

AGENDA REPORT

TO: Mayor & City Commission
FROM: Ken Hibl, City Manager
DATE: June 16, 2016
RE: AT&T Lease Amendment

For the Agenda of June 20, 2016

Background. The City enjoys a lease agreement with AT&T to allow the company to utilize space on the City's south water tower for AT&T cellular antennas. The lease expires in 2017. The company has requested a five-year lease extension with a second five-year automatic extension, thereby creating a new lease expiration date of 2028. The City Staff recommends approval of the proposed amendment.

Issues & Questions Specified. Should the City Commission approve a lease amendment(*copies of Short Form & Fourth Amendment att'd*) for AT&T?

Alternatives.

1. Approve the lease amendment.
2. Approve a five year lease amendment and deny the second five-year extension request.
3. Deny the request for amendment.
4. Defer decision regarding the matter to a subsequently scheduled meeting.

Financial Impact. The lease proposal assures the City's Water Fund of continuing lease revenue of \$1,800 monthly (plus a 3% or CPI, whichever is greater, annual increase) for the next ten years.

Recommendation. I recommend that the City Commission approve the lease amendment by adoption of Resolution 2016-065 (*copy att'd*).

Attachments.

1. Short form Lease Amendment.
2. Fourth Amendment.
3. Resolution 2016-065.

**Prepared by, and
after recording return to:**

Md7, LLC
10590 W. Ocean Air Drive, Suite 300
San Diego, CA 92130

Re: Cell Site #: TRAVMI6068
Cell Site Name: CLARE WT (MI)
Fixed Asset Number: 10124491
State: MI
County: Clare

FIRST AMENDMENT TO SHORT FORM OF LEASE

This First Amendment to Short Form of Lease is entered into on this ____ day of _____, 20____, by and between the City of Clare, a Michigan municipal corporation, having a mailing address of 202 West Fifth Street, Clare, MI 48617 (“**Owner**”) and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 575 Morosgo Drive NE, Atlanta, GA 30324 (“**Tenant**”).

1. Owner and Tenant entered into a certain Site Lease dated October 21, 1998, as amended by that certain First Amendment to the Site Lease dated February 21, 2005, as amended by that certain Second Amendment to the Site Lease dated March 8, 2013, as amended by that certain Third Amendment to Site Lease dated May 2, 2014, and as further amended by that certain Fourth Amendment to Site Lease dated _____, 20____ (collectively, the “**Agreement**”) for the purpose of installing, operating and maintaining a communications facility and other improvements. A Short Form of Lease reflecting the Agreement was recorded on November 3, 1998, in Liber 660 at Page 597, in the public records of Clare County, State of Michigan.
2. The parties have agreed that the Agreement has a new initial term of five (5) years (“**New Initial Term**”), commencing on October 1, 2018, subject to the provisions of the Agreement.
3. The parties have agreed, following the New Initial Term, to add two (2) successive periods of five (5) years each upon the same terms and conditions of the Agreement. The Agreement will be automatically renewed unless Tenant notifies Owner in

writing of Tenant's intention not to renew the Agreement at least sixty (60) days prior to the expiration of the existing term.

4. The portion of the land being leased to Tenant (the "**Premises**") is described in **Exhibit 1** annexed hereto.

5. This First Amendment to Short Form 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 Agreement, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this First Amendment to Short Form of Lease and the provisions of the Agreement, the provisions of the Agreement shall control. The Agreement 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 Agreement.

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

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

OWNER:
City of Clare,
a Michigan municipal corporation

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

By: AT&T Mobility Corporation
Its: Manager

By: _____
Pat Humphrey, Mayor

By: _____

Print Name: _____

Date: _____

Title: _____

Date: _____

[ACKNOWLEDGEMENTS APPEAR ON NEXT PAGE]

Exhibit 1 to First Amendment to Short Form of Lease

Legal Description

Street Address: 200 West Fourth Street, Clare, MI 48617

Parcel #: 051-064-004-00

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

The land referred to herein below is situated in the County of Clare, City of Clare, State of Michigan and is described as follows:

Lots 4, 5, 6, 7, 8, 9, 10 and 11, Block 20, City of Clare, according to the Plat for the Village of Clare on record in the Register's Office of Clare County.

Parcel ID #051-064-004-00

This being the same property conveyed to City of Clare, a Municipal Corporation from Clare Public Schools, as successor of School District No. 2 in a deed dated October 06, 2003 and Recorded October 08, 2003 in Book 878 Page 570.

Property Commonly Known As: 200 West Fourth Street Clare, MI 48617

Cell Site No.: TRAVMI6068
Cell Site Name: CLARE WT
Fixed Asset No.: 10124491
Market: MI / IN
Address: 200 West Fourth Street

FOURTH AMENDMENT TO SITE LEASE

THIS FOURTH AMENDMENT TO SITE LEASE (“**Fourth Amendment**”), dated as of the latter of the signature dates below (the “**Effective Date**”), is by and between the City of Clare, a Michigan municipal corporation, having a mailing address of 202 West Fifth Street, Clare, MI 48617 (hereinafter referred to as “**Owner**”), and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 575 Morosgo Drive NE, Atlanta, GA 30324 (hereinafter referred to as “**Tenant**”).

WHEREAS, Owner (or its respective predecessor-in-interest) and Tenant (or its respective predecessor-in-interest) entered into a Site Lease dated October 21, 1998 (“**Original Agreement**”), as amended by First Amendment to the Site Lease dated February 21, 2005 (“**First Amendment**”), as amended by Second Amendment to the Site Lease dated March 8, 2013 (“**Second Amendment**”), as amended by Third Amendment to Site Lease dated May 2, 2014 (“**Third Amendment**”) (the Original Agreement, First Amendment, Second Amendment, and Third Amendment are collectively referred to herein as, the “**Agreement**”), whereby Owner leased to Tenant certain premises (“**Premises**”), therein described, that are a portion of the property (“**Property**”) located at 200 West Fourth Street, Clare, MI; and

WHEREAS, the term of the Agreement will expire on October 20, 2018, and the parties mutually desire to renew the Agreement, memorialize such renewal period and modify the Agreement in certain other respects, all on the terms and conditions contained herein; and

WHEREAS, Owner and Tenant desire to amend the Agreement to extend the term of the Agreement; and

WHEREAS, Owner and Tenant desire to amend the Agreement to adjust the Monthly Rent (as defined below) in conjunction with the modifications to the Agreement contained herein; and

WHEREAS, Owner and Tenant desire to amend the Agreement to modify the notice section thereof; and

WHEREAS, Owner and Tenant, in their mutual interest, wish to amend the Agreement 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, Owner and Tenant agree that the recitals set forth above are incorporated herein as if set forth in their entirety and further agree as follows:

1. **Extension of Term.** The term of the Agreement shall be extended to provide that the Agreement has a new initial term of five (5) years (“**New Initial Term**”) commencing on October 1, 2018 (“**New Term Commencement Date**”). As of the New Term Commencement

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Date, the term provided in the Agreement and any extensions thereof, as applicable, shall be void and of no further force and consequence. The Agreement will automatically renew, commencing on the expiration of the New Initial Term, for up to two (2) separate consecutive additional periods of five (5) years each (each such five (5) year additional period is hereinafter referred to as an "**Additional Extension Term**" and each such Additional Extension Term shall be considered an Extension Term under the Agreement), upon the same terms and conditions of the Agreement, as amended herein, without further action by Tenant unless Tenant notifies Owner in writing of Tenant's intention not to renew the Agreement at least sixty (60) days prior to the expiration of the then current Additional Extension Term. The New Initial Term, the Additional Extension Term are collectively referred to as the Term ("**Term**").

2. **Monthly Rent.** Commencing on October 1, 2018, the current Monthly Rent payable under the Agreement shall be One Thousand Eight Hundred and No/100 Dollars (\$1,800.00) per month (the "**Monthly Rent**"), and shall continue during the Term, subject to adjustment as provided herein. Section 3 of the Agreement shall be amended to provide that Monthly Rent shall be adjusted as follows: in year two (2) of the New Initial Term and each year thereafter, including throughout any Additional Extension Term exercised, the Monthly Rent will increase by three percent (3%) over the Monthly Rent paid during the previous year.

3. **Improvements.** Tenant and Tenant's subcontractors shall perform the installation of the improvements in a good and workmanlike manner consistent with generally accepted construction standards, in conformity with a valid building permit, if required, and in compliance with all applicable Laws. Within thirty (30) days after any work is complete, Owner shall have the right to inspect the work with a representative of Tenant present. Owner shall thereafter provide Tenant with written notice of any deficiencies in the work ("Work Deficiency Notice"). Tenant shall promptly commence any repairs and/or remedial work necessary to correct the deficiencies described in the Work Deficiency Notice. Once such repairs and/or remedial work have been completed, Owner shall re-inspect the roof, but only with respect to such installation deficiencies while in the presence of a Tenant representative. Owner shall have ten (10) days thereafter to give Tenant written approval of the work or provide a further Work Deficiency Notice.

4. **Charges.** All charges payable under the Agreement such as utilities and taxes shall be billed by Owner 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 Owner, 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 Owner. The provisions of this subparagraph shall survive the termination or expiration of the Agreement.

5. **Acknowledgement.** Owner acknowledges that: 1) this Fourth Amendment is entered into of the Owner's free will and volition; 2) Owner has read and understands this Fourth Amendment and the underlying Agreement and, prior to execution of this Fourth Amendment, was free to consult with counsel of its choosing regarding Owner's decision to enter into this Fourth Amendment and to have counsel review the terms and conditions of this Fourth Amendment; 3) Owner has been advised and is informed that should Owner not enter into this

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Fourth Amendment, the underlying Agreement between Owner and Tenant, including any termination or non-renewal provision therein, would remain in full force and effect.

6. **Notices.** Section 22 of the Original Agreement, Section 2 of the First Amendment, Section 3 of the Second Amendment, and Section 4 of the Third Amendment are hereby deleted in its entirety and replaced with the following:

“(a) 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 Tenant:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #: TRAVMI6068
Cell Site Name: CLARE WT (MI); Fixed Asset No.: 10124491
575 Morosgo Drive NE
Atlanta, GA 30324

With a required copy of the notice sent to the address above to AT&T Legal at:

New Cingular Wireless PCS, LLC
Attn: AT&T Legal Department
Re: Cell Site #: TRAVMI6068
Cell Site Name: CLARE WT (MI); Fixed Asset No: 10124491
208 S. Akard Street
Dallas, Texas, 75202-4206

A copy sent to the Legal Department is an administrative step which alone does not constitute legal notice.

And as to Owner:

City of Clare
202 West Fifth Street
Clare, MI 48617

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. **First Amendment to Short Form of Lease.** Either party will, at any time upon fifteen (15) days prior written notice from the other, execute, acknowledge and deliver to the

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other a recordable First Amendment to Short Form of Lease substantially in the form of the Attachment 1. Either party may record this memorandum at any time, in its absolute discretion.

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

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

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IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute this Fourth Amendment on the dates set forth below.

OWNER:
City of Clare,
a Michigan municipal corporation

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

By: AT&T Mobility Corporation
Its: Manager

By: _____
Pat Humphrey, Mayor

By: _____

Print Name: _____

Date: _____

Title: _____

Date: _____

[ACKNOWLEDGMENTS APPEAR ON THE NEXT PAGE]

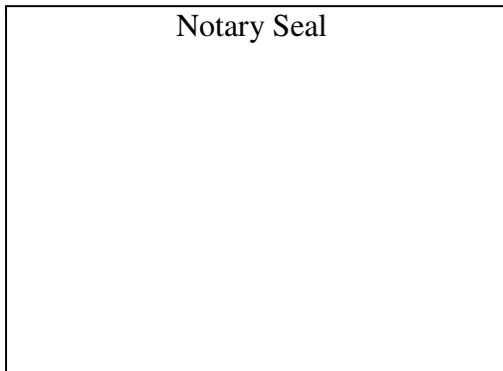
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TENANT ACKNOWLEDGEMENT

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: _____

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Attachment 1

First Amendment to Short Form of Lease

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Exhibit A

Copy of Agreement

RESOLUTION 2016-065

A RESOLUTION OF THE CLARE CITY COMMISSION APPROVING A LEASE AMENDMENT TO EXTEND THE TERMS OF AN EXISTING LEASE WITH AT&T.

WHEREAS, the City of Clare enjoys a lease agreement with AT&T wherein the City leases space to AT&T on its south water tower for the installation of cell phone and communication antennas; and

WHEREAS, said lease expires in 2017; and

WHEREAS, AT&T has requested an amendment to said lease to extend the end date of said lease through 2023 with an additional automatic five-year renewal through 2028; and

WHEREAS, the City Staff has recommended approval of said lease amendment; and

WHEREAS, the City Commission has discussed and considered said proposed lease amendment and the recommendations of the City Staff and deems it prudent and in the best interests of the City to approve said lease agreement.

NOW THEREFORE BE IT RESOLVED THAT, the Clare City Commission hereby approves a lease amendment for an existing lease with AT&T, the terms, conditions, and stipulations of said lease agreement as outlined therein.

ALL RESOLUTIONS AND PARTS OF RESOLUTIONS INsofar AS THEY CONFLICT WITH THE PROVISIONS OF THIS RESOLUTION BE AND THE SAME ARE HEREBY RESCINDED.

The Resolution was introduced by Commissioner _____ and supported by Commissioner _____. The Resolution declared adopted by the following roll call vote:

YEAS:

NAYS:

ABSENT:

ABSTAIN:

Resolution approved for adoption on this 20th day of June 2016.

Diane Lyon, Clare City Clerk