



Legislation Details (With Text)

File #: O-6-23 **Version:** 1 **Name:**

Type: Ordinance **Status:** Adopted

File created: 2/17/2023 **In control:** City Council

On agenda: 4/10/2023 **Final action:** 4/10/2023

Title: City of Annapolis Cellular Antenna Lease with New Cingular Wireless - For the purpose of updating and extending the City's lease with New Cingular Wireless for a cellular antenna on top of the City water tower on Janwall Street.

Sponsors: Gavin Buckley, Brooks Schandelmeier

Indexes: Economic Matters Committee, Finance Committee

Code sections:

Attachments: 1. O-6-23 First Reader, 2. O-6-23 Fiscal Impact Note, 3. 2023 New Cingular Wireless Lease with exhibit, 4. 2023 City Lease Agreement with New Cingular Wireless, 5. 2003 City Lease Agreement with New Cingular Wireless, 6. O-6-23 Signed

Date	Ver.	Action By	Action	Result
4/10/2023	1	City Council	adopt on second reader	Pass
4/10/2023	1	City Council	adopt on third reader	Pass
3/27/2023	1	City Council	postpone	Pass
3/13/2023	1	City Council	declare the public hearing closed	
2/27/2023	1	City Council	adopt on first reader	Pass
2/27/2023	1	City Council	Cosponsor added	
2/27/2023	1	City Council	refer	
2/27/2023	1	City Council	refer	

City of Annapolis Cellular Antenna Lease with New Cingular Wireless - For the purpose of updating and extending the City's lease with New Cingular Wireless for a cellular antenna on top of the City water tower on Janwall Street.

CITY COUNCIL OF THE City of Annapolis

Ordinance 6-23

Introduced by: Mayor Buckley
Co-sponsored by: Ald. Schandelmeier

Referred to
Finance Committee
Economic Matters Committee

An Ordinance concerning

City of Annapolis Cellular Antenna Lease with New Cingular Wireless

FOR the purpose of updating and extending the City's lease with New Cingular Wireless for a cellular antenna on top of the City water tower on Janwall Street.

WHEREAS, The City and New Cingular Wireless entered into an Amended Lease Agreement dated November 10, 2003, to allow and install cellular antenna on a City-owned elevated water tank located at 206 Janwall Street in the City of Annapolis; and

WHEREAS, The term of the Lease will expire on May 25, 2024, and the parties mutually desire to renew the Lease, memorialize such renewal period and modify the Lease in certain other respects, all on the terms and conditions contained herein; and

WHEREAS, The City and New Cingular Wireless desire to extend the term of the Lease, modify the rent, clarify the scope of the lease and permitted use during the term of the Lease as set forth below;

NOW, THEREFORE,

In consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, The City and New Cingular Wireless agree as follows:

- 1. Term.** The Term of the Lease shall be amended to provide that commencing on May 26, 2024, the Lease will be automatically renewed, upon the same terms and conditions of the Lease, for five additional 60-month terms (each an "Extension Term"). Hereafter, "Term" shall include the Current Term and any applicable Extension Term. The Terms will automatically renew without further action by Lessee unless Lessee notifies Lessor in writing of Lessee's intention not to renew the Lease at least 60 calendar days prior to the expiration of the Current Term or any Extension Term. Lessor agrees and acknowledges that except as such permitted use or other rights may be amended herein, Lessee may continue to use and exercise its rights under the Lease as permitted prior to the first Extension Term.
- 2. Acknowledgement.** The parties acknowledge that: 1) this First Amendment is entered into of each party's free will and volition; 2) the parties have each read and understand this First Amendment and the underlying Lease and, prior to execution of this First Amendment, were free to consult with counsel of its choosing regarding their respective decisions to enter into this First Amendment and to have counsel review the terms and conditions of this First Amendment; 3) Lessor has been advised and is informed that should Lessor not enter into this First Amendment, the underlying Lease between Lessor and Lessee, including any termination or non-renewal provision therein, would remain in full force and effect through May 25, 2024.
- 3. Modification of Exhibit A.** Commencing on May 26, 2024, Exhibit A to the Lease, which depicts the Premises, shall be replaced and superseded in its entirety with the Revised Exhibit A attached to this First Amendment.
- 4. Modification of Rent.** Commencing on May 26, 2024, the current Rent payable under the Agreement shall be Eighty-Seven Thousand 00/100 (\$87,000.00) per year, due and payable on May 26th of each year and shall continue during the Term, subject to adjustment as provided herein. In the event of any overpayment of Rent prior to or after the Effective Date, Lessee shall have the right to deduct from any future Rent payments an amount equal to the overpayment amount.

5. **Future Rent Annual Increase Payments.** The amount of the yearly base rent increase set forth at Section 7 of the Agreement is hereby amended to provide that commencing on May 26, 2025, Rent shall increase by 4% over the previous year and each year thereafter on July 1st.
6. **Notices.** Section 14 of the Agreement is hereby deleted in its entirety and replaced with the following: 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.

SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL that the First Amendment to Amended Lease Agreement, Cellular Antenna Janwal Water Tank attached hereto be and the same is hereby approved, adopted and authorized.

SECTION II: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL that this Ordinance shall take effect from the date of its passage.

Cell Site No.: 24257
Cell Site Name: Eastport
Fixed Asset No.: 10004921-37126
Market: WABA
Address: 206 Janwall Street, Annapolis, MD

FIRST AMENDMENT TO AMENDED LEASE AGREEMENT CELLULAR ANTENNA JANWAL WATER TANK

THIS FIRST AMENDMENT TO AMENDED LEASE AGREEMENT CELLULAR ANTENNA JANWAL WATER TANK ("First Amendment") dated as of the later date below is by and between City of Annapolis, Maryland, a municipal corporation of the State of Maryland, having a mailing address at 160 Duke of Gloucester Street, Annapolis, MD 21401 (hereinafter referred to as "Lessor") and New Cingular Wireless PCS, LLC, having a mailing address at 1025 Lenox Park Blvd NE 3rd Floor Atlanta, GA 30319 (hereinafter referred to as "Lessee").

WHEREAS, Lessor and Lessee (or their predecessors in interest) entered into an Amended Lease Agreement dated November 10, 2003, (hereinafter, collectively, the "Lease"), whereby Lessor leased to Lessee certain Premises, therein described, that are a portion of the Property located at 206 Janwall Street, Annapolis, MD; and

WHEREAS, the term of the Lease will expire on May 25, 2024, and the parties mutually desire to renew the Lease, memorialize such renewal period and modify the Lease in certain other respects, all on the terms and conditions contained herein; and

WHEREAS, Lessor and Lessee desire to extend the term of the Lease; and

WHEREAS, Lessor and Lessee desire to modify, as set forth herein, the Rent (as defined

below) payable under the Lease; and

WHEREAS, Lessor and Lessee desire to amend the Lease to clarify the scope of Lessee's permitted use of the Premises; and

WHEREAS, Lessor and Lessee, in their mutual interest, further wish to amend the Lease as set forth below.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

- 7. Term.** The Term of the Lease shall be amended to provide that commencing on May 26, 2024, the Lease will be automatically renewed, upon the same terms and conditions of the Lease, for five (5) additional sixty (60) month terms (each an "Extension Term"). Hereafter, "Term" shall include the Current Term and any applicable Extension Term. The Terms will automatically renew without further action by Lessee, unless Lessee notifies Lessor in writing of Lessee's intention not to renew the Lease at least sixty (60) calendar days prior to the expiration of the Current Term or any Extension Term. Lessor agrees and acknowledges that, except as such permitted use or other rights may be amended herein, Lessee may continue to use and exercise its rights under the Lease as permitted prior to the first Extension Term.
- 8. Acknowledgement.** The parties acknowledge that: 1) this First Amendment is entered into of each party's free will and volition; 2) the parties have each read and understand this First Amendment and the underlying Lease and, prior to execution of this First Amendment, were free to consult with counsel of its choosing regarding their respective decisions to enter into this First Amendment and to have counsel review the terms and conditions of this First Amendment; 3) Lessor has been advised and is informed that should Lessor not enter into this First Amendment, the underlying Lease between Lessor and Lessee, including any termination or non-renewal provision therein, would remain in full force and effect through May 25, 2024.
- 9. Modification of Exhibit A.** Commencing on May 26, 2024, Exhibit A to the Lease, which depicts the Premises, shall be replaced and superseded in its entirety with the Revised Exhibit A attached to this First Amendment.
- 10. Modification of Rent.** Commencing on May 26, 2024, the current Rent payable under the Agreement shall be Eighty-Seven Thousand 00/100 (\$87,000.00) per year, due and payable on May 26th of each year and shall continue during the Term, subject to adjustment as provided herein. In the event of any overpayment of Rent prior to or after the Effective Date, Lessee shall have the right to deduct from any future Rent payments an amount equal to the overpayment amount.
- 11. Future Rent Annual Increase Payments.** The amount of the yearly base rent increase set forth at Section 7 of the Agreement is hereby amended to provide that commencing on May 26, 2025, Rent shall increase by four percent (4%) over the previous year and each year thereafter on July 1st.
- 12. Notices.** Section 14 of the Agreement is hereby deleted in its entirety and replaced with the following: 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.

As to Lessee:

New Cingular Wireless PCS, LLC,
c/o AT&T Network Real Estate Administration,
Cell Site #: 24257, Cell Site Name: Eastport (MD)
Fixed Asset No: 10004921-37126
1025 Lenox Park Blvd NE
3rd Floor
Atlanta, GA 30319

With a required copy to:

Attn.: AT&T Legal Department,
New Cingular Wireless PCS, LLC,
Re: Cell Site #: 24257, Cell Site Name: Eastport (MD),
Fixed Asset No: 10004921-37126
208 S. Akard Street
Dallas, TX 75202-4206

As to Lessor:

City of Annapolis
Finance Director
160 Duke of Gloucester Street
Annapolis, MD 21401

With a copy to:

City Attorney
Office of Law
160 Duke of Gloucester Street
Annapolis, MD 21401

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 party hereto as provided herein.

13. Permitted Use. Lessee, its personnel, invitees, contractors, agents, subtenant/licensors, or its authorized sub Lessee, or assigns may use the Premises, at no additional cost or expense, for the transmission and reception of any and all communications signals and to modify, supplement, replace, upgrade, expand, including but not limited to the number and type(s) of antennas, or refurbish the equipment and/or improvements thereon, or relocate the same within the Premises at any time during the term of this Agreement for any reason, or 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 or for any other reason (collectively, "Permitted Use"). Lessee's Permitted Use shall remain expressly subject to the requirements of Sections 1, 4, and 5A of the Lease, including but not limited to any required Lessor approval specified therein. Lessor shall reasonably cooperate in obtaining governmental and other use permits or approvals

necessary or desirable for the foregoing permitted use. If Lessor does not comply with the terms of this section, in addition to any other rights it may have at law, Lessee may terminate this Agreement and shall have no further liability to Lessor. If Lessor does not comply with the terms of this section, Lessee will have the right to exercise any and all rights available to it under law and equity, including the right to cure Lessor's default and to deduct the costs of such cure from any monies due to Lessor from Lessee.

14. Authorization. This First Amendment is authorized by the Lessor's City Council pursuant to Ordinance O-XX-XX.

15. All other terms and conditions of the Lease shall remain unchanged and in full force and effect.

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

IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute and seal this First Amendment to Amended Lease Agreement, Cellular Antenna Janwal Water Tank on the date and year last written below.

LESSOR: The City of Annapolis, a municipal corporation of the State of Maryland By:
Print Name: Gavin Buckley Title: Mayor Date:

LESSEE: New Cingular Wireless PCS, LLC, a Delaware limited liability company By:
AT&T Mobility Corporation Its: Manager By:
Print Name: Title: Date:

ATTEST:

Regina C. Watkins-Eldridge, MMC,
City Clerk

APPROVED FOR FORM AND LEGAL SUFFICIENCY:

Office of Law
D. Michael Lyles, City Attorney