

AGENDA REPORT

TO: Mayor & City Commissioners
FROM: Ken Hibl, City Manager
DATE: July 30, 2020
RE: Approval of AT&T Lease Amendment

For the Agenda of August 3, 2020

Background. The City has received a request from AT&T to allow the installation of an emergency generator at the base of the City's water tower to support its existing antenna array on the tower. AT&T's vendor has submitted a proposed site plan for the installation of the generator; the City Staff has reviewed the proposal and has provided its preliminary approval of the site plan pending approval of the proffered lease amendment by the City Commission. The lease document (*copy att'd*) has been reviewed by our City Attorney for legal sufficiency; Jaynie has completed her legal review and has offered her concurrence. The City Commission is asked to approve the lease amendment.

Issues & Questions Specified. Should the City Commission approve the proposed AT&T lease amendment?

Alternatives.

1. Approve the amendment.
2. Deny approval of the amendment.
3. Set aside decision regarding this matter to a subsequently scheduled public meeting.

Financial Impact. There is no cost to the City. We have insisted the proposed site plan include a screening fence to "hide" the generator and the other sundry ground equipment at the base of our tower – the cost of the fence will be defrayed by AT&T.

Recommendation. I recommend that the City Commission adopt Resolution 2020-094 (*copy att'd*), thereby approving the proposed AT&T lease amendment.

Attachments.

1. Proposed AT&T Lease Amendment.
2. Resolution 2020-094.

Market: RIND
Cell Site Number: MI6068
Cell Site Name: Clare WT
Fixed Asset Number: 10124491

FOURTH AMENDMENT TO SITE LEASE

THIS FOURTH AMENDMENT SITE LEASE ("**Amendment**"), dated as of the latter of the signature dates below, is by and between the City of Clare, having a mailing address of 202 West 5th Street, Clare, MI 48617 ("**Landlord**") and New Cingular Wireless PCS, LLC, having a mailing address of 1025 Lenox Park Blvd NE, 3rd Floor, Atlanta, GA 30319 ("**Tenant**").

WHEREAS, Landlord and Tenant entered into an Option and Structure Lease Agreement dated December 22, 2003, whereby Landlord leased to Tenant certain Premises, therein described, that are a portion of the Property located at 200 West 3rd Street, Clare, MI 48617 ("**Agreement**"); and

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

WHEREAS, Landlord and Tenant desire to amend the Agreement 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 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, Landlord and Tenant agree as follows:

- 1. Generator.** Tenant shall have the right to install, repair, maintain, modify, replace, remove, utilize and operate (including but not limited to operate as may be required by applicable law) equipment within the existing lease area, including without limitation a concrete pad and generator thereon, including back-up power supply. Tenant shall have the right to access the generator, and any provisions in the Agreement governing access shall apply to such access. The generator shall remain the property of Tenant, and Tenant shall have the right to remove or modify it at any time. Tenant shall be responsible for installation of a privacy fence surrounding the new generator.
- 2. Rent.** Commencing the first day of the month following commencement of installation within the New Premises Area ("**Increase Commencement Date**"), Rent shall be increased by Zero Dollars & Zero Cents (\$0.00) per month, subject to further adjustments, if any, as provided in the Agreement; provided that the first such increased payment shall not be due until sixty (60) days after such commencement date and

provided further that, any partial month occurring after the Increase Commencement Date, the increased Rent amount shall be pro-rated.

3. Tenant shall have the right to install and maintain cables from its equipment within the lease area to its equipment within the compound area of the Premises within spaces and pathways mutually agreed to by the parties, agreement of Landlord not to be unreasonably withheld, delayed or conditioned on payment of additional consideration.
4. **Other.** Landlord represents and warrants that, to its knowledge, no conditions exist within the lease area or otherwise on the property where the Premises are located that would adversely impact Tenant's permitting and/or installation of a generator. Landlord authorizes Tenant to prepare, execute and file all required applications to obtain any government approvals for Tenant's use of the generator under this Agreement and agrees, at Tenant's request, to reasonably assist Tenant with such applications and with obtaining and maintaining the government approvals. Where applicable law governs how the generator will be used, Tenant may use the generator in the manner set forth in applicable law. Tenant may terminate this Amendment by written notice to Landlord at any time, and the rent increase set forth in Section 3 shall not take effect or shall be cancelled, as applicable, following any such termination. Within one hundred twenty 120 days after termination of this Amendment, Tenant shall remove its equipment from the lease area; provided that any portions of the equipment that Tenant fails to remove within such period and cessation of Tenant's operations at the lease area shall be deemed abandoned. Tenant shall repair any damage, less ordinary wear and tear, to the lease area caused by its removal activities.

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 City of Clare
LANDLORD: 202 W. 5th St.,
 Clare, MI 48617

If to New Cingular Wireless PCS, LLC
TENANT:

Attn: Network Real Estate
Administration
Re: Cell Site # MI6068
Cell Site Name: CLARE WT
Fixed Asset #: 10124491
1025 Lenox Park Blvd NE, 3rd
Floor, Atlanta, GA 30319

With copy to:

New Cingular Wireless PCS, LLC
Attn: Legal Department
Re: Cell Site # GRANMI2641
Cell Site Name: CUS-AUBURN
(EAST)
Fixed Asset #: 10144241
AT&T Legal Department –
Network
208 S. Akard Street
Dallas, TX 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.

5. **Emergency 911 Service.** In the future, without the payment of additional rent 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.
6. **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 the Attachment 1. Either party may record this memorandum at any time, in its absolute discretion.
7. **Other Terms and Conditions Remain.** In the event of any inconsistencies between the Original Lease Agreement, any existing Amendments to the Agreement, and this Amendment, the terms of this Amendment shall control. Except as expressly set forth in this 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 Amendment.
8. **Capitalized Terms.** All capitalized terms used but not defined herein shall have the same meanings as defined in the Agreement.

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

LANDLORD:

City of Clare, Michigan

TENANT:

New Cingular Wireless PCS, LLC

By: AT&T Mobility Corporation

Its: Manager

By: _____

Print Name:

Date:

By: _____

Print Name:

Its:

Date:

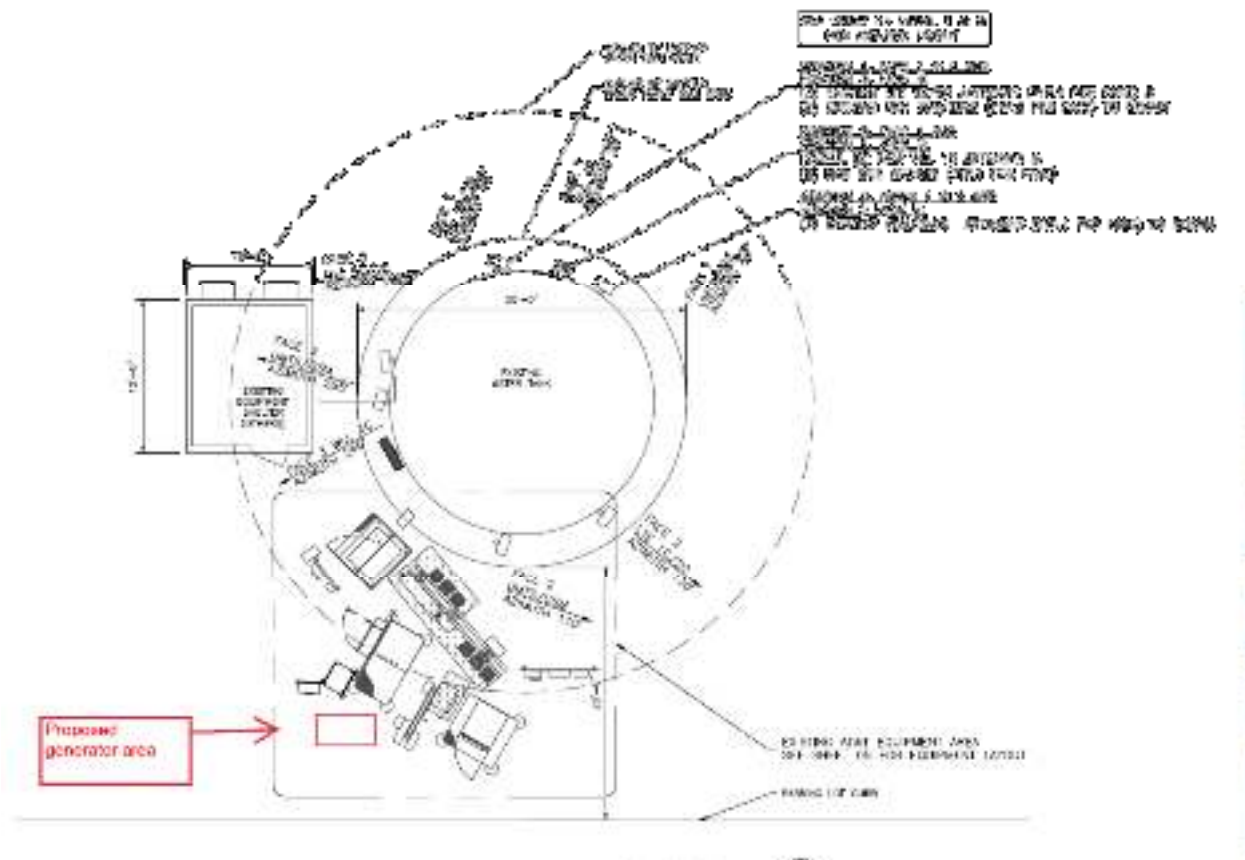
EXHIBIT 1-A

DESCRIPTION OF PREMISES

The Premises are described and/or depicted as follows:

Commonly known as: 200 West 4th Street, Clare, MI 48617

Lease Area Sketch or Survey:



Notes:

1. This Exhibit may be replaced by a land survey and/or construction drawings of the Premises once received by Tenant.
2. Any setback of the Premises from the Property's boundaries shall be the distance required by the applicable governmental authorities.
3. Width of access road shall be the width required by the applicable governmental authorities, including police and fire departments.
4. The type, number and mounting positions and locations of antennas and transmission lines are illustrative only. Actual types, numbers and mounting positions may vary from what is shown above.

Prepared by, and after recording

Return to:

New Cingular Wireless PCS, LLC
12555 Cingular Way, Suite 1300
Alpharetta GA 30004
Attn: Network Real Estate Administration

Grantor: City of Clare

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

Legal Description: Official legal description attached as Exhibit 1

Cell Site Name & #: MI6068 Fixed Asset #: 10124491

CLARE WT

State: MI

RESOLUTION 2020-094

A RESOLUTION OF THE CLARE CITY COMMISSION APPROVING A PROPOSED AMENDMENT TO AN EXISTING LEASE AGREEMENT BETWEEN AT&T AND THE CITY OF CLARE.

WHEREAS, the City of Clare and AT&T enjoy a lease agreement to allow AT&T to maintain its cellular antenna array on the City's southern water tower; and

WHEREAS, AT&T has submitted a proposed site plan and requested an amendment to said lease to allow AT&T to install an emergency generator at the base of the City's south water tower, thereby providing AT&T back-up electrical power for its antenna array; and

WHEREAS, the City Staff has reviewed said proposed site plan and said lease amendment and has recommended that the City Commission approve said lease amendment; and

WHEREAS, the City Commission reviewed and considered said lease agreement and the recommendations of its Staff and has determined that said proposed lease amendment is in the collective best interests of both parties.

NOW THEREFORE BE IT RESOLVED THAT the City Commission of City of Clare hereby a proposed lease amendment to an existing lease between the City of Clare and AT&T, thereby allowing AT&T to install an emergency generator at the base of the City's south water tower at no cost to the City, said installation to be in compliance with the site plan submitted to the City by AT&T and approved by the City Staff.

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

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

YEAS:

NAYS:

ABSENT:

Resolution approved for adoption on this 3rd day of August 2020.

Diane Lyon, City Clerk