

MEMORANDUM

Date: October 20, 2015

To: Water Commission

From: Dan Duchniak, General Manager

Re: T-Mobile Antenna Site License Agreements on the Hunter Road, Evergreen Drive and Meadowbrook Road Towers

We are requesting approval of a renewal to the existing lease with T-Mobile for the Cellular Antennas on the water towers on Hunter Road, Evergreen Drive and Meadowbrook Road. The existing contracts expired in 2015. We have been working with the City Attorney's office to develop a lease document that reflects the current market conditions.

The proposed amendment is for 5 years with two, 5-year options. The initial pricing is a 25% increase to \$35,611.20 per year for the first 5 years with a 20% increase for each of the second and third, 5-year options.

Attached you will find a copy of the amendments. I look forward to your approval at the water commission meeting. Please contact me if you have any questions or concerns.

Recommended Motion: Move to approve the T-Mobile Antenna Site License Agreements on the Hunter Road, Evergreen Drive and Meadowbrook Road Towers.

Enc.

FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT TO LEASE AGREEMENT ("First Amendment") is made and entered into as of the 4th of September, 2015, between the City of Waukesha, Wisconsin Water Utility ("City"), and T-Mobile Central LLC, a Delaware limited-liability company ("Lessee").

Recitals

City and Lessee, by and through their predecessors in interest, entered into a Lease Agreement, dated August 25, 2000 (the "Lease"), for a portion of Building interior space, space required for cables and utilities, as well as Tower and Ground Space, as more particularly described in Section 2 of the Lease, (collectively the "Premises") of the property located at 2520 Meadowbrook Rd., Waukesha, WI 53188 (the "Property").

City and Lessee desire to enter into this First Amendment in order to modify and amend certain provisions of the Lease.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Lessee covenant and agree as follows:

1. All references to "Utility" in the Lease are replaced with "City." The City of Waukesha, Wisconsin, by its Water Utility Commission, shall be deemed to have been, and continue to be, the lessor in both the Lease and this First Amendment.
2. Section 3 (b) of the Lease is hereby amended to provide that the current term, which was to expire on September 4, 2015, is extended for a renewal term of five (5) years, to expire on September 4, 2020, and that Lessee shall have the right to extend the Lease for two (2) additional and successive five (5) year renewal terms (each a "Renewal Term"), which shall each renew automatically, unless Lessee notifies City, in writing, at least sixty (60) days prior to the expiration of the then current Renewal Term that it does not wish to exercise such renewal term. The Renewal Terms shall be upon all of the terms and conditions of the Lease, except as specifically amended by this First Amendment.
3. Section 4 of the Lease is amended to add that as of the full execution of this First Amendment, Lessee shall pay to the City, as rent, Two Thousand Nine Hundred Sixty-Seven Dollars and Sixty Cents (\$2,967.60) per month, and that amount for each month between the expiration of the current term and the execution of this First Amendment. The Rent escalation provision in Section 4(c) of the Lease is amended so that the Rent during each Renewal Term shall increase by twenty percent (20%) over the Rent paid during the preceding term.
4. Section 7 of the Lease is hereby amended to provide that any additional equipment Lessee desires to install shall require Lessee to obtain City's prior written approval, which approval shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, Lessee shall have the right to modify, replace and/or install new equipment within its building interior space portion of its leased Site upon prior written notice to City but without City consent.
5. Section 23 (a) of the License is hereby amended to provide that Lessee shall have sixty (60) days from the termination or expiration of the Lease to remove its equipment and improvements. In the event Lessee does not remove its equipment and improvements within such sixty (60) day time period, the Lease shall continue on the same terms and conditions, and such tenancy shall be deemed a month-to-month tenancy and Lessee shall pay Rent in the amount of one hundred fifty percent (150%) of the then current rate.
6. Section 23 (b) of the Agreement shall be removed entirely from the Lease and is not replaced.
7. Section 23 (c) of the Agreement shall be removed entirely and replaced with the following:

“Lessee may terminate this Agreement at any time during the term hereof by providing written notice to City in the event that either (i) any license, permit or other governmental approval or authority is subsequently canceled, expires or is withdrawn or terminated and Lessee is no longer authorized to operate its Communication Facilities from the Premises; (ii) due to changes in technology or other events beyond Lessee's control, Lessee is no longer able to utilize the Premises for its Communication Facilities; or (iii) due to changes in Lessee's technological network requirements, in Lessee's discretion. Upon such termination, Lessee shall immediately pay to the City as liquidated damages an amount equal to three times the annual rent in effect at the time of termination, or the rent for the remaining Term of the Lease if the Lease had not been terminated, whichever is less.”

8. Section 27 of the Agreement is amended to provide City will provide Lessee at least one hundred twenty (120) days prior written notice of any non-emergency repairs, maintenance or other work during the Term of the Lease which would require the temporary relocation the Communication Facilities. City agrees that Lessee shall have the right to utilize a mobile facility, at an alternate location on City's property, mutually acceptable to both City and Lessee. City will cooperate with Lessee in Lessee's efforts to obtain temporary utilities from any location provided by City. In the event that Lessee is unable to find a suitable alternate location for temporary relocation on City's property and Lessee is required to remove, or otherwise loses use of, the Communication Facilities, the Rent shall abate. The Rent shall continue only at such time as Lessee may resume use of the original Premises.
9. Lessee's notice addresses in Section 36 of the Lease is hereby deleted in its entirety and replaced with the following:

If to Lessee: T-Mobile USA, Inc.
12920 S.E. 38th Street
Bellevue, WA 98006
Attn.: Lease Compliance
Site No. ML12034D

10. The terms and conditions of the Lease are incorporated herein by this reference, and capitalized terms used in this First Amendment shall have the same meanings such terms are given in the Lease. Except as specifically set forth herein, this First Amendment shall in no way modify, alter or amend the remaining terms of the Lease, all of which are ratified by the parties and shall remain in full force and effect. To the extent there is any conflict between the terms and conditions of the Lease and this First Amendment, the terms and conditions of this First Amendment will govern and control.
11. City represents and warrants to Lessee that the consent or approval of no third party, including and without limitation, a lender, is required with respect to the execution of this First Amendment, or if any such third party consent or approval is required, City has obtained any and all such consents or approvals.
12. The persons who have executed this First Amendment represent and warrant they are duly authorized to execute this First Amendment in their individual or representative capacity as indicated.

IN WITNESS WHEREOF, the parties have executed this First Amendment effective as of September 4, 2015.

City: City of Waukesha, Wisconsin

By Shawn N. Reilly, Mayor
Date: _____

Attested by Gina L. Kozlik, City Clerk
Date: _____

Lessee: T-Mobile Central LLC

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

State of _____ }
County of _____ } ss.

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 T-Mobile Central 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: _____



(Use this space for notary stamp/seal)

Notary Public
Print Name _____
My commission expires _____

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THIS FIRST AMENDMENT TO LEASE AGREEMENT ("First Amendment") is made and entered into as of the 4th of September, 2015, between the City of Waukesha, Wisconsin Water Utility ("City"), and T-Mobile Central LLC, a Delaware limited-liability company ("Lessee").

Recitals

City and Lessee, by and through their predecessors in interest, entered into a Lease Agreement, dated August 25, 2000 (the "Lease"), for a portion of Building interior space, space required for cables and utilities, as well as Tower and Ground Space, as more particularly described in Section 2 of the Lease, (collectively the "Premises") of the property located at 1727 Hunter Rd., Waukesha, WI 53188 (the "Property").

City and Lessee desire to enter into this First Amendment in order to modify and amend certain provisions of the Lease.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Lessee covenant and agree as follows:

1. All references to "Utility" in the Lease are replaced with "City." The City of Waukesha, Wisconsin, by its Water Utility Commission, shall be deemed to have been, and continue to be, the lessor in both the Lease and this First Amendment.
2. Section 3 (b) of the Lease is hereby amended to provide that the current term, which was to expire on September 4, 2015, is extended for a renewal term of five (5) years, to expire on September 4, 2020, and that Lessee shall have the right to extend the Lease for two (2) additional and successive five (5) year renewal terms (each a "Renewal Term"), which shall each renew automatically, unless Lessee notifies City, in writing, at least sixty (60) days prior to the expiration of the then current Renewal Term that it does not wish to exercise such renewal term. The Renewal Terms shall be upon all of the terms and conditions of the Lease, except as specifically amended by this First Amendment.
3. Section 4 of the Lease is amended to provide that as of the full execution of this First Amendment, Lessee shall pay to the City, as rent, Two Thousand Nine Hundred Sixty-Seven Dollars and Sixty Cents (\$2,967.60) per month, and that amount for each month between the expiration of the current term and the execution of this First Amendment. The Rent escalation provision in Section 4(c) of the Lease is amended so that the Rent during each Renewal Term shall increase by twenty percent (20%) over the Rent paid during the preceding term.
4. Section 7 of the Lease is hereby amended to provide that any additional equipment Lessee desires to install shall require Lessee to obtain City's prior written approval, which approval shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, Lessee shall have the right to modify, replace and/or install new equipment within its building interior space portion of its leased Site upon prior written notice to City but without City consent.
5. Section 23 (a) of the License is hereby amended to add that Lessee shall have sixty (60) days from the termination or expiration of the Lease to remove its equipment and improvements. In the event Lessee does not remove its equipment and improvements within such sixty (60) day time period, the Lease shall continue on the same terms and conditions, and such tenancy shall be deemed a month-to-month tenancy and Lessee shall pay Rent in the amount of one hundred fifty percent (150%) of the then current rate.
6. Section 23 (b) of the Agreement shall be removed entirely from the Lease and is not replaced.
7. Section 23 (c) of the Agreement shall be removed entirely and replaced with the following:

“Lessee may terminate this Agreement at any time during the term hereof by providing written notice to City in the event that either (i) any license, permit or other governmental approval or authority is subsequently canceled, expires or is withdrawn or terminated and Lessee is no longer authorized to operate its Communication Facilities from the Premises; (ii) due to changes in technology or other events beyond Lessee's control, Lessee is no longer able to utilize the Premises for its Communication Facilities; or (iii) due to changes in Lessee's technological network requirements, in Lessee's discretion. Upon such termination, Lessee shall immediately pay to the City as liquidated damages an amount equal to three times the annual rent in effect at the time of termination, or the rent for the remaining Term of the Lease if the Lease had not been terminated, whichever is less.”

8. Section 27 of the Agreement is amended to provide City will provide Lessee at least one hundred twenty (120) days prior written notice of any non-emergency repairs, maintenance or other work during the Term of the Lease which would require the temporary relocation the Communication Facilities. City agrees that Lessee shall have the right to utilize a mobile facility, at an alternate location on City's property, mutually acceptable to both City and Lessee. City will cooperate with Lessee in Lessee's efforts to obtain temporary utilities from any location provided by City. In the event that Lessee is unable to find a suitable alternate location for temporary relocation on City's property and Lessee is required to remove, or otherwise loses use of, the Communication Facilities, the Rent shall abate. The Rent shall continue only at such time as Lessee may resume use of the original Premises.
9. Lessee's notice addresses in Section 36 of the Lease is hereby deleted in its entirety and replaced with the following:

If to Lessee: T-Mobile USA, Inc.
 12920 S.E. 38th Street
 Bellevue, WA 98006
 Attn.: Lease Compliance
 Site No. ML13067C

10. The terms and conditions of the Lease are incorporated herein by this reference, and capitalized terms used in this First Amendment shall have the same meanings such terms are given in the Lease. Except as specifically set forth herein, this First Amendment shall in no way modify, alter or amend the remaining terms of the Lease, all of which are ratified by the parties and shall remain in full force and effect. To the extent there is any conflict between the terms and conditions of the Lease and this First Amendment, the terms and conditions of this First Amendment will govern and control.
11. City represents and warrants to Lessee that the consent or approval of no third party, including and without limitation, a lender, is required with respect to the execution of this First Amendment, or if any such third party consent or approval is required, City has obtained any and all such consents or approvals.
12. The persons who have executed this First Amendment represent and warrant they are duly authorized to execute this First Amendment in their individual or representative capacity as indicated.

IN WITNESS WHEREOF, the parties have executed this First Amendment effective as of September 4, 2015.

City: City of Waukesha, Wisconsin

By Shawn N. Reilly, Mayor
Date: _____

Attested by Gina L. Kozlik, City Clerk
Date: _____

Lessee: T-Mobile Central LLC

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

State of _____ }
County of _____ } ss.

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 T-Mobile Central 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: _____



(Use this space for notary stamp/seal)

Notary Public
Print Name _____
My commission expires _____

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Recitals

City and Lessee, by and through their predecessors in interest, entered into a Lease Agreement, dated November 17, 2000 (the "Lease"), for a portion of Building interior space, space required for cables and utilities, as well as Tower and Ground Space, as more particularly described in Section 2 of the Lease, (collectively the "Premises") of the property located at 1520 Evergreen Drive, Waukesha, WI 53188 (the "Property").

City and Lessee desire to enter into this First Amendment in order to modify and amend certain provisions of the Lease.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Lessee covenant and agree as follows:

1. All references to "Utility" in the Lease are replaced with "City." The City of Waukesha, Wisconsin, by its Water Utility Commission, shall be deemed to have been, and continue to be, the lessor in both the Lease and this First Amendment.
2. Section 3 (b) of the Lease is hereby amended to provide that the current term, which expires on November 19, 2015, is extended for a renewal term of five (5) years, to expire on November 19, 2020, and that Lessee shall have the right to extend the Lease for two (2) additional and successive five (5) year renewal terms (each a "Renewal Term"), which shall each renew automatically, unless Lessee notifies City, in writing, at least sixty (60) days prior to the expiration of the then current Renewal Term that it does not wish to exercise such renewal term. The Renewal Terms shall be upon all of the terms and conditions of the Lease, except as specifically amended by this First Amendment.
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Bellevue, WA 98006
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Site No. ML13088B

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12. The persons who have executed this First Amendment represent and warrant they are duly authorized to execute this First Amendment in their individual or representative capacity as indicated.

IN WITNESS WHEREOF, the parties have executed this First Amendment on the date last shown below.

City: City of Waukesha, Wisconsin

By Shawn N. Reilly, Mayor
Date: _____

Attested by Gina L. Kozlik, City Clerk
Date: _____

Lessee: T-Mobile Central LLC

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

State of _____ }
County of _____ } ss.

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 T-Mobile Central 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: _____



(Use this space for notary stamp/seal)

Notary Public
Print Name _____
My commission expires _____