



City Council Memorandum

To: Mayor Fasbender & City Council Members
From: Ryan Stempski – PW Director/City Engineer
Date: August 1, 2022
Item: Approve Lease Agreement Amendment for Wireless Carrier Generator Installation – AT&T

COUNCIL ACTION REQUESTED

Council is requested to approve a lease agreement amendment with AT&T for a generator installation at the West 4th Street Water Tower site owned by the City. Council is also requested to authorize the Mayor's and City Clerk's signatures on the amendment.

BACKGROUND

AT&T is requesting to install a back-up generator and associated facilities in a designated location at the West 4th Street Tower site to service their existing Antenna Facilities. The generator facilities shall be subject to the same restrictions on installation, use, interference, and replacement as apply to the Antenna Facilities under the respective Site Lease Agreement dated July 1, 2008 for the West 4th Street Tower.

FINANCIAL IMPACT

The additional rent amount will increase by \$160 per month and is based on additional lease space needed at the site.

The agreement contains a rent escalator of 5% annually, which is the same amount as in prior agreements. For instance, the rents for 2023 will be 5% higher than for 2022, the 2024 lease amount will be 5% higher than for 2023, and so on. The agreements also provide consideration for increases to the lease amount in the event that AT&T would add facilities to the site in a way that results in their equipment occupying additional space beyond their current footprint, with the incremental rent amount being negotiated between parties and final outcome memorialized in an agreement amendment that would also be brought before the Council for approval.

ATTACHMENTS

A copy of the agreement amendment has been attached for reference.

STAFF RECOMMENDATION

Staff is recommending that the Council approve the amendment and authorize the Mayor and City Clerk to apply their signatures.

**FIRST AMENDMENT TO THE SITE LEASE AGREEMENT BETWEEN
THE CITY OF HASTINGS AND NEW CINGULAR WIRELESS PCS, LLC
FOR 4TH STREET WATER TOWER**

THIS FIRST AMENDMENT TO THE SITE LEASE AGREEMENT (“First Amendment”) is effective this ___ day of _____, 2022 (the “Effective Date”), by and between the City of Hastings, Minnesota, a Minnesota municipal corporation (“Landlord”), and New Cingular Wireless PCS, LLC, a Delaware limited liability company (“Tenant”).

WHEREAS, the parties hereto are parties to a Site Lease Agreement for equipment located on Landlord’s 4th Street Water Tower (the “Lease”); and

WHEREAS, there are two versions of the fully executed Lease with different hand-written dates inserted on the first page of the Lease (June 2, 2008 and July 1, 2008, respectively); and

WHEREAS, other than this discrepancy in the dates on the first page of the Lease, the fully executed Leases are identical, including the fully executed signature pages of the parties noting the dates signed; and

WHEREAS, for purposes of clarification, the parties would like to identify the Effective Date of the Lease, which will signal the start of the Initial Term; and

WHEREAS, Tenant desires to amend the Lease to add additional land space next to its equipment shelter for a generator; and

WHEREAS, in exchange for the additional space for the generator, Landlord shall increase the rent; and

WHEREAS, Tenant and Landlord both agree to the proposed clarification of the Effective Date and to the amendments as stated herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration, receipt of which is acknowledged, Landlord and Tenant agree as follows:

SECTION 1. The Effective Date of the Lease shall be July 1, 2008, which identifies the start of the Initial Term, pursuant to Section 3 of the Lease.

SECTION 2. Section 1 of the Lease is deleted in its entirety and replaced as follows:

1. **Leased Premises.** Landlord owns that certain real property legally described and depicted on Exhibit A (“Landlord’s Property”). Subject to the terms and conditions of this Lease, and existing easements and leases, Landlord hereby leases to Tenant and Tenant leases from Landlord a portion of Landlord’s water tower (sometimes referred to herein as the “Structure”) for its antenna facilities together with a portion of land on Landlord’s Property for an equipment shelter

and a generator, which are depicted on Exhibit B. The portion of the Landlord's water tower occupied by Tenant's antenna facilities and the portion of the land depicted on Exhibit B are collectively referred to as the "Leased Premises." Tenant shall use the Leased Premises for uses identified in Section 4 (b) of the Lease. In addition, Tenant shall use the portion of the Leased Premises depicted on Exhibit B for an equipment shelter and for a generator that are or shall be constructed pursuant to plans, specifications and construction documents approved by the City Engineer.

SECTION 3. Section 2 of the Lease shall be amended by adding the following section:

(d) Commencing the first day of the month following commencement of installation of the generator depicted on Exhibit B, but no later than August 1, 2022, Rent shall be increased by One Hundred and Sixty and No/100 Dollars (\$160.00) per month, subject to further adjustments, as provided in the Lease.

SECTION 4. Section 13 (a) of the Lease shall be amended by adding the following subsection:

(viii) Tenant may terminate the portion of the Leased Premises occupied by the generator on Exhibit B by providing written notice to Landlord. The effective date of such termination shall be 120 days after the notice is received by Landlord and thereafter, rent shall be reduced accordingly, which may be memorialized by an amendment to the Lease. In the event of such termination under this subparagraph, Tenant shall remove its generator and any related equipment from the Leased Premises pursuant to Section 13 (e) and restore the Lease Premises accordingly.

SECTION 5. Section 22 of the Lease is deleted in its entirety and replaced as follows:

22. **Notices.** All notices, requests, and demands 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 Hastings
 Attn: City Administrator
 101 4th St. E.
 Hastings, MN 55033

If to Tenant: New Cingular Wireless PCS, LLC
 Re: Cell Site # MNL03417
 Cell Site Name: LIONS PARK
 Fixed Asset #: 10122649
 1025 Lenox Park Blvd NE
 3rd Floor
 Atlanta, GA 30319

With copy to: New Cingular Wireless PCS, LLC
Attn: Legal Department
Re: Cell Site # MNL03417
Cell Site Name: LIONS PARK
Fixed Asset #: 10122649
208 S. Akard Street
Dallas, Texas, 75202-4206

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.

SECTION 6. Exhibit B is hereby added to the Lease.

SECTION 7. Memorandum of Lease. Either party will, at any time upon fifteen (15) days prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum of Lease substantially in the form of Exhibit C. Either party may record this memorandum at any time, in its absolute discretion.

SECTION 8. Capitalized Terms. All capitalized terms used but not defined herein shall have the same meanings as defined in the Lease.

SECTION 9. Other Terms and Conditions Remain. In the event of any inconsistencies between the Lease and this First Amendment, the terms of this First Amendment shall control. Each reference in the Lease to itself shall be deemed also to refer to this First Amendment.

SECTION 10. Nothing contained herein shall be deemed a waiver by Landlord of any governmental immunity defenses, statutory or otherwise. Further, any and all claims brought by Tenant or its successors or assigns, shall be subject to any governmental immunity defenses of Landlord and the maximum liability limits provided by Minnesota Statutes, Chapter 466.

SECTION 11. This First Amendment may be executed in two or more counterparts, all of which shall be considered one and the same instrument and shall become effective when one or more counterparts have been signed by the parties and delivered to the other parties.

SECTION 12. This First Amendment shall not be amended, modified or supplemented, except by a written instrument signed by an authorized representative of each party.

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IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be executed on the date and year written below effective as of the Effective Date above.

**LANDLORD:
CITY OF HASTINGS**

By: _____
Mary Fasbender
Its Mayor

By: _____
Kelly Murtaugh
Its City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this ____ day of _____, 202____, before me a Notary Public within and for said County, personally appeared Mary Fasbender and Kelly Murtaugh, to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and City Clerk of the City of Hastings, the municipality named in the foregoing instrument, and that the seal affixed to said instrument was signed and sealed on behalf of said municipality by authority of its City Council and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said municipality.

Notary Public

Market: RUMW
Cell Site Number: MNL03417
Cell Site Name: LIONS PARK
Fixed Asset Number: 10122649

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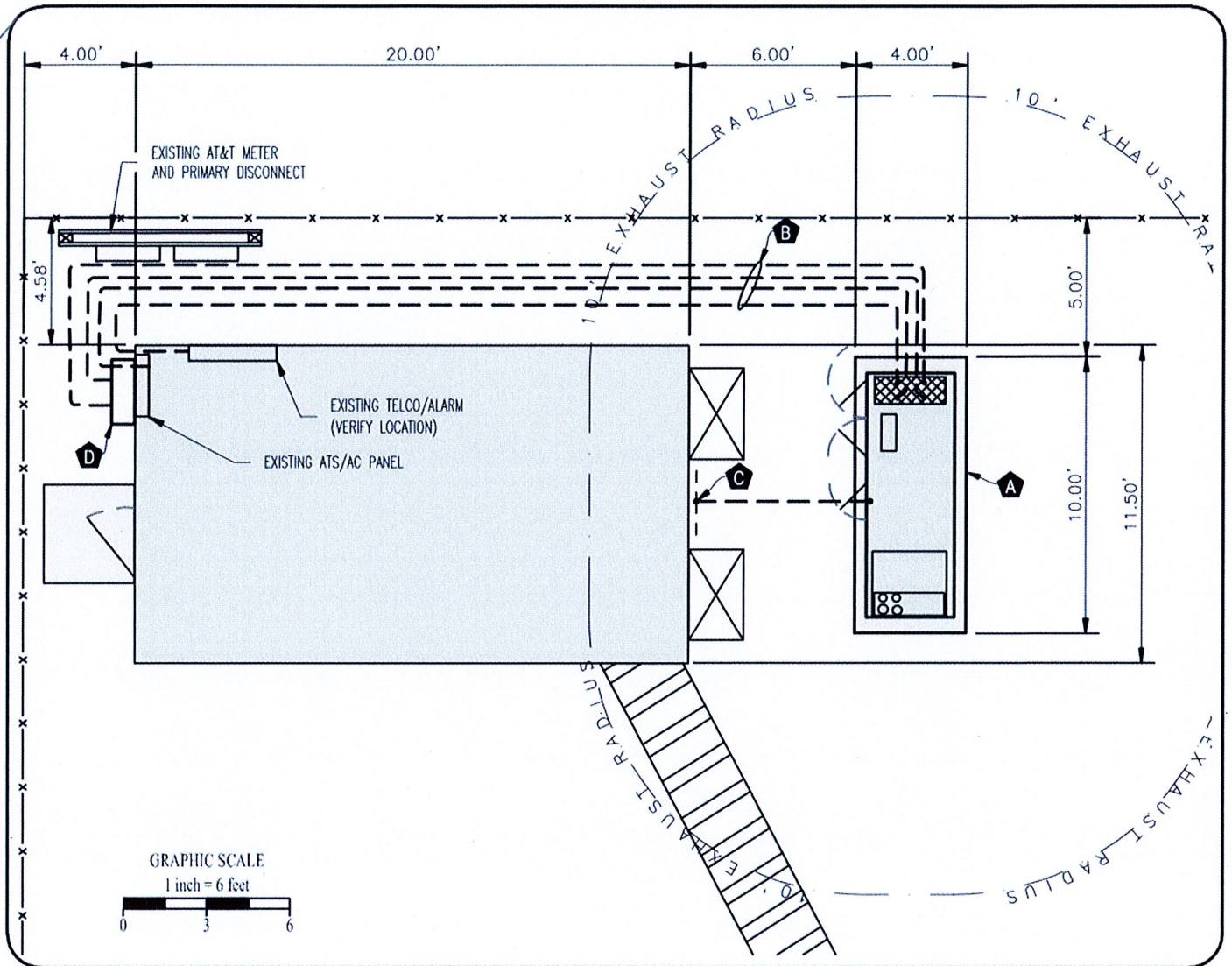
EXHIBIT A
LEGAL DESCRIPTION AND DEPICTIONS OF LANDLORD'S PROPERTY

Property Address: 1800 West 4th Street, Hastings, MN 55033
Property Index: 19-32200-020-01

Legal Description is as follows:

The North 297 feet of the South 330 feet of the West 330 feet of the North Half of the Northwest Quarter of Section 29, Township 115 North, Range 17 West, now platted as Lot 2, Block 1, HASTINGS HIGH SCHOOL, Dakota County, Minnesota.

EXHIBIT B DEPICTION OF THE LEASED PREMISES FOR THE EQUIPMENT SHELTER AND GENERATOR



Prepared by:

Zachary Arrasmith

General Dynamics Wireless Services

Re: Cell Site # MNL03417
Cell Site Name: LIONS PARK
Fixed Asset Number: 10122649
State: MN
County: Dakota

**MEMORANDUM OF LEASE FOR
FIRST AMENDMENT TO SITE LEASE AGREEMENT**

This Memorandum of Lease relates to the First Amendment to Site Lease Agreement and is entered into on this ____ day of _____, 20____, by and between City of Hastings, a Minnesota municipal corporation, having a mailing address of 101 4th St. E., Hastings, MN 55033 (“**Landlord**”), and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd NE, 3rd Floor, Atlanta, GA 30319 (“**Tenant**”).

1. Landlord and Tenant entered into a certain a Site Lease Agreement (“**Lease**”) dated July 1, 2008, as amended by that certain First Amendment to Site Lease Agreement dated _____ (collectively, the “**Lease**”) for the purpose of installing, operating and maintaining a communications facility and other improvements.
2. Landlord agrees to increase the size of the Leased Premises, as defined in the Lease, to accommodate Tenant’s additional equipment, for which Landlord shall be compensated appropriately. The additional premises area is more completely depicted on attached **Exhibit A**.
3. This First Amendment to Site Lease Agreement is not intended to amend or modify and shall not be deemed or construed as amending or modifying, any of the main terms,

Market: RUMW
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conditions or provisions of the Lease, except as stated therein. The Lease and the Amendment shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Lease.

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IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease for the First Amendment to Site Lease Agreement as of the day and year first above written.

**LANDLORD:
CITY OF HASTINGS**

By: _____
Mary Fasbender
Its Mayor

By: _____
Kelly Murtaugh
Its City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this ____ day of _____, 202____, before me a Notary Public within and for said County, personally appeared Mary Fasbender and Kelly Murtaugh, to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and City Clerk of the City of Hastings, the municipality named in the foregoing instrument, and that the seal affixed to said instrument was signed and sealed on behalf of said municipality by authority of its City Council and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said municipality.

Notary Public

EXHIBIT A DEPICTION OF THE LEASED PREMISES FOR THE EQUIPMENT SHELTER AND GENERATOR

