



## WEST DES MOINES WATER WORKS BOARD OF TRUSTEES MEETING COMMUNICATION

**DATE:** October 16, 2023

**ITEM:**

6. Recommendations from Committees
  - c. Resolution – Approving a Wireless Antenna Tower Lease Amendment No. 1 with AT&T

**FINANCIAL IMPACT:**

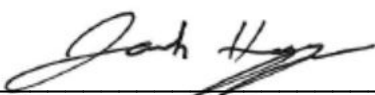
\$1,910.81 monthly lease

**BACKGROUND AND SUMMARY:**

West Des Moines Water Works has multiple lease agreements with nearly every major cellular provider to allow for equipment on our water towers. The 50<sup>th</sup> Street water tower has Verizon, T-Mobile, US Cellular and AT&T. AT&T has a lease set to expire and would like to extend the lease. The following lease amendment would maintain the same current lease terms and extend the lease another 25 years in 5-year increments. Our attorney has reviewed the lease agreement and does not have any issues with the amendment.

To Concur with the Recommendation of Staff and Approve Lease Amendment No. 1 with AT&T
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**RECOMMENDED ACTION BY THE BOARD OF TRUSTEES:**

Prepared by: 

Approved for Content by: 

Market: ND / SD / NE / MN / IA  
Cell Site Number: DESMIA2022  
Cell Site Name: West Des Moines Water Tank  
Fixed Asset Number: 10082519

## FIRST AMENDMENT TO TOWER LEASE WITH OPTION

THIS FIRST AMENDMENT TO TOWER LEASE WITH OPTION (“**First Amendment**”) dated as of the later date below is by and between City of West Des Moines, Iowa, a Municipal Corporation, by the Board of Trustees of the West Des Moines Municipal Water Works, having a mailing address at 1505 Railroad Avenue, West Des Moines, IA 50265 (“**Landlord**”) and New Cingular Wireless PCS, LLC, a Delaware limited liability company, successor by merger to TeleCorp Realty, L.L.C., a Delaware limited liability company, 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 Tower Lease with Option dated August 14, 2000, whereby Landlord leased to Tenant certain Premises, therein described, that are a portion of the Property located at 505 South 50th Street, West Des Moines, IA 50265 (“**Lease**”); and

WHEREAS, the term of the Lease will expire at Midnight on the last day of the month in which the fifth anniversary of the Commencement Date shall have occurred, 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 modify the notice section thereof; and

WHEREAS, Landlord and Tenant desire to amend the Lease to permit Tenant to add, modify and/or replace equipment 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; 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 current term, which commenced on November 1, 2020, shall expire at Midnight on the last day of the month in which the fifth anniversary of the Commencement Date shall have occurred (“**Current Term**”), and commencing on November 1, 2025, will be automatically renewed, upon the same terms and conditions of the Lease, for five (5) additional five (5) year terms (each a “**Renewal Term**”). Hereafter, “**Term**” shall include the Current Term and any applicable Renewal Term. The Terms will automatically renew 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 Current Term or any Renewal Term. Landlord agrees and acknowledges that, except 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 first Renewal Term.

2. **Modification of Rent.** Commencing on November 1, 2025, the current Rent payable under the Lease shall be One Thousand Nine Hundred Ten and 81/100 Dollars (\$1,910.81) per month, 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 / Renewal Term Increase.** The Lease is amended to provide that commencing on November 1, 2030, Rent shall increase by fifteen percent (15%) and at the beginning of each Renewal Term, as applicable.

4. **Emergency 911 Service.** In the future, without the payment of additional Rent, or any other consideration, and at a location mutually acceptable to Landlord and Tenant, Landlord agrees that Tenant may add, modify and/or replace equipment 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.

5. **Acknowledgement.** Landlord acknowledges that: 1) this First Amendment is entered into of the Landlord’s free will and volition; 2) Landlord has read and understands this First Amendment and the underlying Lease and, prior to execution of this First Amendment, was free to consult with counsel of its choosing regarding Landlord’s decision to enter into this First Amendment and to have counsel review the terms and conditions of this First Amendment; 3) Landlord has been advised and is informed that should Landlord not enter into this First Amendment, the underlying Lease between Landlord and Tenant, including any termination or non-renewal provision therein, would remain in full force and effect.

6. **Notices.** Paragraph 13 of the Lease is hereby amended as follows:

If to Tenant:

New Cingular Wireless PCS, LLC  
Attn: TAG – LA  
Re: Cell Site #: DESMIA2022  
Cell Site Name: West Des Moines Water Tank (IA)  
Fixed Asset #: 10082519

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 #: DESMIA2022  
Cell Site Name: West Des Moines Water Tank (IA)  
Fixed Asset #: 10082519  
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 First Amendment, the terms of this First Amendment shall control. Except as expressly set forth in this First 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 First 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 First Amendment to be effective as of the last date written below.

**LANDLORD:**

City of West Des Moines, Iowa,  
a Municipal Corporation,

By: The Board of Trustees of the  
West Des Moines Municipal Water Works

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**TENANT:**

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

By: AT&T Mobility Corporation  
Its: Manager

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

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 \_\_\_\_\_ [title] of **City of West Des Moines, Iowa, a  
Municipal Corporation, by the Board of Trustees of the West Des Moines Municipal Water  
Works**, 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: \_\_\_\_\_



**Attachment 1**

**Memorandum of Lease**

**PARCEL #: 320-00312002000**

SPACE ABOVE FOR RECORDER'S USE

LEGAL DESCRIPTION, page \_\_\_\_\_

**Prepared by, and  
after recording return to:**  
Catherine Abejar, Lease Processing  
(469) 965-9850  
MD7, LLC  
950 W. Bethany Drive, Suite 700  
Allen, TX 75013

Re: Cell Site #: DESMIA2022  
Cell Site Name: West Des Moines Water Tank (IA)  
Fixed Asset Number: 10082519  
State: IA  
County: Polk

**FIRST AMENDMENT TO MEMORANDUM OF LEASE**

This First Amendment to Memorandum of Lease is entered into on this \_\_\_\_ day of \_\_\_\_\_, 202\_\_, by and between City of West Des Moines, Iowa, a Municipal Corporation, by the Board of Trustees of the West Des Moines Municipal Water Works, having a mailing address of 1505 Railroad Avenue, West Des Moines, IA 50265 (“**Landlord**”) and New Cingular Wireless PCS, LLC, a Delaware limited liability company, successor by merger to TeleCorp Realty, L.L.C., a Delaware limited liability corporation, having a mailing address of 1025 Lenox Park Blvd. NE, 3rd Floor, Atlanta, GA 30319 (“**Tenant**”).

1. Landlord and Tenant entered into a certain Tower Lease with Option dated August 14, 2000, and as further amended by that certain First Amendment to Tower Lease with Option dated \_\_\_\_\_, 202\_\_ (collectively, the “**Lease**”) for the purpose of installing, operating and maintaining a communications

2019 Amendment

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facility and other improvements. A Memorandum of Lease reflecting the Lease was recorded on December 6, 2000, as instrument number 041346, in the public records of Polk County, State of Iowa.

2. The parties have agreed, commencing at Midnight on the last day of the month in which the fifth anniversary of the Commencement Date shall have occurred, to add five (5) successive periods of five (5) years each upon the same terms and conditions of the Lease.
3. The portion of the land being leased to Tenant (the “**Premises**”) is described in **Exhibit 1** annexed hereto.
4. This First Amendment to Memorandum of Lease is not intended to amend or modify and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Lease, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this First Amendment to Memorandum of Lease and the provisions of the Lease, the provisions of the Lease shall control. The Lease 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.

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

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

**LANDLORD:**  
City of West Des Moines, Iowa,  
a Municipal Corporation,

**TENANT:**  
New Cingular Wireless PCS, LLC,  
a Delaware limited liability company

By: The Board of Trustees of the  
West Des Moines Municipal Water Works

By: AT&T Mobility Corporation  
Its: Manager

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

[ACKNOWLEDGEMENTS APPEAR ON 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 \_\_\_\_\_ [title] of **City of West Des Moines, Iowa, a  
Municipal Corporation, by the Board of Trustees of the West Des Moines Municipal Water  
Works,** 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: \_\_\_\_\_

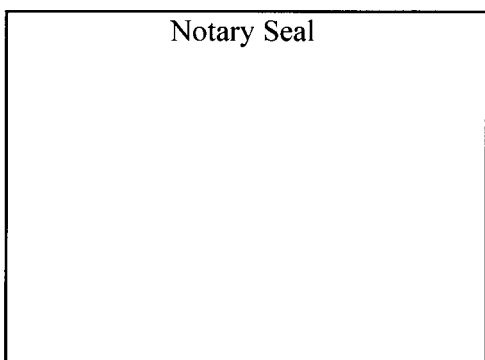
My Commission Expires: \_\_\_\_\_

**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: \_\_\_\_\_.



\_\_\_\_\_  
(Signature of Notary)

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

\_\_\_\_\_  
My appointment expires: \_\_\_\_\_

**Exhibit 1 to First Amendment to Memorandum of Lease  
Legal Description**

Street Address: 505 South 50th Street, West Des Moines, IA 50265

Parcel #: 320-00312002000

That certain Premises (and access and utility easements) on a portion of the real property described as follows:

A tract of land, containing 3.33 acres, in the Northeast Quarter and the Southeast Quarter of Section 18, Township 78 North, Range 25 West of the Fifth Principal Meridian, in the City of West Des Moines, Polk County, Iowa, more particularly described as follows:

Commencing at the East 1/4 Corner of said Section 18, with the east line of the Southeast 1/4 of said Section 18 having an assumed true bearing of S 0°00'00" E, with all subsequent bearings referenced therefrom; thence S 0°00'00" E, a distance of four hundred thirty-nine and sixty-nine hundredths (439.69) feet; thence N 90°00'00" W, a distance of thirty-three (33.00) feet to a point on the west right-of-way line of 50<sup>th</sup> Street in the said City of West Des Moines and the point of beginning; thence N 90°00'00" W, a distance of three hundred forty and thirty hundredths (340.30) feet; thence N 27°25'15" W, a distance of two hundred eighty-seven and eight hundredths (287.08) feet to the southerly line of a power line easement, one hundred (100) feet in width; thence N 62°34'45" E, along said southerly line of said power line easement, a distance of five hundred thirty-two and thirty-nine hundredths (532.39) feet to the west right-of-way line of said 50<sup>th</sup> Street; thence S 0°01'51" W, along the said west right-of-way line of 50<sup>th</sup> Street, a distance of sixty and thirty-one hundredths (60.31) feet; thence S 0°00'00" E, along said west right-of-way line of 50<sup>th</sup> Street, a distance of four hundred thirty-nine and sixty-nine hundredths (439.69) feet to the point of beginning. (Also being part of Lot 3 Partition Plat)