

19-552

RESOLUTION

Nu. _____

Date of Adoption **OCT 17 2019**

Factual content certified by

A roved as to Form and Legality

JOHN MORELLI, CITY ATTORNEY

ADAME E. CRUZ, BUSINESS ADMINISTRATOR

Council map/wom

presents the following Resolution:

RESOLUTION AUTHORIZING A LEASE AGREEMENT WITH SPRINT SPECTRUM, L.P. (SPRINT), 6200 SPRINT PARKWAY, OVERLAND PARK, KS 66251-2650 FOR LEASE OF SPACE FOR CELLULAR ANTENNA SYSTEM ON THE WATER TOWERS

**BIDDER WILL PAY THE CITY OF TRENTON
\$88,000.00
FOR THE FIRST (1) YEAR- BID2019-55**

WHEREAS, one (1) sealed bid was received on August 28, 2019, for Lease of Space for Cellular Antenna System on the Water Towers located at Lawrence Tank a/k/a Darrah Lane, Mercerville Tank a/k/a Clifford Avenue, Hopewell Tank a/k/a Pennington/Lawrenceville Road, and Whitehorse Tank a/k/a Hempstead Road for the City of Trenton, Department of Administration; and

WHEREAS, the sole bid of Sprint Spectrum, L.P. (Sprint), 6200 Sprint Parkway, Overland Park, KS 66251-2650 made pursuant to advertisement, be and is hereby accepted, as the legally lowest, responsive, responsible bidder complying with terms and specifications on file in the Division of Purchasing. Sprint Spectrum, L.P. (Sprint) agreed to lease the locations at Lawrence Tank a/k/a Darrah Lane and Mercerville Tank a/k/a Clifford Avenue; and

WHEREAS, Sprint Spectrum, L.P. (Sprint) will pay the City of Trenton \$44,000.00 for the first (1) year for each antenna for a grand total of \$88,000.00. There shall be an annual increase in rent of four percent (4%) for each year of the initial term which is a ten (10) year term and any subsequent renewal terms. Sprint Spectrum, L.P. (Sprint) has an option to renew for two (2) additional consecutive five (5) year terms; under the same terms and conditions as the original lease.

NOW, THEREFORE, IT IS RESOLVED, by the City Council of the City of Trenton that the Mayor is hereby authorized to execute a contract with Sprint Spectrum, L.P. (Sprint), 6200 Sprint Parkway, Overland Park, KS 66251-2650 for Lease of Space for Cellular Antenna System on the Water Towers for the City of Trenton, Department of Administration for the said purposes in the manner prescribed by law.

	Aye	Nay	Abstain	Absent		Aye	Nay	Abstain	Absent		Aye	Nay	Abstain	Absent
BLAKELEY	<input checked="" type="checkbox"/>				MUSCHAL				<input checked="" type="checkbox"/>	MCBRIDE		<input checked="" type="checkbox"/>		
CALDWELL	<input checked="" type="checkbox"/>				RODRIGUEZ		<input checked="" type="checkbox"/>							
WILSON	<input checked="" type="checkbox"/>													
HARRISON	<input checked="" type="checkbox"/>				VAUGHN	<input checked="" type="checkbox"/>								

This Resolution was adopted at a Meeting of the City Council of the City of Benton on

OCT 17 2019

Kelly McBrine
President of Council

[Signature]
City Clerk

**CITY OF TRENTON, NEW JERSEY
BID2019-55
RES. NO. 19-552**

NON-EXCLUSIVE TOWER ATTACHMENT LEASE AGREEMENT

THIS NON-EXCLUSIVE TOWER ATTACHMENT LEASE AGREEMENT ("Lease") is executed as of the date of the last signature below (the "Effective Date"), by and between the **CITY OF TRENTON**, a New Jersey municipal corporation, **319 EAST STATE STREET, TRENTON, NEW JERSEY 08608** ("Lessor"), and **T-MOBILE NORTHEAST LLC**, a Delaware Limited Liability Company, **12920 SE 38TH STREET, BELLEVUE, WASHINGTON 98006** ("Lessee").

WHEREAS, Lessor owns an elevated water tank ("Tank") located at 30 East Darrah Lane, Lawrence, NJ 08648 ("Property") and referred to as the **LAWRENCE TANK**, as described on Exhibit A, upon which Lessee desires to mount certain of Lessee's antennas, other equipment and related devices; and

WHEREAS, Lessee desires to lease from Lessor a certain designated space on the Tank; and

WHEREAS, Lessor retains the right to contract with other parties to attach equipment on the Property, so long as said equipment does not cause interference with reception of Lessee's equipment; and

WHEREAS, Lessor desires to be indemnified by Lessee and held harmless from and against any and all damages caused by the operation, maintenance or installation of any-and-all of Lessee's Equipment, as defined below.

NOW THEREFORE, for and in consideration of the terms and mutual promises herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

1. Property. Lessor hereby grants Lessee the right to install, maintain, operate and remove communication equipment and appurtenances on the ground and Tank space leased exclusively to Lessee, together with easements for ingress, egress and utilities during the initial term and any Renewal Terms, as those terms are hereinafter defined, as described in Exhibit "B" attached hereto ("Leased Premises").

2. Use. Lessee shall be permitted to install antennas, cabling, emergency power generators and related equipment on the Leased Premises ("Lessee's Equipment"). A detailed description of the Lessee's Equipment and a diagram showing the installation and location of same on the Leased Premises is included on Exhibit B. The permission granted to Lessee for installation of the Lessee's Equipment is contingent upon the approval of Lessee's plans that demonstrate there will be no interference with any other equipment owned by other communication carriers, which may lease space from the City, in accordance with Paragraph 13. Prior to subsequent installation, all installation plans, including plans for the attachment of Lessee's Equipment, must be approved by Lessor, which approval shall not be unreasonably conditioned, withheld or delayed by Lessor. Routine maintenance and like-for-like swap of Lessee's Equipment shall not require Lessor's approval. Any personal property owned by Lessee, whether fixed or attached to the Leased Premises shall remain the exclusive property of Lessee, without regard to whether the personal property is described on Exhibit B, except that Lessee shall be responsible for any damages to the Leased Premises caused by the installation and or removal of any fixed and or attached Lessee's Equipment, including personal property.

3. Welding. **The Lessee's Equipment shall not be permanently attached or welded to the Tank, unless otherwise approved by Lessor.** If welded attachments are approved, Lessee shall be responsible for replacing interior or exterior tank coatings that are damaged by welding. All replacement of coatings shall meet the exact specifications of the existing tank coating and must be completed within sixty (60) days of the time that welding on the tank occurs. All costs associated with the new coatings, to included Lessor's operational cost (i.e. draining elevated tank), shall be borne by Lessee. Lessor hereby grants Lessee designated access to the Leased Premises for the purpose of installing and maintaining the Equipment and appurtenances.

4. Initial Term. The initial term of this Lease shall be for a period of ten (10) years commencing on the Effective Date ("Commencement Date"). Notwithstanding the foregoing, Lessee previously was leasing the leased premises under a prior agreement ("Original Agreement") and has remained on the Leased Premises.

with Lessor's consent, making interim Lease Payments, as defined below, all of which are current through the Effective Date.

5. Renewal Terms. Lessee shall have the right to extend this Lease for two (2) additional five (5) year renewal terms ("Renewal Terms"). The Renewal Terms shall be on the same terms and conditions as set forth in this Lease, except that Lease Payments shall increase as provided in Paragraph 6. This Lease shall automatically be renewed for the Renewal Terms, unless Lessee notifies Lessor of Lessee's intention not to renew the Lease at least forty-five (45) days prior to the expiration of the Initial Term or the Renewal Term which is then in effect.

6. Consideration. Lessee shall pay to Lessor as lease payment the sum of Forty-Four Thousand Dollars and Zero Cents (**\$44,000.00**), **partial years to be prorated**, ("Lease Payment") for use of the Leased Premises. The Lease Payment shall be paid annually unless otherwise agreed to in writing by the Lessor and Lessee. The Lease Payment shall be increased annually, commencing one (1) year from the Commencement Date and on each anniversary thereafter at the rate of four (4%) percent of the Lease Payment in effect for the previous year. The four (4%) percent increased Lease Payment shall also apply to each year of any renewal option period(s).

7. Utilities. Lessee will arrange for separate metering for all required electrical or other utility connections to support their equipment.

8. Water Tank Purpose. Lessee recognizes that the primary function of the Tank is to provide water storage for Lessor and its customers. Lessee understands that Lessor may find it necessary from time to time to interrupt Lessee's use of the Premises for maintenance of the Tank. Lessor shall provide Lessee with at least one hundred and eighty (180) days prior written notice for non-emergency maintenance, "Maintenance Period", and, if necessary, Lessee agrees to remove its antennas or coax from the Tank, provided that such removal shall not exceed a period of thirty (30) days. If required to remove its antennas or coax, Lessee shall have the right to relocate its antennas or coax in any manner as set out in this Paragraph and/or Lessee may terminate this Lease upon thirty (30) days written notice to the Lessor at any time during the thirty (30) day relocation period and neither party shall have any further rights or obligations arising hereunder, except Lessee shall have the duty to remove Lessee's Equipment as set forth herein, and the parties shall have those rights and obligations that are to survive the termination of this Lease.

a. Lessee, at its sole cost and expense, may relocate temporarily its antennas to a different location on the Tank; provided, however, that such relocation shall not exceed the "Maintenance Period" and that relocation space is available on the Tank at a location sufficient to meet Lessee's coverage or engineering needs and sufficient to allow maintenance performed by Lessor. Lessee shall be allowed to relocate to any location on the Tank that is not being used or intended to be used by Lessor and will not cause interference with any other equipment located on the Tank. Such temporary location shall not interfere with Lessor's maintenance or any other users on the water tank.

b. Lessee, at its sole cost and expense, may use a temporary transmission site or cell on wheels ("COW") on the Property at a location sufficient to meet Lessee's coverage or engineering needs.

9. Lessor's Representations and Warranties. Lessor represents and warrants that all operations conducted by Lessor in connection with the Tank and the Property, including the lighting systems meet with all applicable rules and regulations of the Federal Aviation Administration and all applicable codes and regulations of the city, county and state concerned. Lessor shall maintain its lighting system in a proper operating and safe condition and shall comply with all notice requirements of the Federal Aviation Administration regarding the failure, malfunction or repair of the Tank lighting systems. The cost of painting and repairing the Tank shall be borne by Lessor, unless the damage to the Tank is caused by Lessee, in which case Lessee shall repair such damage, or, at its option, Lessee may reimburse Lessor for its costs and expenses incurred in such repair. Cost of painting Lessee's Equipment shall be borne by Lessee and shall be performed routinely to maintain the appearance of Lessee's Equipment and shall be the same color of the Tank and must have prior approval of Lessor. In the event Lessor fails to maintain the Tank lighting systems as provided herein, Lessee shall have the right to withhold Lease Payments to Lessor, if Lessor fails to make said lighting repairs after Lessee has given Lessor thirty (30) days written notice of the need to provide maintenance and repairs. Lessee shall have the right to apply such Lease Payments withheld hereunder to make the necessary repairs and provide the necessary maintenance, and Lessee shall not thereafter be responsible for the Lease Payments withheld to Lessor.

10. Conditions Precedent. Lessee's obligation to perform under this Lease shall be subject to and conditioned upon:

a. Lessee securing appropriate and necessary approvals for Lessee's intended use of the Property, as well as any future regulations or requirements, from the Federal Communications Commission, the Federal Aviation Administration and any other federal, state or local regulatory authority having jurisdiction over Lessee's proposed use of the Property.

b. Lessee may conduct radio frequency propagation studies ("RF Studies") on the Property. If the RF Studies do not provide results which meet with the personal satisfaction of Lessee, or if the RF Studies provide results which demonstrate that operation of the Lessee's Equipment will disrupt or interfere with any program of Lessor, Lessee shall have no obligation to perform under this Lease; Lessee's inability to successfully satisfy these conditions or the occurrence of any other event, which effectively prohibits Lessee's intended use of the Property shall relieve Lessee from any obligation to perform under this Lease and shall entitle Lessee to restitution of any unearned Lease Payments which have been paid to Lessor.

11. Termination. Except as otherwise provided herein, this Lease may be terminated without any penalty or further liability upon written notice as follows:

(a) By either party upon a default of any covenant or term hereof by the other party which default is not cured within sixty (60) days of receipt of written notice of default (without, however, limiting any other rights available to the parties pursuant to other provisions hereof); provided, that if the defaulting party commences efforts to cure the default within such period, the non-defaulting party shall no longer be entitled to declare a default;

(b) Upon thirty (30) days written notice by Lessee if Lessee is unable to obtain or maintain through no fault of Lessee any license, permit or other governmental approval necessary to the construction and operation of the Lessee's Equipment or business, including its ability to manage a telecommunications network pursuant to which the space is leased, and the equipment will be installed; or

(c) By Lessor by giving Lessee twelve (12) months written notice that the Tank is going to be abandoned or relocated.

(d) By Lessee by giving six (6) months' written notice that the use of the Leased Premises is unacceptable for its use, for any or no reason, at Lessee's sole discretion.

In any of the events of default or termination of this Lease, Lessee must leave the Leased Premises in its original condition, normal wear and tear and loss by casualty excepted.

12. Liability Insurance. During the Initial Term and the Renewal Terms, Lessee shall maintain, at its own expense, insurance covering claims under a policy of general liability insurance, with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence Two Million Dollars (\$2,000,000.00) aggregate, and property damage insurance of not less than One Hundred Thousand Dollars (\$100,000.00). Such insurance shall insure against liabilities arising out of or in connection with Lessee's use or occupancy of the Property subject to the standard exceptions found in the Commercial General Liability Insurance Policy.

13. Interference. Lessee covenants that the equipment will not cause interference with the operation of any other wireless communications equipment located on the Tank as of the date of the Original Lease. Lessor shall be responsible for curing any and all interference to the operation of the equipment caused by the operation of equipment owned by a third party to this Lease, which is in privity of contract with Lessor ("Third Party"). In the event that such interference cannot be eliminated or rectified to Lessee's personal satisfaction within seventy-two (72) hours of the receipt of notice by Lessor from Lessee of the existence of interference ("Notice Date"), Lessor shall require the party causing the interference to disconnect utility service to their equipment, until such time as the interference can be eliminated or rectified to the personal satisfaction of Lessee. If said interference cannot be eliminated or rectified to Lessee's personal satisfaction within thirty (30) days of the Notice Date, Lessor shall, at the request of Lessee, require the party causing the interference to immediately remove its equipment from the Tank and the Property or Lessee may, at the sole discretion and option of Lessee, terminate this Lease upon notice to Lessor.

14. Subrogation.

(a) In General. All insurance policies required under this Lease shall, if possible, contain a waiver of subrogation provision under the terms of which the insurance carrier waives all of its rights to proceed against Lessor or Lessee, as the case may be. If waivers of subrogation are obtained, the party procuring such insurance shall use its best efforts to obtain the waivers of subrogation.

(b) Mutual Release. Lessor and Lessee each release the other and their respective representative from any claims by them or any one claiming through or under them by way of subrogation or otherwise for damage to any person or to the Property and to the fixtures, personal property, improvements and alterations in or on the Property that are caused by or result from risks insured against under any insurance policy carried by them and required by this Lease; provided that such releases shall be effective only if and to the extent that the same do not diminish or adversely affect the coverage under such insurance policies. Lessor shall be included as additional insured on any insurance policy procured by Lessee, and Lessee shall be named as an additional insured on any insurance policy procured by Lessor pursuant to this Lease.

15. Notices. Any and all notices or demands by or from Lessor to Lessee, or Lessee to Lessor, shall be in writing. Such notices or demands shall be mailed to the other party at the following address: Lessor: City of Trenton, Department of Law, 319 East State Street, Trenton, New Jersey 08608; With Copy to: The City Clerk. Notices to Lessee are to be sent to: T-Mobile USA, Inc., 12920 SE 38th Street, Bellevue, WA 98006, Attn: Lease Compliance/PL57XC001/1ME9744A.

16. Destruction of Premises. If the Property or the Tank are destroyed or damaged, so as to hinder the effective use of the Tank in Lessee's judgement, Lessee may elect to terminate this Lease as of the date of the damage or destruction by so notifying Lessor. In such event, all rights and obligations of Lessee to Lessor shall cease as of the date of the damage or destruction, and Lessee shall be entitled to the reimbursement of any Lease Payments prepaid by Lessee.

17. Title and Quiet Enjoyment. Lessor warrants that (i) it has the full right, power and authority to execute this Lease; (ii) it has good and marketable title to the Property and the Leased Premises free and clear of any liens, encumbrances or mortgages.

18. Assignment. Any sublease or assignment of this Lease that is entered into by Lessor or Lessee shall be subject to the provisions of this Lease. Lessee may assign this Lease with the consent of Lessor. Notwithstanding anything to the contrary, Lessee may assign or sublet to a parent company, subsidiary or an affiliate of Lessee, surviving party of Lessee due to a merger or to an entity which acquire Lessee's assets or stock and continues in the business of offering wireless telecommunication services. Lessee shall provide written Notice to Lessor of such assignment.

19. Successors and Assigns. This Lease shall run with the Property described on Exhibit "A" and shall be binding upon and inure to the benefit of the parties, their respective heirs, successors, personal representatives and assigns.

20. Miscellaneous. (a) This Lease shall be construed in accordance with the laws of the state of New Jersey. (b) If any term of this Lease is found to be void or invalid, such validity shall not affect the remaining terms of this Lease, which shall continue in full force and effect. (c) This Lease may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties, it being understood that all parties need not sign the same counterpart.

[Signatures to Follow on Next Page]

IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease as of that date and year first above written.

Attest: [Signature]
Municipal Clerk

3/6/23
Date

CITY OF TRENTON
[Signature]
W. Reed Gusclora, Esq., Mayor

3.3.23
Date

and

Attest: _____
Title:

Date

T-MOBILE NORTHEAST LLC
DocuSigned by:
Ana Hemmert
52C13840B037444...
Title: Director Technology Procurement

11/17/2022
Date



TMO Signatory Level : L06,SL06