

FOR BOARD ACTION

Agenda Item # 9. a.

Meeting Date:

4/27/04

SUBJECT: SECOND AMENDMENT TO SAINT MARYS TOWER SITE AGREEMENT
(Rochester CellTelCo Partnership – AT&T Wireless)

PREPARED BY: Doug Rovang, Senior Civil Engineer *DR*

ITEM DESCRIPTION:

A request has been received from Rochester CellTelCo Partnership, d/b/a AT&T Wireless Services, a District of Columbia partnership, by AT&T Wireless Services of Minnesota, Inc., its general Partner, a Nevada corporation (AT&T, hereafter) for a second Amendment to the Site Agreement dated December 15, 1999, which permitted AT&T to install nine (9) wireless communications antennas and appurtenant equipment at the Saint Marys Concrete Water Tower Site.

The first Amendment (dated December 10, 2002) to the original Site Agreement permitted the additional installation of three (3) E-911 antennas and a small GPS antenna on the Tower

The proposed second Amendment would permit AT&T to install three (3) additional eight-foot tall by 12-inch wide antennas matching the existing nine antennas currently on the water tower, and additional interior cable runs to connect equipment and the additional antennas.

Staff has prepared the attached proposed Second Amendment to Site Agreement for the requested installation. AT&T would pay additional rent of \$1,823.80 in 2004 for the additional three antennas with annual adjustments based on the Consumer Price Index (CPI-U) to reflect future inflation, but not to exceed six (6) percent per year (in accordance with the terms of the original Agreement). The 2004 AT&T rent payment of \$20,176.20 for this site would increase to \$22,000 (prorated).

All other terms of the original Agreement as amended by the first Amendment would remain unchanged.

UTILITY BOARD ACTION REQUESTED:

Staff recommends the Utility Board approve the proposed Second Amendment to the existing Site Agreement dated December 15, 1999, with Rochester CellTelCo Partnership, d/b/a AT&T Wireless Services, a District of Columbia partnership, by AT&T Wireless Services of Minnesota, Inc., its general Partner, a Nevada Corporation for the sole purpose of adding three (3) eight-foot tall by 12-inch wide antennas to its existing wireless communications facility at the Saint Marys Concrete Water Tower Site, and request the Mayor and City Clerk to execute the document.

Larry Koshice
General Manager

4-22-04
Date

ROCHESTER PUBLIC UTILITIES

SECOND AMENDMENT TO SITE AGREEMENT

This Second Amendment to the SITE AGREEMENT dated December 15, 1999, ("Agreement") subsequently amended by AMENDMENT TO SITE AGREEMENT dated December 10, 2002, is made and entered into this ___ day of _____, 2004 by and between City of Rochester, a Minnesota municipal corporation, ("CITY"), acting through its Rochester Public Utilities whose address is 4000 East River Road NE, Rochester, Minnesota 55906 and Rochester CellTelCo Partnership, d/b/a AT&T Wireless Services, a District of Columbia partnership, by AT&T Wireless Services of Minnesota, Inc., its general Partner, a Nevada corporation (hereinafter, "LESSEE") for the leasing of certain property interests at 929 4 St. SW (Saint Marys Concrete Tower Site).

Paragraphs 1 and 4 have been replaced with the following paragraphs:

1. **PROPERTY.** The property interests hereby leased (collectively, the "Leased Premises") and granted by CITY include the following real property comprised of approximately 400 square feet of interior space at the second story level of the tower, water tower ("Structure") exterior space for attachment of up to twelve (12) eight-foot tall by 12'inch wide antennas on the sides of the tower, three (3) four-foot tall by three-foot wide E911 AOA panel antennas, one (1) small GPS antenna, space required for cable runs to connect equipment and antennas, non-exclusive easements required to run utility lines/cables, a non-exclusive easement across CITY's property (hereinafter defined) for access in or upon the CITY's real property ("CITY's Property"). CITY's property is legally described and Leased Premises are shown in relationship to CITY's property in Exhibit "A" attached hereto, the locations of the original six antennas on the Structure are depicted in Exhibit "B" attached hereto, and the locations of the three E911 antennas and GPS antenna and appurtenances are depicted in Exhibit "C" attached hereto.
4. **RENT.** The Lessee shall pay CITY rent of twenty-two-thousand-and-00/100-dollars (\$22,000.00) for Year 2004. The CITY will issue an invoice for each subsequent year's rent on or about March 1. The rental year shall run from January 1 to December 31 of each year. The rental amount shall be adjusted annually based on the Consumer Price Index for All Urban Customers (CPI-U); however, any annual increase in rent from the previous year shall not exceed six percent (6%). Rent proration shall be based on the number of days in the calculation period. If this Agreement is terminated for any reason other than LESSEE's default, any prepaid rents for the period after termination shall be refunded to LESSEE (or credited against any termination fee payable by LESSEE pursuant to Section 11 below).

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

Signature page to Second Amendment to the Site Agreement between City of Rochester, a Minnesota municipal corporation and Rochester CellTelCo Partnership, d/b/a AT&T Wireless Services, a District of Columbia partnership, by AT&T Wireless Services of Minnesota, Inc., its general partner, a Nevada corporation. (Saint Marys Concrete Tower Site)

CITY

City of Rochester, a Minnesota municipal corporation

By: _____

Print Name: _____

Its: Mayor

[MUNICIPAL SEAL]

Attest: _____

Print Name: _____

Its: City Clerk

Approved as to Form: _____

Print Name: _____

Its: City Attorney

By: _____

Print Name: _____

Its: General Manager, Rochester Public Utilities

Address: City of Rochester
c/o Rochester Public Utilities
4000 East River Road NE
Rochester, MN 55905

Phone: (507) 280-1510

Federal Tax ID No.: 41-6005494

STATE OF _____) COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2004, by _____, _____, _____, and _____, the Mayor, City Clerk, and City Attorney and Rochester Public Utilities General Manager, respectively, of the City of Rochester, a Minnesota municipal corporation, on behalf of the corporation.

[seal]

Notary Public
My commission expires _____

Signature page to Second Amendment to the Site Agreement between City of Rochester, a Minnesota municipal corporation and Rochester CellTelCo Partnership, d/b/a AT&T Wireless Services, a District of Columbia partnership, by AT&T Wireless Services of Minnesota, Inc., its general partner, a Nevada corporation. (Saint Marys Concrete Tower Site)

LESSEE

Rochester CellTelCo Partnership,
D/b/a AT&T Wireless Services,
a District of Columbia Partnership

By: AT&T Wireless Services of Minnesota, Inc.,
Its general partner, a Nevada corporation

By: [Signature]
Its: [Signature]

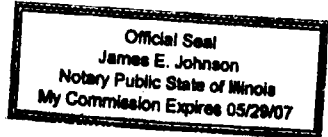
Address: AT&T Wireless Services
2729 Prospect Park Drive
Rancho Cordova, CA 55406
Attn: Lease Administration

STATE OF Illinois)
COUNTY OF Champaign)SS

The foregoing instrument was acknowledged before me on the 16th day of April, 2004, by
Brian P. Meyer the System Development Manager of AT&T Wireless Services of Minnesota
Name Title Company

on behalf of the corporation

Notary Public [Signature]
James E. Johnson
My commission expires: 5.29.07



[Seal]

Corporate Acknowledgement page to Second Amendment to the Site Agreement between City of Rochester, a Minnesota municipal corporation and Rochester CellTelCo Partnership, d/b/a AT&T Wireless Services, a District of Columbia partnership, by AT&T Wireless Services of Minnesota, Inc., its general partner, a Nevada corporation. (Saint Marys Concrete Tower Site)

ACKNOWLEDGEMENT OF CORPORATION
AUTHORIZED SIGNATURE

STATE OF MINNESOTA

COUNTY OF _____

On this _____ day of, _____, 2004, before me appeared
_____ to me personally known, who, being by
(name of officer)
me duly sworn, did say that he/she is the _____ of
(officer's title)
_____, a corporation; and that said instrument
(name of company)
was executed by _____, who acknowledged said
(name of officer)
instrument to be the free act and deed of said corporation.

Notary Public _____

County _____

My Commission Expires _____



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve the Second Amendment to the existing Site Agreement dated December 15, 1999, with Rochester CellTelCo Partnership, d/b/a AT&T Wireless Services, a District of Columbia partnership, by AT&T Wireless Services of Minnesota, Inc., its general Partner, a Nevada corporation, and to request that the Mayor and the City clerk execute the Second Amendment to a Site Agreement dated December 15, 1999, for

Adding Three (3) Additional Eight-Foot Tall by 12-inch Wide Antennas to its
Existing Wireless Communications Facility at the
Saint Marys Concrete Water Tower Site

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 27th day of April, 2004.

President

Secretary