



STAFF REPORT

DATE: 1/21/2025

Consent Agenda

TO: City Council
FROM: Jason Stopa, Community Development Director
AGENDA ITEM: Approve the Lease Extension at 3303 Langly Ct N with T-Mobile Central, LLC
REVIEWED BY: Marty Powers, Public Works Director
Nicole Miller, City Administrator

BACKGROUND:

T-Mobile Central, LLC lease space on the existing City-owned water tower at 3303 Langly Ct N. Their lease is set to expire this year, and the City plans to demolish the water tower in 2025. The licensee would like to extend the lease for 3 months on the water tower while they plan to construct a temporary tower at the site.

ANALYSIS:

The current water tower has T-Mobile equipment that is essential for area coverage. The licensee is seeking a 3-month lease to remain on the water tower.

ISSUE BEFORE COUNCIL: Should the city approve the lease extension for cellular equipment on the water tower with T-Mobile Central, LLC?

FISCAL IMPACT: The City will receive a \$5,616 one-time payment for 3 months.

OPTIONS:

- Approve the Lease extension
- Deny the Lease extension
- Amend the Lease extension
- Table for further information

RECOMMENDATION:

“Motion to approve the Lease Extension at 3303 Langly Ct N with T-Mobile Central, LLC”

ATTACHMENTS:

- Original Lease
- Amendment

SITE AGREEMENT

This Site Agreement ("Agreement") is made as of this 21st day of March, 2000, by and between City of Lake Elmo ("Owner"), whose address is 3800 Laverne Avenue North, Lake Elmo, Minnesota 55042 and APT Minneapolis, Inc., ("APT") a Delaware corporation, whose address is 8410 West Bryn Mawr, Suite 1100, Chicago, IL 60631, for the leasing of certain property interests at _____, pursuant to the following terms:

1. **PROPERTY.** The property interests hereby leased (collectively, the "Leased Premises") and granted by Owner shall include the following [Check appropriate boxes]:
 - [X] Real property comprised of approximately square feet of land
 - [X] Structure exterior space for attachment of antennas
 - [X] Space required for cable runs to connect equipment and antennas
 - [X] Non-exclusive easements required to run utility lines and cables
 - [X] Non-exclusive easement across Owners Property (hereinafter defined) for access in or upon the Owner's real property ("Owner's Property") legally described on Exhibit "A" attached hereto. The Leased Premises are shown in relation to the Owner's Property on Exhibit "A-1" attached hereto.
2. **TERM.** The initial term of this Agreement shall begin on the "Commencement Date" (as hereinafter defined) and subject to the terms of the Termination paragraph herein, shall end on December 31, 2004 ("Initial Term"). The Commencement Date shall be the date on which all conditions precedent detailed in Exhibit "C" have been met.
3. **RENT.** APT shall pay Owner rent in advance in monthly installments, beginning ten (10) days after the Commencement Date for the first (1st) calendar month (or portion thereof) of the term of this Agreement, and thereafter on the first (1st) business day of each calendar month. Payments will be wired directly into the Owner's bank account in accordance with written wiring instructions previously provided or to be provided by Owner to APT. The annual rent for the initial term shall be Twelve Thousand and No/100 Dollars (\$12,000.00) ("Initial Annual Rent"), together with any applicable sales tax. Rent for any initial partial year will be prorated. The annual rent for each applicable Option Period (hereinafter defined) shall be the annual rent of the expiring term, increased, upon the commencement of the applicable Option Period, by a percentage of the expiring annual rent. Such percentage shall be computed by multiplying the number of years in the then expiring term (whether Initial Term or Option Period) times three percent (3%). Upon Owner approval and execution of this Site Lease, APT shall pay Owner a single, one-time payment to reimburse, in whole or in part, the legal fees incurred by Owner in relation to this Site Lease, in the amount of Five Hundred and no/100 dollars (\$500.00).
4. **OPTION TERMS.** APT may extend the term of the Agreement for four (4) additional five (5) year option periods (individually, an "Option Period" and collectively, the "Option Periods"). APT shall have elected to extend the term for each successive Option Period unless it gives Owner written notice of its intention not to extend at least thirty (30) days prior to the expiration of the then-current term.

5. **USE.** APT may use the Leased Premises for the purpose of installing, removing, replacing, maintaining, modifying, altering and operating a communications facility (collectively, the "Communications Facility"). The manner in which the Communications Facility may be attached to the Leased Premises shall be subject to the prior approval by Owner. Owner shall provide APT with twenty-four (24) hour, seven (7) day a week year round access to the Leased Premises. APT will pay all personal property taxes (if any) assessed against the Communications Facility. Owner shall timely pay all real property taxes and assessments against the Owner's Property. APT will not allow any mechanics' or materialmen's liens to be placed on the Leased Premises as a result of its work on the Leased Premises.

APT, its agents and contractors, are hereby granted the right, at its sole cost and expense, to enter upon the Owner's Property and conduct such studies as APT deems necessary to determine the Leased Premises' suitability for the Communications Facility. These studies may include surveys, soil tests, environmental evaluations, radio wave propagation measurements, field strength tests and such other analyses and studies as APT deems necessary or desirable. Owner shall cooperate with APT and execute all documents required to permit the Communications Facility to be in compliance with zoning, land use, and for building regulations. Owner hereby appoints APT as its agent and attorney-in-fact for the limited purpose of making such filings and taking such actions as are necessary to obtain any desired zoning and/or land use approvals.

6. **UTILITIES.** Payment for electric service, telephone or other communication services to the Communications Facility shall be APT's responsibility. Owner agrees to cooperate with APT in its efforts to connect the Communications Facility to existing utility service at APT's expense.
7. **REMOVAL OF COMMUNICATIONS FACILITY.** APT shall remove all personal property, trade fixtures, and improvements installed by APT upon the termination of this Agreement.
8. **INSURANCE.** APT shall maintain commercial general liability insurance insuring APT against liability for bodily injury, death or damage to personal property arising out of use of the Leased Premises by APT, with combined single limits of One Million and No/100 Dollars (\$1,000,000). APT shall also maintain fire and extended coverage insurance insuring APT's personal property for its full insurable value (subject to reasonable deductibles). APT shall name Owner as an additional insured on the policy to the extent required to indemnify under paragraph 11 of this Agreement and provide a certificate of insurance to the Owner annually. Owner shall maintain commercial general liability insurance insuring Owner against liability for bodily injury, death or damage to personal property arising out of ownership, use and management of Owner's Property by Owner or its agents, with combined single limits of One Million and No/100 Dollars (\$1,000,000). Owner shall also maintain fire and extended coverage insurance insuring Owner's Property for its full insurable value (subject to reasonable deductibles). Any policy required to be obtained pursuant to this paragraph shall contain a Waiver of Subrogation in favor of the other party hereto to the extent required to indemnify under paragraph 11 of this Agreement.
9. **CONDITION OF PROPERTY.** Owner represents that Owner's Property and all improvements thereto, including the proposed installation of the Communications Facility on the Leased Premises, are in compliance with all building, life/safety, and other laws of any governmental or quasi-governmental authority.
10. **TERMINATION.** This Agreement may be terminated by APT at any time in its sole discretion by giving written notice thereof to Owner, except only as expressly limited by the following:

- A. **OPTION TERMS.** APT shall give Owner written notice of its intention not to extend the term of this Agreement at least thirty (30) days prior to the expiration of the Initial Term or any Option Period;
- B. **Discontinued Use:** Owner may terminate this Agreement, with one year written notice, if the Structure becomes unusable for Owner's purposes and the Structure must be removed;
- C. **CASUALTY.** If any portion of Owner's Property or the Communications Facility is damaged by any casualty and such damage adversely affects APT's use of the Leased Premises, and APT gives written notice of the same within thirty (30) days after APT receives notice of such casualty, this Agreement shall terminate as of the date of the casualty;
- D. **CONDEMNATION.** If a condemning authority takes any portion of Owner's Property and such taking adversely affects APT's use of the Leased Premises, and APT gives written notice of the same within thirty (30) days after APT receives notice of any such taking by condemnation, this Agreement shall terminate as of the date of the taking; and,
- E. **DEFAULT.** In the event of any default by Owner, APT may terminate this Agreement at any time following written notice of such default and failure to cure the same within thirty (30) days. In the event of termination of this Agreement by APT, any prepaid rent shall be immediately refunded to APT. Termination of this Agreement by APT shall not constitute a waiver of APT's rights under the Default paragraph of this Agreement.
11. **INDEMNITY.** Owner and APT each indemnify the other against, and hold the other harmless from any and all costs (including reasonable attorneys' fees and expenses) and claims, actions, damages, obligations, liabilities and liens which arise out of (a) the breach of this Agreement by the indemnifying party; and (b) the use and/or occupancy of the Leased Premises or Owner's Property by such indemnifying party. This indemnity shall not apply to any claims, actions, damages, obligations, liabilities and liens arising from any negligent or intentional misconduct of the indemnified party and shall survive the termination of this Agreement.
12. **HAZARDOUS SUBSTANCES.** Owner represents that Owner has no knowledge of any substance, chemical, or waste on Owner's Property that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Owner shall hold APT harmless from and indemnify APT against any damage, loss, expense, response costs, or liability, including consultant fees and attorneys' fees resulting from the presence of hazardous substances on, under or around Owner's Property or resulting from hazardous substances being generated, stored, disposed of, or transported to, on, under, or around Owner's Property as long as the hazardous substances were not generated, stored, disposed of, or transported by APT or its employees, agents or contractors.
13. **CONDEMNATION.** The parties shall be entitled to make claims in any condemnation proceeding for value of their respective interests in Owner's Property (which for APT may include, where applicable, the value of the Communications Facility, moving expenses, prepaid rent, and business relocation expenses). Sale of all or part of Owner's Property to a purchaser with the power of eminent domain in the face of the exercise of such power shall be treated as a taking by condemnation.
14. **QUIET ENJOYMENT.** APT, upon performance of its obligations hereunder, shall peaceably and quietly have, hold and enjoy the Leased Premises. If, as of the date of execution of this Agreement or hereafter, there is any mortgage or other encumbrance affecting Owner's Property, then Owner agrees

to obtain from the holder of such encumbrance an agreement that APT shall not be disturbed in its possession, use and enjoyment of the Leased Premises. Owner shall not cause or permit any use of Owner's Property that interferes with or impairs (a) the integrity of the Communications Facility and/or the structure to which it is attached, or (b) the quality of the communication services being rendered by APT from the Leased Premises. Except in cases of emergency, Owner shall not have access to the Leased Premises unless accompanied by APT personnel.

15. **DEFAULT.** Except as expressly limited hereby, Owner and APT shall each have such remedies for the default of the other party hereto as may be provided at law or equity following written notice of such default and failure to cure the same within thirty (30) days.
16. **INTERFERENCE.** APT's equipment shall be installed and operated in a manner that does not cause interference to Owner's radio equipment. Should any such interference occur, Owner and APT shall diligently pursue a cure to remove or satisfactorily attenuate such interference. If such interference to the Owner's radio equipment cannot be cured or satisfactorily attenuated, APT agrees to immediately stop using its equipment if so demanded in writing by Owner. Owner hereby covenants to use its best efforts to afford APT similar protection from interference that may be caused by the operations of subsequent additional Owner's Property users.
17. **CONFIDENTIALITY.** Owner agrees that the terms and conditions of this Agreement are confidential and Owner shall not directly or indirectly disclose any such terms and conditions to any third party without APT's prior written consent.
18. **MISCELLANEOUS.**
 - A. Owner represents and warrants that Owner has full authority to enter into this Agreement and that any person or entity executing in a representative capacity for Owner has full authority to do so, such authority being verified and confirmed by attestation in the space provided therefor. Further, Owner represents that it has good and marketable title to Owner's Property.
 - B. This Agreement supersedes all prior discussions and negotiations and contains all agreements and understandings between Owner and APT. This Agreement may only be amended in writing signed by all parties. Exhibits "A" through "C" are incorporated into this Agreement by reference.
 - C. This Agreement may be signed in counterparts by the parties hereto.
 - D. The terms and conditions of this Agreement shall run with the land and shall extend to and bind the heirs, personal representatives, successors and assigns of Owner and APT; provided, however, that APT may assign this Agreement at any time or sublease a portion of the Leased Premises to allow co-location by other users without Owner's consent and further provided that the same shall not release APT from any of the obligations arising under this Agreement.
 - E. The prevailing party in any action or proceeding in court to enforce the terms of this Agreement shall be entitled to receive its reasonable attorneys' fees and other reasonable enforcement costs and expenses from the non-prevailing party.
 - F. Owner shall contemporaneously herewith execute, acknowledge and deliver to APT for recording a Memorandum of this Agreement ("Memorandum") in the form of Exhibit "B."

- G. Notices shall be in writing and sent by United States Mail, postage prepaid, certified or registered with return receipt requested or by courier service to the address set forth beneath the signature of each party below.
- H. This Agreement shall be construed in accordance with the laws of the state in which Owner's Property is located. Each party agrees to furnish to the other, within ten (10) days after request, such truthful estoppel information regarding this Agreement as the other may reasonably request.
- I. APT represents that they have not been represented by a real estate broker or other listing agent in connection with this Agreement in this transaction for purposes of commission, fee or other payment to such broker or any other leasing agent claiming to have represented APT. If Owner is represented by any broker or listing agent, Owner is responsible for all commission, fee or other payment to such agent.
- J. Owner hereby agrees to cooperate with APT and its authorized representatives regarding any reasonable requests made subsequent to execution of this Agreement to correct any clerical errors contained in this Agreement and to provide any and all additional documentation deemed necessary by APT to effectuate the transaction contemplated by this Agreement. The Owner further agrees that "to cooperate" as used in this Agreement includes but is not limited to, the agreement by the Owner to execute or re-execute any documents that APT reasonably deems necessary or desirable to carry out the intent of this Agreement.
- K. In order to induce a title insurance company to provide coverage against standard title insurance exceptions in a leasehold title insurance policy to be issued to APT, Owner hereby agrees to execute, acknowledge and deliver to APT an owner's affidavit in form customarily used by title insurance companies in the community where Owner's Property is located.
- L. Owner's approvals required herein shall not be unreasonably withheld (unless otherwise provided herein) or delayed.
- M. If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.
- N. Headings set forth herein are for convenience, only, and are not to be construed against the content of any paragraphs herein.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

CITY OF LAKE ELMO,
a Minnesota municipal corporation

By: Lee Hunt
Name: Lee Hunt
Its: Mayor

Date: 03/21/00

Tax ID# _____

By: Mary Kuepner
Name: _____
Its: City Administrator
Date: 03/21/00

Tax ID# _____

APT MINNEAPOLIS, INC.,
a Delaware corporation

By: Michael O'Rourke
Name: Michael O'Rourke
Its: Director

Date: 3/27/00

Tax ID# 36-4027583

EXHIBIT "A"
TO
SITE AGREEMENT

LEGAL DESCRIPTION OF OWNER'S PROPERTY:

Real Property in Washington County, Minnesota, described as follows:

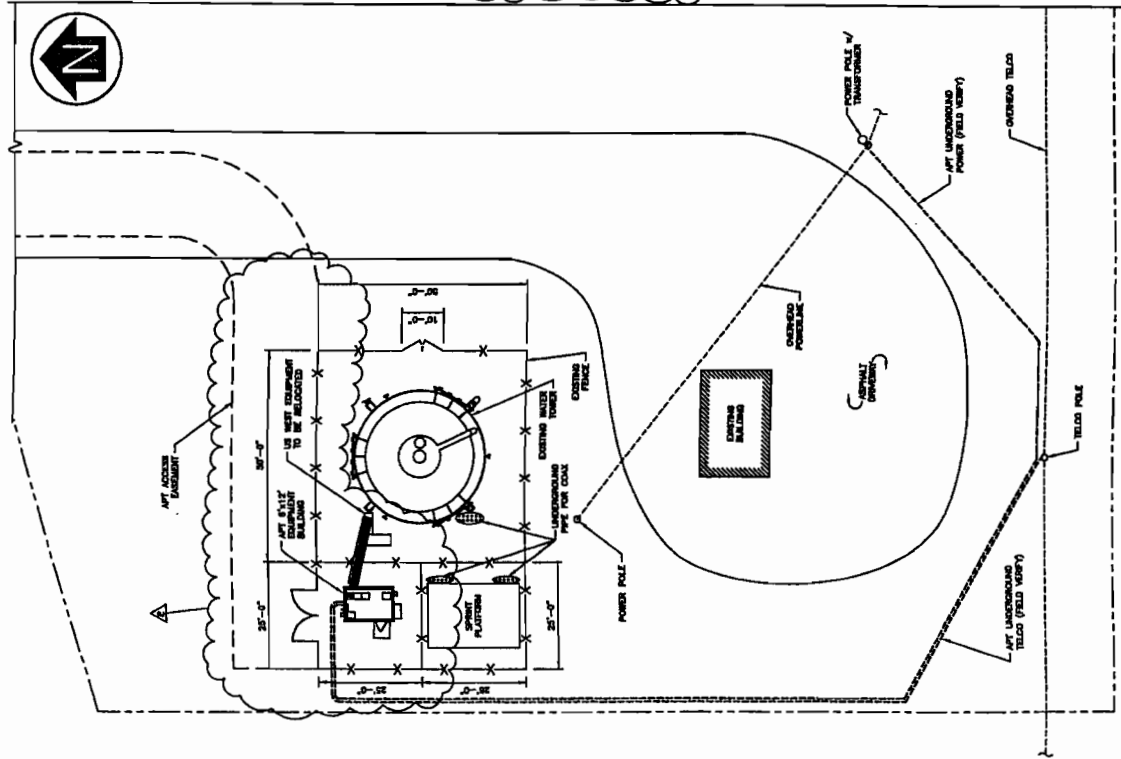
The East One Hundred and Ninety-four and Sixty-five One Hundredths (194.65) feet of Lot Six (6), Block Two (2), LAKE ELMO PARK, as surveyed and platted and now on file and of record in the Office of the Register of Deeds of Washington County, Minnesota.

APT Site Name: Lake Elmo

APT Site No.: A1N510

Market: Minneapolis

It is agreed by Owner and APT that the precise legal description for the Owner's Property will be corrected, if necessary, and that the correct legal description may be placed on this Exhibit "A" by APT.



SITE PLAN

[illegible]

EXHIBIT "A-1"

EXHIBIT "B"
TO
SITE AGREEMENT

FORM OF
MEMORANDUM OF AGREEMENT

THIS MEMORANDUM evidences that a Site Agreement was made and entered into by written Site Agreement effective the _____ day of _____, 200__, between _____ ("Owner") whose address is as set forth below and **APT Minneapolis, Inc.**, a Delaware corporation ("APT"), whose address is **8410 West Bryn Mawr, Suite 1100, Chicago, IL 60631**, the terms and conditions of which are incorporated herein by reference.

Such Site Agreement provides, in part, that Owner, for valuable consideration, leases to APT a part of that certain property owned by Owner which is described in Exhibit "A" attached hereto and incorporated herein, together with a nonexclusive appurtenant easement across Owner's property for access thereto, for a term which terminates on _____, 200__, and which term is subject to ____ () additional ____ () year option periods.

OWNER SIGNATURE

Address of Owner

Phone

Federal Tax ID or Social Security #

ACKNOWLEDGEMENT OF OWNER SIGNATURE

APT SIGNATURE

American Portable Telecom

P.O. Box 31793

Chicago, IL 60631-0793

Attn: Real Estate

With copy to:

APT Minneapolis, Inc.

8000 W. 78th Street, Suite 400

Minneapolis, MN 55439

Attn: Real Estate Manager

ACKNOWLEDGEMENT OF APT SIGNATURE

This document drafted by:

APT Minneapolis, Inc. _____

8000 W. 78th Street, Suite 400

Minneapolis, MN 55439

Attn: Real Estate Manager

EXHIBIT "A"
TO
MEMORANDUM OF AGREEMENT

LEGAL DESCRIPTION OF OWNER'S PROPERTY:

Real Property in _____ County, Minnesota, described as follows:

SKETCH AND DESCRIPTION OF LEASED PREMISES SHOWN IN RELATION TO OWNER'S PROPERTY:

EXHIBIT "C"
TO
SITE AGREEMENT

Conditions Precedent

1. All permits from all local or federal land use jurisdictions for the intended use.
2. All local airspace authorities and FAA determination of no hazard to airspace.
3. FCC authorization to utilize this location for the intended use.
4. APT's technical reports must establish to its exclusive satisfaction that the Leased Premises is capable of being suitably engineered to accomplish APT's intended use.

FIRST AMENDMENT TO SITE AGREEMENT

This First Amendment to Site Agreement (“**Amendment**”) is made effective as of the date last signed below (“**Effective Date**”) by and between T-Mobile Central, LLC, successor-in-interest to APT Minneapolis, Inc. (“**APT or Tenant**”), and City of Lake Elmo (“**Owner**”). Owner and Tenant are collectively referred to herein as the “**Parties**.”

RECITALS

WHEREAS, Owner’s and Tenant’s predecessors in interest entered into that certain Site Agreement effective March 21, 2000, (collectively, the “**Agreement**”), pursuant to which Tenant is leasing space for a telecommunications facility at 3303 Langley Court (as more fully described in the Agreement, the “**Leased Premises**”). Tenant and Owner now wish to further amend the Agreement as set forth below.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The foregoing Recitals are expressly made a part of this Amendment and are incorporated herein by this reference. All capitalized terms used but not defined herein shall have the same meaning as in the Agreement.
2. The term of the Agreement is hereby extended to midnight on December 31, 2024 (the “**Current Term**”), and Tenant shall have the right to extend this Agreement for three (3) months (the “**Renewal Term**”), respectively, on the same terms and conditions as set forth in the Agreement except as amended. The Agreement shall automatically renew for the Renewal Term. Prior to the expiration of the Renewal Term, Tenant shall remove its antennas, radios, TMAs and cables from the water tank. Tenant’s ground equipment shall remain in place during the Renewal Term.
3. Rent for the Renewal Term shall be a one-time fee of Five Thousand Six Hundred Sixteen Dollars (\$5,616.00). Rent for the Renewal Term shall be paid within 30 days of the Effective Date.
4. Tenant’s addresses for notice purposes are hereby replaced with the following:

T-Mobile USA, Inc.
12920 SE 38th Street
Bellevue, WA 98006
Attn: Lease Compliance/Site No. A1N0510A
5. Each person signing this Amendment on behalf of Owner or Tenant represents that he or she is duly authorized to sign this Amendment and to bind the Party on behalf of which

such person is signing. If there is a conflict between the Agreement and this Amendment, this Amendment shall prevail.

6. Owner warrants and represents that the consent or approval of no third party, including, without limitation, a lender, is required with respect to Owner's execution of this First Amendment, or if any such third party consent or approval is required, Owner has obtained any and all such consents or approvals.

7. The Agreement remains in full force and effect as amended by this Amendment and is hereby ratified and confirmed by the Parties.

8. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument. Signed facsimile and electronic copies of this Amendment shall legally bind the parties to the same extent as original documents.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their duly authorized representatives as of the date first written above.

Tenant:

T-Mobile Central, LLC

Owner:

City of Lake Elmo

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____