RESOLUTION 2021-19
Agenda Item

To: Mayor and City Council

From: Steve Rasmussen, City Manager

Date: June 7, 2021

Re: Verizon Wireless Confidentiality Agreement

Issue:
The City collects gross receipts license tax from telecommunications providers operating within the City of Cameron. The City finds it is in its best interest to audit these telecommunications providers as needed to determine the existence of possible underpayment of these taxes.

Verizon Wireless and their affiliates desire to enter into a confidentiality agreement with the City to balance their claim that certain information contained in these audits is proprietary with the City's obligations under the Sunshine Law. This agreement has been presented to the City through Cunningham Vogel & Rost, the law firm currently conducting these audits.

Recommendation:
Staff recommends approval.

Resolution 2021-19

A RESOLUTION AUTHORIZING THE CITY OF CAMERON, MISSOURI TO EXECUTE A CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT WITH CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS AND GRANTING FURTHER AUTHORITY

WHEREAS, the City of Cameron, Missouri (the "City") has initiated audits to determine the existence or extent of possible underpayment of the gross receipts license tax by certain telecommunications providers operating within the City (the "Audits"); and

WHEREAS, the City and Cellco Partnership d/b/a Verizon Wireless ("Verizon"), along with Verizon's affiliates, desire to enter into a confidentiality agreement substantially in the form of **Exhibit 1** attached hereto ("Verizon Confidentiality Agreement"), and the City Council finds it in the best interests of the City to enter into such agreement since it balances the company's claim that certain information is proprietary with the City's obligations under the Sunshine Law; and

WHEREAS, in order to proceed with the Audits efficiently, the City may need to enter into additional confidentiality agreements with other persons or entities subject to the City's gross receipts license tax, and the City Council finds it in the best interests of the City to enter into such agreements if they are in a form substantially the same as **Exhibit 1**.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CAMERON, MISSOURI, AS FOLLOWS:

Section 1. The City Council hereby authorizes the Mayor or designee thereof to execute on behalf of the City the Verizon Confidentiality Agreement, substantially in the form attached hereto as **Exhibit 1**, and the City Council hereby further authorizes the Mayor or designee thereof to execute on behalf of the City confidentiality agreements substantially in the form of **Exhibit 1** with other persons or entities subject to the City's gross receipts license tax as may be needed during the Audits.

Section 2. The City Council hereby authorizes the Mayor and Special Legal Counsel to take all such further action as may be necessary to carry out the intent of this Resolution and the Audits.

Section 3. The recitals contained above are incorporated in this Resolution as if fully set forth herein.

Section 4. The Mayor is authorized to sign this Resolution approving it on behalf of the City of Cameron, Missouri.

Section 5. The City Clerk is directed to attest to the Mayor's signature.

Section 6. This Resolution shall be in full force and effect upon and after its passage and approval.

PASSED AND APPROVED this 7th day of June 2021.

_____
Mayor Dennis M. Clark

ATTEST:

_____
City Clerk

EXHIBIT 1
(see attached)

CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

THIS CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT ("Agreement") is made by and among the City of Cameron, Missouri (the "City"), and Cellco Partnership d/b/a Verizon Wireless ("Cellco"), on behalf of itself and its Affiliates, as defined below (collectively, "Verizon").

WHEREAS, the City imposes a License Tax, as such term is defined in a Tolling Agreement that is currently in effect;

WHEREAS, Verizon operates a wireless telecommunications business and is subject to the City's License Tax;

WHEREAS, the City desires to verify by audit the accuracy of Verizon's compliance with the City's License Tax (such audit, the "Audit") pursuant to authority provided by law;

WHEREAS, in connection with the Audit, the City has requested certain revenue data from Verizon (together with such other information with respect to the Audit as may later be either requested by the City, or provided by Verizon to the City, the "Requested Information");

WHEREAS, because the Requested Information includes information that is considered by Verizon to be proprietary and confidential, the disclosure of which to other parties would, in Verizon's view, cause financial and commercial harm to Verizon, Verizon is willing to provide the Requested Information only if the City agrees to preserve the confidentiality of the Requested Information in accordance with, and to the extent permitted by, Missouri law;

WHEREAS, Cellco is entering into this Agreement on its own behalf and on behalf of certain of its commonly controlled affiliated entities, namely, Alltel Corporation (on its own behalf and as successor by merger to Alltel Communications, LLC), Missouri 4 RSA Limited Partnership, and St. Joseph CellTelCo (collectively, the "Affiliates");

WHEREAS, after being provided by Verizon to the City, some or all of the Requested Information may be subject to disclosure as a "public record" pursuant to §§ 610.010 RSMo. *et seq.* ("Sunshine Law") and,

WHEREAS, the City is willing to (a) treat the Requested Information, once it has been labeled and transmitted as provided for below, as confidential except in response to Sunshine Law requests the City may receive, and (b) with respect to Sunshine Law requests, cooperate with Cellco to provide an adequate opportunity for judicial determination of the confidentiality of the Requested Information, all on the terms provided in this Agreement, to the extent permitted by law;

NOW, THEREFORE, in consideration of the foregoing, and intending to be legally bound, the City and Verizon (collectively, the "Parties," and each individually, a "Party") agree as follows:

1. Any revenue data, or other proprietary information related thereto, provided by Verizon to City that is clearly labeled as confidential and transmitted by correspondence citing the existence and applicability of this Agreement shall be considered to be Requested Information. Verizon agrees it shall label as confidential and utilize this process only for information that contains revenue data, or other proprietary information related thereto, not otherwise released or made available to the public. The Parties agree they will each promptly confer about and attempt to resolve by mutual agreement any dispute regarding whether information so labeled and transmitted should qualify for treatment as Requested Information pursuant to this Agreement. The City will use reasonable efforts to maintain the Requested Information in confidence and not disclose to any person, except as expressly authorized in this Agreement, any of the Requested Information that is provided by Verizon to the City in the course of the Audit. The City's obligations shall apply whether it receives Requested Information directly from Verizon or from a cooperating city as provided for below.

2. The City will use reasonable efforts to limit access to the Requested Information to (i) persons employed by the City or that are directly engaged in the performance or supervision of the Audit, (ii) duly licensed attorneys or duly licensed certified public accountants retained by the City for the purpose of assisting the City with the performance of the Audit, (iii) any other city cooperating with the City to conduct a similar audit of that other city's license taxes, provided that such other city has also executed an agreement with Verizon containing terms similar to this Agreement, (iv) court filings related to the License Tax or this Agreement, provided the City communicates with Verizon in advance of such a filing and uses reasonable efforts to make such filing subject to a protective order containing terms similar to this Agreement, and (v) the Missouri Attorney General's Office if the City seeks a determination from such office of whether the information may be treated as a closed record under the Sunshine Law, but in such event, City agrees to provide only a sample of the Requested Information unless the Attorney General's Office requires additional disclosures, in which case City shall be authorized to provide such additional disclosures. The City shall ensure that each such employee, attorney, and accountant is aware of the obligations of the City under this Agreement, and the City shall direct such employees, attorneys, and accountants to avoid any disclosures of information inconsistent with such obligations.

3. The City will use the Requested Information solely for the purposes of (i) completing the Audit and (ii) pursuing any claims against Verizon that arise from the Audit with respect to Verizon's compliance with the City's License Tax.

4. The City agrees that Verizon may enforce this Agreement by equitable remedies, including restraining order and injunction.

5. If the City determines that the results of the Audit would support a claim against Verizon, then the City agrees to communicate and work with Verizon in good faith to attempt to reasonably protect and maintain the confidentiality of the Requested Information as provided by this Agreement in the pursuit of such claim, including, without limiting the generality of the foregoing, cooperating with Verizon in its applications for entry of appropriate confidentiality orders. The City agrees that Verizon's provision of Requested Information shall not be construed

as an admission by Verizon that any claim by the City against Verizon that may result from the Audit is authorized or permitted under applicable law.

6. If the City receives any request or demand to provide Requested Information to any person, regardless of whether such request or demand is specifically styled as a request under the Sunshine Law, or any agent of City in possession of any of the Requested Information receives any other request or demand to provide Requested Information to any court, government agency, or other person pursuant to a written court order, subpoena, regulatory demand, or process of law, the City, or other party receiving such request or demand (except as prohibited by law, regulation or court order), shall provide Verizon with prompt written notice of such request or demand and reasonably cooperate with Verizon if Verizon should determine to block, or to seek reasonable protective arrangements for, the production of such Requested Information. If Verizon does not take prompt action to attempt to block, or to seek reasonable protective arrangements for, the production of such Requested Information after being notified of such request or demand, then the City may exercise its discretion to either assert closed record protections for such Requested Information pursuant to the Sunshine Law or produce any portion thereof the City determines to be responsive to the request or demand. If the City is ordered to produce such Requested Information by a court, or state or federal regulatory body, of competent jurisdiction, then City's compliance with such order shall not be deemed to be a breach of this Agreement. As permitted by law, the City will (i) take reasonable steps to limit any such provision of Requested Information to the specific Requested Information required to comply with such request, demand, or order, and (ii) continue to otherwise protect all Requested Information disclosed in response to such request or demand. Except for such required disclosure, or unless the Missouri Attorney General's Office or a court of competent jurisdiction determines the Requested Information is an open record under the Sunshine Law, the Requested Information shall remain subject to the terms of this Agreement. The City shall not actively encourage any person to make a request or demand to provide Requested Information pursuant to the Sunshine Law or otherwise. Verizon acknowledges that the process for approval of this Agreement may be done publicly, and that this Agreement will be an open record under the Sunshine Law, so approval or other disclosure of this Agreement shall not be construed to constitute encouragement of requests or demands for Requested Information.

7. The rights and obligations of the Parties created by this Agreement shall be governed by and construed in accordance with the laws of the State of Missouri, without regard to conflicts of law. Notwithstanding any other provision of this Agreement, no actions taken by City that are required by the Sunshine Law shall be construed to be a breach of this Agreement, and this Agreement shall not be construed to waive City's sovereign immunity. Nothing in this Agreement shall be deemed to authorize an action for damages against the City or any of its agents or employees or officers, but this limitation shall not preclude judicial enforcement in equity if otherwise so available.

8. This Agreement may not be amended, modified, or supplemented, except in writing duly executed and delivered by all Parties to this Agreement.

9. This Agreement constitutes the full and complete agreement of the Parties concerning the subject matter of the Agreement, and there are no covenants, conditions, or terms other than those expressly set forth in this Agreement

10. Any and all notices under this Agreement shall be in writing, and shall be addressed and provided to the Parties by email and physical delivery to the following persons:

To a City Party:	Mayor City of Cameron, Missouri 205 N. Main Cameron MO 64429
With a copy to:	Cunningham Vogel & Rost, P.C. 333. S. Kirkwood Rd., Suite 300 St. Louis MO 63122 greg@municipalfirm.com maggie@municipalfirm.com Special Legal Counsel City of Cameron, Missouri
To Verizon:	Verizon One Verizon Way, VC54 Attention: Managing Associate General Counsel - Tax Basking Ridge NJ 07920 Doug.Reeves@verizon.com Leigh.Schachter@verizon.com

11. The individual signatories hereto represent and warrant they are authorized to execute this Agreement on behalf of, respectively, the City and Verizon. This Agreement shall be binding upon and inure to the benefit of the City, Verizon, and their respective affiliates, successors, and assigns.

12. This Agreement shall be effective on the date of the last signature below.

13. This Agreement may be signed in counterparts, each of which shall be deemed an original, and all such counterparts shall be considered to constitute one Agreement. The exchange of copies of this Agreement and/or signature pages electronically or by physical delivery of hard copy shall constitute effective execution and delivery of this Agreement.

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals as of the date below written.

CITY OF CAMERON, MISSOURI

By:_____

Name:_____

Title:_____

Date:_____

CELLCO PARTNERSHIP
d/b/a Verizon Wireless

By:_____

Name:_____

Title:_____

Date:_____