



Waukesha Water Utility

SERVING WAUKESHA SINCE 1886

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MEMORANDUM

DATE: July 18, 2016
TO: Daniel Duchniak, GM
FROM: Donna Scholl, ASM
RE: AT&T Cell Tower – Breach of Lease Agreement

Utility staff and the City Attorney's office are requesting authorization to litigate two lease agreements the Utility holds with AT&T.

The two lease agreements relate to cell phone tower installations on the Davidson and UWW Towers. The agreements were originally negotiated with Cricket Communications. They were transferred to AT&T as a result of a merger.

While AT&T is current on the two annual lease payments, it has given notice of termination of the lease agreement relating to UWW Tower. In its notice it states that termination was "due to changes . . . beyond Lessee's control," and is therefore not obligated to pay any additional amounts pursuant to the lease.

Utility staff and the City Attorney disagree with AT&T's assertion. AT&T has stated that its technology is superior to that used by Cricket and that the two cell coverage areas overlap. We believe AT&T's termination of the lease is driven by the business decision to merge with Cricket, resulting in "changes in Lessee's technological network requirements." Termination for this reason requires the Lessee to "pay to Utility as liquidated damages an amount equivalent to 200% of the annual rental fee in effect at the time of termination." Under this clause AT&T would owe the Utility \$71,750 in liquidated damages for the UW Tower and the same amount if they chose to terminate the cell lease at the Davidson Tower.

The City Attorney's office has informed AT&T that it believes the Utility is entitled to liquidated damages. AT&T disagrees. As a result, Utility staff and the City Attorney are requesting authorization to litigate the lease agreement that relates to UWW Tower. Further, it proactively seeks authorization to litigate should AT&T take the same position with the lease on Davidson Tower.

Recommended Motion: Move to authorize the City Attorney's Office to litigate in order to secure liquidated damages relating to the UWW Cell Lease and to proceed likewise should AT&T take the same position with the Davidson Tower Lease.