement contains the entire agreement between Lessor and Lessee with respect to the Leased Premises.

b) Lessor agrees that any and all actions or inactions that have occurred or should have occurred prior to the date of this First Amendment are approved and ratified and that no breaches or defaults exist as of the date of this First Amendment.

c) Lessor represents and warrants that Lessor is duly authorized and has the full power, right and authority to enter into this First Amendment and to perform all of its obligations under the Agreement as amended.

11. Notices. Lessee's notice address as stated in Section 21 of the Agreement is amended as follows:

LESSEE'S PRIMARY CONTACT

PINNACLE TOWERS LLC
c/o Crown Castle USA Inc.
Attn: Legal Department
2000 Corporate Drive
Canonsburg, PA 15317

12. IRS Form W-9. Lessor agrees to provide Lessee with a completed IRS Form W-9, or its equivalent, upon execution of this First Amendment and at such other times as may be reasonably requested by Lessee. In the event Lessor's interest in Lessor's Property is transferred, the succeeding lessor shall have a duty at the time of such transfer to provide Lessee with a completed IRS Form W-9, or its equivalent, and other related paperwork to effect a transfer in the rent to the new lessor. Lessor's failure to provide the IRS Form W-9 within thirty (30) days after Lessee's request shall be considered a default and Lessee may take any reasonable action necessary to comply with IRS regulations including, but not limited to, withholding applicable taxes from rent payments.

13. Remainder of Agreement Unaffected. The parties hereto acknowledge that except as expressly modified hereby, the Agreement remains unmodified and in full force and effect. In the event of any conflict or inconsistency between the terms of this First Amendment and the Agreement, the terms of this First Amendment shall control. This First Amendment may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

[Execution Pages Follow]

This First Amendment is executed by Lessor as of the date first written above.

LESSOR:
MILES CITY AIRPORT COMMISSION

By: _____
Print Name: _____
Title: _____

[City Execution Page Follows]

This First Amendment is executed by City as of the date first written above.

CITY:
CITY OF MILES CITY

By: _____
Print Name: _____
Title: _____

[Lessee Execution Page Follows]

This First Amendment is executed by Lessee as of the date first written above.

LESSEE:
PINNACLE TOWERS LLC,
a Delaware limited liability company

By: _____
Print Name: _____
Title: _____