

EMERGENCY

City of Cincinnati

An Ordinance No. _____

CHM

AWB

- 2020

AUTHORIZING the City Manager to execute an *Amendment to Lease* with Cincinnati SMSA Limited Partnership to extend the term of an existing lease pertaining to space on the City-owned water tower located 701 Covedale Avenue in Delhi Township.

WHEREAS, the City of Cincinnati owns the water tower located at 701 Covedale Avenue in Delhi Township, which is under the management and control of the Greater Cincinnati Water Works (“GCWW”); and

WHEREAS, the City and Cincinnati SMSA Limited Partnership (“SMSA”), a subsidiary of AT&T, Inc., are parties to a *Lease of Space* dated June 14, 1999, under which SMSA leases from the City space on the water tower and associated ground space for the installation and operation of voice and data communications equipment, for a term of 20 years; and

WHEREAS, the term of the *Lease of Space* expired on June 13, 2019, and the lease has continued on a month-to-month basis since that time, and the City and SMSA desire to extend the term for up to an additional 20 years (i.e. an initial term with three 5-year renewal options), on the terms and conditions set forth in the *Amendment to Lease* attached to this ordinance as Attachment A; and

WHEREAS, the City has determined that the area leased by SMSA is not needed for a municipal purpose; and

WHEREAS, the City’s Real Estate Services Division has determined, by appraisal, that the base rent set forth in the *Amendment to Lease* (namely, \$70,992/year, with annual increases of 4%) reflects the approximate fair market rental value of the leased area; and

WHEREAS, Section 13 of Article VIII of the Ohio Constitution provides that, to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the State, it is a public interest and proper public purpose for the State or its political subdivisions to sell, lease, exchange, or otherwise dispose of property within the State of Ohio for industry, commerce, distribution, and research; and

WHEREAS, the City has determined that it is in the best interest of the City to eliminate competitive bidding in connection with the City’s lease of the leased area to SMSA because SMSA has been utilizing space on the water tower for the past 21 years and both SMSA and GCWW desire to continue the mutually beneficial arrangement; and

WHEREAS, the City Planning Commission approved the *Amendment to Lease* at its meeting on July 17, 2020; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That the City Manager is hereby authorized to execute an *Amendment to Lease* with Cincinnati SMSA Limited Partnership (“SMSA”), in substantially the form attached to this ordinance as Attachment A, pursuant to which the City of Cincinnati will extend the term of the existing *Lease of Space* pertaining to the water tower located at 701 Covedale Avenue in Delhi Township, which is controlled by the Greater Cincinnati Water Works, through June 13, 2039.

Section 2. That the leased area is not needed for a municipal purpose.

Section 3. That the City’s Real Estate Services Division has determined, by appraisal, that the base rent set forth in the *Amendment to Lease* (namely, \$70,992/year, with annual increases of 4%) reflects the approximate fair market rental value of the leased area.

Section 4. That it is in the best interest of the City to eliminate competitive bidding in connection with the City’s lease of the leased area to SMSA because SMSA has been utilizing space on the water tower for the past 21 years and both SMSA and GCWW desire to continue the mutually beneficial arrangement.

Section 5. That the rent and other proceeds from the *Lease of Space* shall be deposited into Water Works Fund 312 “Private Lead Service Line Replacement” account 2140 for the purpose of providing financial assistance to qualified, low-income residential property owners for the costs of lead service line replacement.

Section 6. That Council authorizes the appropriate City officials to take all necessary and proper actions to fulfill the terms of the *Amendment to Lease* and this ordinance, including without limitation executing any and all ancillary documents.

Section 7. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the

terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is to enable the City to promptly execute the *Amendment to Lease* to extend the term so that the additional proceeds generated by the *Amendment to Lease* may provide financial assistance to qualified, low-income residential property owners for the costs of lead service line replacement at the earliest possible time.

Passed: _____, 2020

John Cranley, Mayor

Attest: _____
Clerk

ATTACHMENT A

Contract No. 95X0016

Location: 701 Covedale Avenue, Cincinnati, OH
(Delhi Hills Water Tower)

AMENDMENT TO LEASE

This Amendment is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **City of Cincinnati**, an Ohio municipal corporation (as landlord; the "**City**"), and **Cincinnati SMSA Limited Partnership**, a Delaware limited partnership (a subsidiary of AT&T, Inc.) (as tenant; "**SMSA**").

Recitals:

A. The City and SMSA are parties to a *Lease of Space* dated June 14, 1999 (the "**Lease**") pursuant to which the City leases to SMSA space on the City's water tower and associated ground space located at 701 Covedale Avenue in Cincinnati, as more particularly described in the Lease, which is under the management and control of Greater Cincinnati Water Works ("**GCWW**"), pursuant to which SMSA operates various antennas and other telecommunications equipment at the site (collectively, the "**Equipment**"). Capitalized terms used herein but not defined herein, if any, shall have the meanings ascribed to them in the Lease.

B. The term of the Lease (having an initial term of 5 years, with 3 automatic 5-year renewals) expires on June 13, 2019, and the parties desire to extend the term.

C. The City's execution of this Amendment was authorized by Ordinance No. ____-2020, passed by Cincinnati City Council on _____, 2020.

NOW THEREFORE, the parties hereby agree as follows:

1. Extension of Term.

(A) Extended Term. With reference to section 2 (*Term*) of the Lease, the term of the Lease is hereby extended for the 5-year period from **June 14, 2019 – June 13, 2024** (the "**Extended Term**"), subject to the parties' early termination rights under the Lease.

(B) Renewal Periods. Provided SMSA is not in default under the Lease at the time of each renewal, the term of the Lease shall automatically be extended beyond the Extended Term for three (3) consecutive renewal periods of five (5) years each (namely: [1] June 14, 2024 – June 13, 2029; [2] June 14, 2029 – June 13, 2034; and [3] June 14, 2034 – June 13, 2039). The foregoing notwithstanding, SMSA may avoid such automatic renewal by notifying the City in writing, no less than six (6) months prior to the scheduled expiration date of the then current term, that the current term will not be extended.

2. Base Rent. With reference to section 4 (*Rent*) of the Lease, effective **June 14, 2019**, base rent payable by SMSA during the Extended Term and renewal periods shall be as set forth on Exhibit A (Base Rent Table) hereto. Payments of base rent shall be made, in advance, on the first day of each month, without demand, notice or setoff. Payments shall be made to "Greater Cincinnati Water Works", and mailed to: GCWW, 4747 Spring Grove Avenue, Cincinnati, OH 45232.

3. Modification or Additional Equipment; Coordinated Report Conditions (CR #112-2018). With reference to section 5 (*Installation and Location of Antennas or Other Telecommunication Equipment on Tower*), section 6 (*Installation and Location of Telecommunication Equipment Enclosures or Cabinets on Tower Property*), section 9 (*Electrical Interference*), and section 11 (*Liability and Indemnification*) of the Lease, and without limitation of other restrictions, approvals, obligations or liability imposed upon SMSA under the Lease, SMSA shall abide by the following with respect to any proposed

alterations, upgrades or additions to its existing Equipment, radio frequency exposure from the Equipment, or signage at the site ("**Changes**"):

(i) SMSA shall not make any Changes without in each instance the prior written consent of GCWW.

(ii) Prior to beginning any work at the site or other initiation of Changes, SMSA shall provide GCWW with copies of all plans, designs and drawings pertaining to the proposed work, and any and all other information requested by GCWW in order to evaluate such request, including without limitation radio frequency information, radio frequency tests, and other information needed to thoroughly assess any potential safety issues. SMSA shall contract with a City of Cincinnati prequalified third party inspection services firm to inspect and approve all work involving structural modifications, welding, coatings, and the like. SMSA's commencement of work at the site prior to obtaining the written consent of GCWW shall constitute an immediate default under the Lease. Upon completion of Changes, GCWW shall have the right to request that SMSA perform a radio frequency exposure study of the site, provide the results to GCWW, and work with GCWW to address any radio frequency exposure concerns.

(iii) SMSA shall ensure that all Changes comply with all applicable zoning requirements, including without limitation those pertaining to screening and concealment. SMSA shall utilize best efforts to minimize detractions from the tower's architecture or aesthetics.

(iv) If the tower is then being used by the City or any other governmental entity for telecommunications purposes, SMSA shall provide GCWW with an interference study or other evidence satisfactory to GCWW establishing that the Changes will not cause interference or damage thereto.

(v) In addition to SMSA's other obligations under section 11 (*Liability and Indemnification*) of the Lease, SMSA shall defend, indemnify and hold harmless the City, its employees, agents, contractors, licensees and invitees from and against any and all losses, damages, costs, expenses, or liability associated with the Equipment or Changes, including without limitation any of the foregoing caused by exposure to radio frequency radiation.

(vi) SMSA shall ensure that the Equipment, Changes, and other activities of SMSA and its contractors shall not interfere with the rights of utility companies that have utility facilities at the Site (e.g., Cincinnati Bell, Duke Energy, Metropolitan Sewer District of Greater Cincinnati, GCWW) to access, operate or maintain their facilities. Any damage to such facilities caused by SMSA or its contractors shall be repaired at SMSA's sole expense.

4. Government Approvals. With reference to the requirements of section 14 (*Governmental Approvals*) of the Lease, and without limitation of other restrictions, approvals, obligations or liability imposed upon SMSA under the Lease, SMSA shall provide the City with a copy of any and all notices of violations of federal or state regulations in connection with the Equipment, including without limitation, OSHA or FCC requirements as to radio frequency energy exposure in connection with the Equipment or Changes.

5. Access and Security. With reference to the requirements of section 8 (*Access and Security*) of the Lease, and without limitation of other restrictions, approvals, obligations or liability imposed upon SMSA under the Lease, in order to provide for the safety and security of the City's employees and contractors, SMSA shall:

(i) arrange for power to the Equipment to be turned off within 30 minutes of notice of the City's need to access or perform work at the water tower. The Equipment shall remain deenergized for the duration of the City's access or work per the City's notice;

(ii) provide to the City any radio frequency exposure studies conducted on the Equipment promptly upon completion;

(iii) upon the City's request, provide to the City any information reasonably needed to understand the potential radio frequency exposure from the Equipment (subject to the City signing a nondisclosure agreement for SMSA's proprietary information).

6. **Ratification.** All terms of the Lease not amended hereby or not inconsistent herewith shall remain in full force and effect and by this reference are incorporated herein as if fully rewritten herein, and the Lease, as amended hereby, is hereby ratified by the parties.

Executed by the parties on the dates indicated below their respective signatures, effective as of the later of such dates (the "Effective Date").

Cincinnati SMSA Limited Partnership

By: _____

Printed name: _____

Title: _____

Date: _____, 2020

City of Cincinnati

By: _____
Paula Boggs Muething, Interim City Manager

Date: _____, 2020

Recommended by:

Cathy Bailey, Director, Greater Cincinnati Water Works

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

EXHIBIT A
BASE RENT TABLE

	Monthly Installment	Annual Amount
<i>Extended Term:</i>		
(1) June 14, 2019 – June 13, 2020	\$ 5,916.03	\$ 70,992.36
(2) June 14, 2020 – June 13, 2021	\$ 6,152.67	\$ 73,832.05
(3) June 14, 2021 – June 13, 2022	\$ 6,398.78	\$ 76,785.33
(4) June 14, 2022 – June 13, 2023	\$ 6,654.73	\$ 79,856.74
(5) June 14, 2023 – June 13, 2024	\$ 6,920.92	\$ 83,051.01
<i>1st Renewal Period:</i>		
(1) June 14, 2024 – June 13, 2025	\$ 7,197.75	\$ 86,373.06
(2) June 14, 2025 – June 13, 2026	\$ 7,485.66	\$ 89,827.98
(3) June 14, 2026 – June 13, 2027	\$ 7,785.09	\$ 93,421.10
(4) June 14, 2027 – June 13, 2028	\$ 8,096.50	\$ 97,157.94
(5) June 14, 2028 – June 13, 2029	\$ 8,420.35	\$101,044.26
<i>2nd Renewal Period:</i>		
(1) June 14, 2029 – June 13, 2030	\$ 8,757.17	\$105,086.03
(2) June 14, 2030 – June 13, 2031	\$ 9,107.46	\$109,289.47
(3) June 14, 2031 – June 13, 2032	\$ 9,471.75	\$113,661.05
(4) June 14, 2032 – June 13, 2033	\$ 9,850.62	\$118,207.49
(5) June 14, 2033 – June 13, 2034	\$10,244.65	\$122,935.79
<i>3rd Renewal Period:</i>		
(1) June 14, 2034 – June 13, 2035	\$10,654.44	\$127,853.22
(2) June 14, 2035 – June 13, 2036	\$11,080.61	\$132,967.35
(3) June 14, 2036 – June 13, 2037	\$11,523.84	\$138,286.04
(4) June 14, 2037 – June 13, 2038	\$11,984.79	\$143,817.49
(5) June 14, 2038 – June 13, 2039	\$12,464.18	\$149,570.19