SUBJECT: Second Amendment to Land Lease Agreement with Verizon Wireless at the Tenny Standpipe Site

SUMMARY:

- Des Moines Water Works (DMWW) entered into a Land Lease Agreement with Verizon Wireless on October 3, 2011, to locate wireless communication equipment on the Morris K. Tenny Standpipe site in the 4000 block of Merle Hay Road.
- At the May 2013 Board meeting, the Board approved and authorized execution of the First Amendment to Land Lease Agreement. This first amendment to the agreement was needed to allow Verizon Wireless to revise the location of their proposed facilities to avoid a conflict with an existing license that had been previously granted to AT&T Mobility.
- It was discovered by Engineering Department staff during construction of Verizon Wireless’ facilities that the Exhibit included with the first amendment showed incorrect dimensions for the revised location of Verizon Wireless’ facilities.
- A second amendment to the Land Lease Agreement with Verizon Wireless has been prepared to correct the dimensions on the Exhibit.
- A Memorandum of Second Amendment to Land Lease Agreement will be recorded at the Office of the Polk County, Iowa, Recorder after the amendment is executed by DMWW and Verizon Wireless.
- The Second Amendment to Land Lease Agreement and the Memorandum of Second Amendment to Land Lease Agreement have both been reviewed by staff and legal counsel. This second amendment does not alter either parties rights but is required to correct the previously executed documents.

FISCAL IMPACT:

DMWW will receive payment of $1,000 for reimbursement from Verizon Wireless for legal and administrative costs associated with preparing and executing this second amendment.

RECOMMENDED ACTION:

Approve and authorize the Chairperson and CEO and General Manager to execute the Second Amendment to Land Lease Agreement and the Memorandum of Second Amendment to Land Lease Agreement with Verizon Wireless at the Tenny Standpipe site.

BOARD REQUIRED ACTION:

Motion to approve and authorize the Chairperson and CEO and General Manager to execute the Second Amendment to Land Lease Agreement and the Memorandum of Second Amendment to Land Lease Agreement with Verizon Wireless at the Tenny Standpipe site.

Attachments: Second Amendment to Land Lease Agreement, Memorandum of Second Amendment to Land Lease Agreement
SECOND AMENDMENT TO LAND LEASE AGREEMENT

THIS SECOND AMENDMENT to the Land Lease Agreement is entered into as of the date set forth below, by and between Verizon Wireless (VAW) LLC d/b/a Verizon Wireless (“Verizon Wireless”), a Delaware Limited Liability Company qualified to do business in the State of Iowa, and the Board of Water Works Trustees of the City of Des Moines, Iowa, (“Water Works”).

WHEREAS, Water Works and Verizon Wireless entered into a Land Lease Agreement on October 3, 2011 (the “Agreement”); and

WHEREAS, a Memorandum of Land Lease Agreement with respect to the Agreement is recorded in Polk County, Iowa Book 14009, Pages 426 – 429; and

WHEREAS, the Land Lease Agreement was amended by Water Works and Verizon Wireless under the First Amendment to Land Lease Agreement on August 27, 2013 (“First Amendment”); and

WHEREAS, a Memorandum of First Amendment to Land Lease Agreement with respect to the First Amendment to Land Lease Agreement is recorded in Polk County, Iowa Book 14949, Pages 336 – 339; and

WHEREAS, Water Works and Verizon Wireless desire to further amend the Agreement as provided in this Second Amendment.

NOW THEREFORE, the Parties agree as follows:

1. Effective immediately, Exhibit A, Page 2 of 2, of the Agreement, as amended by the First Amendment, is hereby deleted in its entirety and is replaced with Exhibit A, Page 2 of 3, and Exhibit A, Page 3 of 3, as attached hereto and made a part hereof. Exhibit B of the Agreement, the site survey, is attached hereto and made a part hereof. Exhibit A, Page 1 of 2 of the Agreement, shall be relabeled Exhibit A, Page 1 of 3.

2. Section 1 of the Agreement is hereby amended by deleting all of Section 1 in its entirety and substituting the following:

1. **PREMISES.** LESSOR hereby leases to LESSEE a portion of that certain real property located at 4006 Merle Hay Road, Polk County, Iowa, as being further described in Exhibit “A” attached hereto and made a part hereof (the entirety of LESSOR’s property is referred to hereinafter as the “Property”), being described as a 728 square feet (the “Land Space”), together with the non-exclusive right for ingress and egress, seven (7) days a week twenty-four (24) hours a day, on foot or motor vehicle, including trucks over or along the Property extending from the nearest public right-of-way, Merle Hay Road, to the Land Space (hereinafter collectively referred to

DESC Merle Hay Second Amendment
as the “Premises”) being substantially as described herein in Exhibit "A" attached hereto and made a part hereof.

The LESSOR hereby agrees to grant to the LESSEE or to its public utility service provider, at no cost to the LESSEE and at the location shown on Exhibit "A", an additional right to install and maintain utility wires, poles, cables, conduits, and pipes over, under, or along the Property. The utility location serving the Premises shall be considered part of the Premises. LESSEE shall be responsible for the installation and payment of all utilities required by its use of the Premises.

The Parties acknowledge that this Agreement is contingent upon the execution of a tower lease Supplement between TeleCorp Communications, LLC, a Delaware limited liability company and LESSEE, and LESSOR hereby consents to the same. If for any reason said Supplement is terminated by either party, this Land Lease Agreement shall also terminate.

3. As additional consideration for this Amendment, Verizon Wireless further agrees to pay Water Works a one-time, lump sum payment in the sum of $1,000.00 as additional rent, which shall be due and payable within forty-five (45) days of the full execution of this Amendment and which shall be non-refundable. The Parties understand and agree that this additional rent is being paid for the purpose of reimbursing Water Works for its attorney costs and that no additional costs or reimbursement are due pursuant to Section 6 of the Agreement that was added under the First Amendment.

4. Except as amended hereby, the Agreement, as previously amended by the First Amendment, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties here to have executed this Second Amendment to Land Lease Agreement as of the date set forth below.

Board of Water Works Trustees of
the City of Des Moines, Iowa
By: __________________________
Graham Gillette
Its: Chairperson
Attest: ________________________
William G. Stowe
CEO & General Manager
Date: ________________________

Verizon Wireless (VAW) LLC d/b/a
Verizon Wireless
By: __________________________
Lynn Ramsey
Its: Area Vice President Network
Date: ________________________

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Exhibit A  Page 2 of 3
See Attached Sketch of Land Space and Access/Utility Rights of Way
Exhibit A  Page 3 of 3

See Attached Enlarged Site Plan

DESC Merle Hay Second Amendment
Exhibit B
See Attached Survey
MEMORANDUM OF SECOND AMENDMENT TO LAND LEASE AGREEMENT

THIS MEMORANDUM OF SECOND AMENDMENT TO LAND LEASE AGREEMENT (“Memorandum”) dated ______________, 201__ was entered into by and between Board of Water Works Trustees of the City of Des Moines, Iowa, with its address for notice located at 2201 George Flagg Parkway, Des Moines, Iowa 50321 (“LESSOR”) and Verizon Wireless (VAW) d/b/a Verizon Wireless, with its address for notice located at 180 Washington Valley Road, Bedminster, New Jersey 07921 (“LESSEE”).

LESSOR and LESSEE, or their predecessors in interest, originally entered into a Land Lease Agreement with an effective date of October 3, 2011 (the “Agreement”), a memorandum of which was recorded on October 14, 2011, in Book 14009, Page 426-429, as amended by the First Amendment to Land Lease Agreement dated August 27, 2013, a memorandum of which was recorded on September 6, 2013, in Book 14949, Pages 336 – 339, and as amended by the Second Amendment to Land Lease Agreement dated ______________, 201__ (the “Amendment”), for a portion of LESSOR’S certain real property located at 4006 Merle Hay Road, County of Polk, State of Iowa, described on Exhibit “A” attached hereto and made a part hereof. The Amendment provides for revised premises.
IN WITNESS WHEREOF, LESSOR and LESSEE have duly executed this Memorandum as of the day and year written below.

LESSOR:  
Board of Water Works Trustees of the City of Des Moines, Iowa  

By: ______________________________ 
Graham Gillette  
Its: Chairperson  

Attest: _____________________________ 
William G. Stowe  
CEO and General Manager  

Date: ______________________________  

LESSEE: 
Verizon Wireless (VAW) LLC  
d/b/a Verizon Wireless  

By: ______________________________ 
Lynn Ramsey  
Its: Area Vice President Network  

Date: ______________________________  

Acknowledgments on following page

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ACKNOWLEDGMENTS

LESSOR ACKNOWLEDGMENT

STATE OF IOWA )
        ) ss:
COUNTY OF POLK )

On this _____ day of ____________, 201__, before me, a Notary Public in and for the State of Iowa, personally appeared Graham Gillette and William G. Stowe, to me personally known, and, who being by me duly sworn, did say that they are the Board Chairperson and the Chief Executive Officer/General Manager of the Board of Water Works Trustees of the City of Des Moines, Iowa, that no seal has been procured by the entity; that the instrument was signed on behalf of the entity by authority of its Board as contained in the resolution adopted by the Board on the _____ day of ____________, 201__, and that Graham Gillette and William G. Stowe acknowledged the execution of the instrument to be the voluntary act and deed of the Board of Water Works Trustees of the City of Des Moines, Iowa, by it and by them voluntarily executed.

Notary Public in and for Polk County, Iowa

LESSEE ACKNOWLEDGMENT

STATE OF ILLINOIS)
        ) ss.
COUNTY OF COOK )

On this _____ day of ____________, 201__, before me, the undersigned, a Notary Public in and for the State of Illinois, duly commissioned and sworn, personally appeared Lynn Ramsey, to me known to be the Area Vice President Network of Verizon Wireless (VAW) LLC d/b/a Verizon Wireless, that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of Verizon Wireless (VAW) LLC d/b/a Verizon Wireless, for the uses and purposes therein mentioned.

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

Print or Type Name:
Notary Public in and for the State of Illinois
My appointment expires: __________________
Exhibit “A”

(Legal Description)

Beginning at a point on the North line of the South fifty (50) acres of the East Half (E1/2) of the Southeast Quarter (SE1/4) of Section 24, Township 79 North, Range 25 West of the 5th P.M., Iowa, thirty-three (33) feet west of the East line of said Section 24; thence West on the North line of said tract three hundred sixty (360) feet; thence South three hundred sixty (360) feet; thence East three hundred sixty (360) feet to a point thirty-three (33) feet West of the East line of said Section 24; thence North three hundred sixty (360) feet to the point of beginning, now included in and forming a part of the City of Des Moines, Iowa, subject to easements for roads and highways. In the event streets are established on any margin of said tract of land, the City of Des Moines, Iowa will contribute one-half (1/2) the width thereof from said land.

Now known as Lot 4, Merle Hay-Aurora Place, according to the Plat thereof recorded in Book R, Page 114, Polk County, Iowa.