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## **LEGAL SERVICES DEPARTMENT**

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**TO:** Alderperson Kathy Plank, Chair  
Members of the Finance Committee

**FROM:** Emily Truman, Assistant City Attorney

**DATE:** December 3, 2015

**RE:** AT&T Cell Phone Antenna Lease Amendments –  
Monopole at Memorial Park and Oneida Street Water Tower

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In July of 2015, a representative for AT&T contacted the City requesting to renegotiate their lease for their cell phone antenna sites located on a monopole in Memorial Park and on the water tower on Oneida Street. After several months of negotiations, below is a summary of the proposed amended terms:

#### Memorial Park Monopole

This would be the second amendment to the original lease. AT&T proposed the following changes:

1. Lower the annual rent payable to the City from \$18,400 to \$12,000.
2. Provide a "rent guarantee" of 24 months.
3. Lower the rental increase of 15% to 12% at the beginning of each extension term.
4. Place limits on the City from transferring the rents to another entity or selling the site.
5. Eliminate AT&T's responsibility for caring for or restoring the site and general area around the site should AT&T cause any damage.

After several months of negotiations, the attached is the proposed second lease amendment. A summary of the changes are as follows:

1. Beginning June 1, 2016, the annual rent will be \$15,500.
2. There will be a rental increase of 12% on June 1, 2018, and at the beginning of each extension term.
3. A "rent guarantee" period of 48 months.
4. AT&T is now responsible for caring for and restoring the site and the area around the site should they cause any damage.
5. Both AT&T and the City now have the option of terminating the lease for any reason after the end of the 48 months' rent guarantee period with 90 days' notice (the City and AT&T will still terminate for cause, or without cause with termination clauses applying, during the 48 month rent guarantee period).
6. The City agreed to AT&T's requested terms regarding transferring the rents and selling the property.

Some additional information:

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*Deputy City Attorney*

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*Assistant City Attorney*

- All of the other terms of the lease will remain in effect.
- The original lease was entered into in 2005 and was for \$20,000 annually.
- In April 2006, the first amendment to the lease was made reducing the rent to \$16,000 annually with a 36 month rent guarantee and a 15% increase at the start of each extension term.
  - Part of the April 2006 amendment included the right of AT&T to cancel the lease without cause with 30 days' notice to the City after the end of the 36 month rent guarantee. The City was not given the same termination rights. Under the terms of the current lease, the City can only terminate for cause or termination clauses will apply (including, but not limited to, the City having to find a substitute location for AT&T's cell phone antennas).

#### Oneida Street Water Tower

This would be the third amendment to the original lease. AT&T proposed the following changes:

1. Lower the annual rent payable to the City from \$20,700 to \$12,000.
2. Provide a "rent guarantee" period of 24 months.
3. Lower the rental increase of 15% to 12% at the beginning of each extension term.
4. Place limits on the City from transferring the rents to another entity or selling the site.
5. Eliminate AT&T's responsibility for caring for or restoring the site and general area around the site should AT&T cause any damage.

After several months of negotiations, the attached is the proposed second lease amendment. A summary of the changes are as follows:

1. Beginning June 1, 2016, the annual rent will be lowered \$17,800.
2. There will be a rental increase of 12% on June 1, 2019, and at the beginning of each extension term.
3. A "rent guarantee" period of 60 months.
4. AT&T is now responsible for caring for and restoring the site and the area around the site should they cause any damage.
5. Both AT&T and the City have the option of terminating the lease for any reason after the end of the 60 months' rent guarantee period with 90 days' notice (the City and AT&T can still terminate for cause, or without cause with termination clauses applying, during the 60 month rent guarantee period).
6. The City agreed to AT&T's requested terms regarding transferring the rents and selling the property.

#### Additional Information:

- All of the other terms of the lease will remain in effect.
- The original lease was entered into in 2001 with an annual rent of \$18,900.
- In 2008, the first amendment to the lease was made reducing the rent to \$18,000 annually with a 24 month rent guarantee and a 15% increase at the start of each extension term.
  - Part of the first amendment included the right of AT&T to cancel the lease without cause at any time with notice to the City after the end of the 24 month rent guarantee. The City was not given the same termination rights.
- In 2013 the second amendment was made granting AT&T the right to modify the number of antenna facilities located on the water tower.
- The water tower will be decommissioned by the City at some point during the next few years. In 2015 a study by the Utilities Department determined the estimated life of the tower for the purposed of being used for cell phone antennas to be approximately 10-15 years.