



500 West Big Beaver
Troy, MI 48084
troymi.gov

CITY COUNCIL AGENDA ITEM

Date: November 29, 2022

To: Honorable Mayor and Troy City Council Members

From: Mark F. Miller, City Manager
Lori Grigg Bluhm, City Attorney

Subject: Renewal of AT & T Leases for Sylvan Glen and Lowery Street Cell Towers

Since October 1998, the City has leased a place on its cell towers, located at Sylvan Glen and Lowery Street, to AT & T. All renewal options for these leases have been exhausted, but the parties wish to continue the beneficial relationship. AT & T uses subcontractors to negotiate lease amendments, and unfortunately, there are two different companies assigned to the Troy towers. We were able to negotiate an agreement for the Lowery Street Tower, which was approved by the Troy City Council at its June 27, 2022 meeting (Resolution 2022-06-094). Following the City Manager's execution of this document, we sent it to AT & T for execution. Unfortunately, there was a change in the subcontractor's agent, and according to this new individual, AT & T was not willing to sign the lease unless it was modified from a ten- year initial term to a five- year initial term. AT & T's new agent has approved the revised AT & T lease for Lowery Street, and we recommend its approval.

In the interim, we attempted to work with the other subcontractor on the Sylvan Glen tower to accept identical lease terms. Since these lease agreements technically expired in June of this year, City Administration is hoping to get these leases approved, and to collect the first year's lease payment before the end of the year.

Please let us know if you have any questions or concerns.

Market: MI / IN
Cell Site Number: MI3328
Cell Site Name: MDOT Tower
Fixed Asset Number: 10076496

FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT TO LEASE AGREEMENT (“**Amendment**”) dated as of the later date below is by and between City of Troy, a Michigan municipal corporation, having a mailing address at 500 West Big Beaver Road, Troy, MI 48084 (“**Landlord**”) and New Cingular Wireless PCS, LLC, a Delaware limited liability company, successor by merger to AT&T Wireless Services PCS, Inc., a Delaware corporation, acting by and through its Agent, Wireless PCS, Inc., d/b/a AT&T Wireless Services, having a mailing address at 1025 Lenox Park Blvd. NE, 3rd Floor, Atlanta, GA 30319 (“**Tenant**”).

WHEREAS, Landlord and Tenant (or its affiliate or predecessor in interest) entered into a Lease Agreement dated October 6, 1998, whereby Landlord leased to Tenant certain Premises, therein described, that are a portion of the Property located at 203 Lowry Street, Troy, MI 48084 (collectively, the “**Lease**”); and

WHEREAS, the term of the Lease will expire on June 30, 2022, and the parties mutually desire to renew the Lease, memorialize such renewal period and modify the Lease in certain other respects, all on the terms and conditions contained herein; and

WHEREAS, Landlord and Tenant desire to amend the Lease to extend the term of the Lease; and

WHEREAS, Landlord and Tenant desire to adjust the rent in conjunction with the modifications to the Lease contained herein; and

WHEREAS, Landlord and Tenant desire to amend the Lease to clarify the scope of Tenant's permitted use of the Premises; and

WHEREAS, Landlord and Tenant, desire to amend the Lease to modify the notice section thereof; and

WHEREAS, Landlord and Tenant, in their mutual interest, wish to amend the Lease as set forth below accordingly.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. **Term.** The term of the Lease shall be amended to provide that the Lease has a new initial term of five (5) years (“**New Initial Term**”), commencing on July 1, 2022, (“**New Term**”).

Commencement Date”). The Lease will be automatically renewed for up to four (4) additional five (5) year terms (each a “**Renewal Term**”) upon the same terms and conditions of the Lease, as amended herein, without further action by Tenant, unless Tenant notifies Landlord in writing of Tenant’s intention not to renew the Lease at least sixty (60) days prior to the expiration of the New Initial Term or the then current Renewal Term. Hereafter, the defined term “**Term**” shall include the New Initial Term and any applicable Renewal Term. Landlord agrees and acknowledges that except that as such permitted use or other rights may be amended herein, Tenant may continue to use and exercise its rights under the Lease as permitted prior to the New Initial Term.

2. **Modification of Rent.** Commencing on July 1, 2022, the annual rent payable under the Lease shall be Forty Thousand Four Hundred and No/100 Dollars (\$40,000.00) (the “**Rent**”), and shall continue during the Term, subject to adjustment, if any, as provided below. In the event of any overpayment of Rent prior to or after the Effective Date, Tenant shall have the right to deduct from any future Rent payments an amount equal to the overpayment amount.

3. **Future Rent Increase / Annual Payments.** The Lease is amended to provide that commencing on July 1, 2023 and for the duration of the Renewal Term, the annual Rent shall increase by three percent (3%) over the Rent paid during the previous year.

4. **Permitted Use.** Tenant, its personnel, invitees, contractors, agents, or assigns may use the Premises, at no additional cost or expense, for the transmission and reception of any and all communications signals, and with advanced written permission from Landlord, which shall not be unreasonably withheld, may modify, replace, upgrade, or expand, including but not limited to the number and type(s) of antennas, or refurbish the equipment and/or improvements thereon or relocate the same within the Premises at any time during the term of the Lease, or in order to be in compliance with any current or future federal, state or local mandated application, including but not limited to emergency 911 communication services, or for any other reason. Landlord shall reasonably cooperate in obtaining governmental and other use permits or approvals necessary or desirable for the foregoing permitted use.

5. **Acknowledgement.** Landlord and Tenant acknowledge that: 1) this Amendment is entered into of the Tenant’s and Landlord’s free will and volition; 2) Tenant and Landlord have read and understand this Amendment and the underlying Lease and, prior to execution of this Amendment, were free to consult with counsel of their choosing regarding its decision to enter into this Amendment and to have counsel review the terms and conditions of this Amendment.

6. **Notices.** Section 29 of the Lease is hereby deleted in its entirety and replaced with the following:

NOTICES. All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows.

If to Landlord:

City of Troy
City Manager and City Attorney
500 West Big Beaver Road
Troy, MI 48084

If to Tenant:

New Cingular Wireless PCS, LLC
Attn: TAG – LA
Re: Cell Site #: MI3328
Cell Site Name: MDOT Tower (MI)
Fixed Asset #: 10076496
1025 Lenox Park Blvd. NE
3rd Floor
Atlanta, GA 30319

With a copy to:

New Cingular Wireless PCS, LLC
Attn: Legal Department
Re: Cell Site #: MI3328
Cell Site Name: MDOT Tower (MI)
Fixed Asset #: 10076496
208 S. Akard Street
Dallas, TX 75202

The copy sent to the Legal Department is an administrative step which alone does not constitute legal notice. Either party hereto may change the place for the giving of notice to it by thirty (30) days prior written notice to the other as provided herein.

7. **Charges.** All charges payable under the Lease such as utilities and taxes shall be billed by Landlord within one (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by Landlord, and shall not be payable by Tenant. The foregoing shall not apply to monthly Rent which is due and payable without a requirement that it be billed by Landlord. The provisions of this subsection shall survive the termination or expiration of the Lease.

8. **Other Terms and Conditions Remain.** In the event of any inconsistencies between the Lease and this Amendment, the terms of this Amendment shall control. Except as expressly set forth in this Amendment, the Lease otherwise is unmodified and remains in full force and effect. Each reference in the Lease to itself shall be deemed also to refer to this Amendment.

9. **Capitalized Terms.** All capitalized terms used but not defined herein shall have the same meanings as defined in the Lease.

[NO MORE TEXT ON THIS PAGE - SIGNATURES TO FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Amendment to be effective as of the last date written below.

LANDLORD:

City of Troy,
a Michigan municipal corporation

TENANT:

New Cingular Wireless PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

By: _____

By: _____

Print Name: _____

Print Name: _____

Its: _____

Its: _____

Date: _____

Date: _____

[ACKNOWLEDGEMENTS APPEAR ON THE NEXT PAGE]

LANDLORD ACKNOWLEDGEMENT

STATE OF _____)

_____)
COUNTY OF _____)

I CERTIFY that on _____, 202__,
_____ [name of representative] personally came before me and
acknowledged under oath that he or she:

- (a) is the City Manager of **City of Troy, a Michigan municipal corporation**, the
corporation named in the attached instrument;
- (b) was authorized to execute this instrument on behalf of the corporation; and
- (c) executed the instrument as the act of the corporation.

Notary Public: _____

My Commission Expires: _____

TENANT ACKNOWLEDGEMENT

STATE OF _____)
) SS.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of AT&T Mobility Corporation, the Manager of **New Cingular Wireless PCS, LLC, a Delaware limited liability company**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____.

Notary Seal

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of

My appointment expires: _____

Market: MI / IN
Cell Site Number:
Cell Site Name: MDOT Tower
Fixed Asset Number: 843387

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WHEREAS, Landlord and Tenant (or its affiliate or predecessor in interest) entered into a Lease Agreement dated October 6, 1998, whereby Landlord leased to Tenant certain Premises, therein described, that are a portion of the Property located at 5709 Rochester Road, Troy, MI 48085 (collectively, the “**Lease**”); and

WHEREAS, the term of the Lease expires on June 30, 2022, and the parties mutually desire to renew the Lease, memorialize such renewal period and modify the Lease in certain other respects, all on the terms and conditions contained herein; and

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City Manager and City Attorney
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Fixed Asset #: 843387
1025 Lenox Park Blvd. NE
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By: _____

By: _____

Print Name: _____

Print Name: _____

Its: _____

Its: _____

Date: _____

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Notary Public: _____

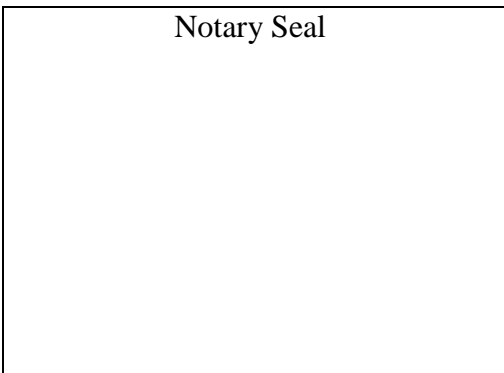
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TENANT ACKNOWLEDGEMENT

STATE OF _____)
) SS.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of AT&T Mobility Corporation, the Manager of **New Cingular Wireless PCS, LLC, a Delaware limited liability company**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____.



(Signature of Notary)

(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of

My appointment expires: _____