

April 20, 2009

Date

HEARING ON APPROVAL OF LEASE AMENDMENT AGREEMENT WITH VERIZON WIRELESS (VAW) LLC (ASSIGNEE OF DES MOINES MSA GENERAL PARTNERSHIP) AND USE AUTHORIZATION AND CONSENT AGREEMENT WITH AMERICAN TOWER DELAWARE CORPORATION FOR WAVELAND GOLF COURSE TELECOMMUNICATIONS TOWER

WHEREAS, the City is the titleholder of real property commonly referred to as Waveland Municipal Golf Course; and

WHEREAS, on June 21, 1993, by Roll Call No. 93-2343, the City Council approved an option to lease to Des Moines MSA General Partnership ("MSA") a portion of Waveland Municipal Golf Course, as described as follows, for a period of 20 years, for construction, maintenance and operation of a mobile communications facility consisting of one building of approximately 432 square feet and one monopole antenna structure of approximately 120 feet in height, including cellular antennas and link antennas, in conformity with the special Use Permit granted by the Zoning Board of Adjustment on May 26, 1993 ("the Lease"):

Beginning at the Southwest corner of Lot 40, Cummins' Woods, an Official Plat, Des Moines, Polk County, Iowa, said point also being the Northwest corner of the South 1/2 of Lot 17 of the Official Replat of the Official Plat of the N.E. 1/4 of Section 1, Township 78 North, Range 25 West of the 5th P.M., Des Moines, Polk County, Iowa; thence South along the West line of South 1/2 of said Lot 17 a distance of 50.0 feet thence West a distance of 250.00; thence North parallel 1/4 of said Section 1 a distance of 150.00 feet; thence East a distance of 250.00 feet to a point on the West line of Lot 39 in said Cummins' Woods, said line also being the East line of the N.W. Fractional 1/4 of said Section 1; thence South along the West line of said Lots 39 and 40 in said Cummins Woods a distance of 100.00 feet to the Southwest corner of Lot 40 in said Cummins' Woods, said point also being the POINT OF BEGINNING, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, Said tract of land contains approximately 0.86 acres more or less; and

WHEREAS, section 16 of the Lease provides that MSA may sell, assign, or transfer the Lease, to MSA's affiliates or subsidiaries; and

WHEREAS, MSA assigned the Lease to Verizon Wireless (VAW) LLC ("Verizon") when MSA merged into Verizon; and

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WHEREAS, Verizon, as the owner of the cell tower, has contracted with American Tower Delaware Corporation, a Delaware corporation, located at 116 Huntington Avenue, 11<sup>th</sup> Floor, Boston MA, 02116 (“American Tower”), to manage the tower; and

WHEREAS, the Lease expires on October 31, 2013; and

WHEREAS, Verizon desires to increase the term of the Lease and to provide for up to four 5 year renewal terms at Verizon’s option, to decrease the area of the lease, as described below, and to authorize American Tower to install additional antennas and supporting service buildings:

A PART OF THE NW FRACTIONAL ¼ OF SECTION 1, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5TH P.M., POLK COUNTY, IOWA LYING NORTH OF INTERSTATE 235, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE SOUTHWEST CORNER OF LOT 40, THENCE SOUTH 00°18'37" EAST, A DISTANCE OF 50.00 FEET; THENCE SOUTH 89°41'23" WEST, A DISTANCE OF 100.00 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89°41'23" WEST, A DISTANCE OF 150.00 FEET; THENCE NORTH 00°18'37" WEST, A DISTANCE OF 150.00 FEET; THENCE NORTH 89°41'23" EAST, A DISTANCE OF 150.00 FEET; THENCE SOUTH 00°18'37" EAST, A DISTANCE OF 150.00 FEET TO THE POINT OF BEGINNING. SAID PARCEL CONTAINS 22,500 SQUARE FEET MORE OR LESS.

ACCESS/UTILITY EASEMENT DESCRIPTION (AS SURVEYED)

A 20 FOOT WIDE STRIP PARCEL IN PART OF THE NW FRACTIONAL ¼ OF SECTION 1, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5TH P.M., POLK COUNTY, IOWA LYING NORTH OF INTERSTATE 235, THE CENTERLINE OF WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE SOUTHWEST CORNER OF LOT 40, THENCE SOUTH 00°18'37" EAST, A DISTANCE OF 50.00 FEET; THENCE SOUTH 89°41'23" WEST, A DISTANCE OF 100.00 FEET; THENCE NORTH 00°18'37" WEST, A DISTANCE OF 27.42 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 22°05'36" EAST, A DISTANCE OF 34.70 FEET; THENCE SOUTH 03°01'20" WEST, A DISTANCE OF 154.67 FEET; THENCE NORTH 90°00'00" EAST, A DISTANCE OF 95.82 FEET TO THE POINT OF TERMINATION. SAID PARCEL CONTAINS 5,703 SQUARE FEET MORE OR LESS;

and

WHEREAS, Verizon has agreed to a Lease Amendment Agreement for the above described property, which allows the Lease to be extended for up to four 5-year renewal terms at the option of Verizon beginning at the end of the initial term, November 1, 2013, and provides for rent of \$15,500.00 (includes two antennas) per year beginning on November 1, 2014, with a 3% annual increase, a copy of which is on file in the City Clerk’s Office; and

WHEREAS, American Tower has agreed to a Use Authorization and Consent Agreement for the above described property, which allows co-location of antennas on the tower and supporting ground structures, with rent consisting of a one- time payment of \$16,000 plus \$8,340.00 in annual rent for each co-location commencing January 1, 2009, with a 3% annual increase, a copy of each which is on file in the City Clerk’s Office; and

WHEREAS, such Use Authorization and Consent Agreement also approves a proposed support structure for the Verizon tower; and

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WHEREAS, the Amendment and Use Authorization and Consent to Sublease of said real estate by Verizon for such purposes will not adversely affect the use of adjoining real estate by the City for municipal purposes and use of the real estate is presently not required for municipal purposes; and

WHEREAS, Park and Recreation and Community Development staff believe that allowing additional co-locations of antennas on the Verizon tower will not adversely affect use of the Waveland Municipal Golf Course and will be more efficient than allowing additional telecommunications towers in the vicinity; and

WHEREAS, on April 6, 2009, by Roll Call No. 09- , it was duly resolved by the City Council that the proposed Lease Amendment Agreement and Consent to Use Agreement of such real property be set down for hearing on April 20, 2009, at 5:00 p.m. in the Council Chamber; and

WHEREAS, in accordance with said notice, those interested in said proposed Lease Amendment Agreement and Use Authorization and Consent Agreement, both for and against, have been given an opportunity to be heard with respect thereto and have presented their views to the City Council.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa that:

1. Upon due consideration of the facts and statements of interested persons, the objections to said proposed Lease Amendment Agreement and Use Authorization and Consent Agreement to use public real property, as described above, are hereby overruled and the hearing is closed.

2. That the form of the Lease Amendment Agreement between Verizon Wireless (VAW) LLC and the City of Des Moines, as described above and which is on file with the City Clerk's Office, be and is hereby approved.

3. That the form of the Use Authorization and Consent Agreement between American Tower Delaware Corporation, as described above and which is on file with the City Clerk's Office, be and is hereby approved

3. That the rental payments in such agreements constitute fair market value and the Mayor is hereby authorized and directed to sign said Lease Amendment Agreement and Use Authorization and Consent Agreement, subject to receipt of signed copies of such agreements from the respective parties, and the City Clerk is authorized and directed to attest to the Mayor's signature.

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4. That, upon execution, the City Clerk is authorized and directed to forward the original of the Lease Agreement Amendment and Use Authorization and Consent Agreement, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing, to the Park and Recreation Department in order to forward copies to the Land Records Clerk and a signed copy of said documents to Verizon Wireless (VAW) LLC and American Tower Delaware Corporation.

5. The proceeds from the lease of this property will be deposited into the following account: PKS 010100, General Administration.

( Council Communication 09- 226 )

Moved by \_\_\_\_\_ to adopt.

APPROVED AS TO FORM:

Ann DiDonato  
Ann DiDonato, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
TOTAL				

MOTION CARRIED

APPROVED

.....  
Mayor

**CERTIFICATE**

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

\_\_\_\_\_  
City Clerk