

# VILLAGE OF ALLOUEZ

Allouez Village Hall • 1900 Libal Street • Green Bay, Wisconsin 54301-2453  
Phone No.: (920) 448-2800 • Fax No.: (920) 448-2850

## Department of Public Works

### T-MOBILE CELL LEASE AT STANDPIPE

T-Mobile, thru BlackDot as its agent, is requesting re-negotiation of its current lease to lower the monthly payment.

Attached is the proposed lease amendment fee and terms, and a sample lease amendment.

From what we have been able to learn, T-Mobile is potentially to be acquired by another company and T-Mobile needs to increase its profitability. The new lease effort is to assist in these regards.

The new lease would be a decrease of \$150 per month at this time, and includes a 12% increase per 5-year lease term. The rent decrease results lower revenue to the water utility, but this does increase the probability that future rent is maintained.

If the current T-Mobile agreement is amended as proposed, and in the future T-Mobile cancels the agreement, the village is afforded some financial compensation by the 48 month rent guarantee at a \$98,400 buyout. This guarantee is of value to the water utility, and offsets to some degree the reduced rent.

The Village Board requested that the termination notice period be increased and a village termination clause be added. T-Mobile agreed to revise notice to a 90-day period.

The village request to add a termination option/renegotiation option was reviewed with T-Mobile but they declined to agree to this change. The reason given is that T-Mobile requires a 25-year term to recover their investment in the facility construction. This option might result in the loss of this financial recovery.

The T-Mobile lease was also reviewed by Attorney Gast. His comments are attached.

It is recommended that this T-Mobile lease amendment be approved with the modification to a 90-day notice period. If approved by the village board the attached amendment to the terms will be sent to T-Mobile. They will draft the final contract amendment and return it for signature by the village president. Signature of the final amendment should be included in the village board approval, if granted.

C. Berndt  
March 23, 2017

## Craig Berndt

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**From:** Randall L. Gast <Randy@hanaway.com>  
**Sent:** Friday, March 17, 2017 12:28 PM  
**To:** Craig Berndt; Brad Lange  
**Subject:** RE: T-Mobile

Thought that could be a problem. I have seen similar situations in other cell site lease agreements where the provider wants an extended term to recoup investment and to insure continuity of service. It would be my recommendation that we proceed with the lease since we do get a long term rental income stream at a 12% bump every five years, plus the guaranteed early termination buyout (which was a nice touch Craig). Let me know if you have any questions. Thanks.

Randy

Attorney Randall L. Gast  
HANAWAY ROSS, S.C.  
345 S. Jefferson Street  
Green Bay, WI 54301  
920-432-3381  
Email: [Randy@hanaway.com](mailto:Randy@hanaway.com)  
Web Site: [www.hanaway.com](http://www.hanaway.com)

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**From:** Craig Berndt [mailto:Craig@villageofallouez.com]  
**Sent:** Friday, March 17, 2017 11:24 AM  
**To:** Brad Lange; Randall L. Gast  
**Subject:** T-Mobile

Brad and Randy-

T-Mobile will not go along with the renegotiate clause by the owner because of the possible impact of losing a cell site for which they have a contract. This is what Veren Fai thought would be the response.

If we are willing to go ahead with the renewal contract I need to send an email back to Veren with the term sheet. They will then send a contract amendment for signature.

They will amend the notice term to 90 days. No problem with that change. Craig

Craig L. Berndt, P.E.  
Director, Public Works  
Village of Allouez  
1900 Libal Street  
Green Bay, WI 54301  
(920) 448-2800  
[Craig@villageofallouez.com](mailto:Craig@villageofallouez.com)

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From: [randy@hanaway.com](mailto:randy@hanaway.com)

*You received this message because the sender is on your allow list.*

## Craig Berndt

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**From:** Craig Berndt  
**Sent:** Wednesday, March 08, 2017 11:02 AM  
**To:** 'bsmith@blackdotwireless.com'  
**Cc:** Brad Lange  
**Subject:** RE: T-MOBILE PROPOSAL

Brett-

The Village of Allouez is interested in continuing the T-Mobile lease agreement per your request, but we do have two requests with regard to your proposal. This is as a result of last night's village board meeting.

1. Change to a contract "renewal terms" minimum notification period to at least 90 days if the contract is to be terminated by the tenant. This is paragraph 2. In paragraph 8 the minimum period for notification should also be 90 days for FCC or other government approval issues.
2. Under paragraph 8 please add a provision that provides for the Landlord to terminate the lease upon 90 days notice. We can add conditions under which this would apply if that is needed, but our intent is to allow the Village to terminate the lease if we need the site area for water tower expansion, or if we wish to renegotiate the tenant lease for some reason.

Please take a look at this request and let me know if we can modify the amendment accordingly. Thanks, Craig

Craig L. Berndt, P.E.  
Director, Public Works  
Village of Allouez  
1900 Libal Street  
Green Bay, WI 54301  
(920) 448-2800  
[Craig@villageofallouez.com](mailto:Craig@villageofallouez.com)

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**From:** Craig Berndt  
**Sent:** Thursday, February 16, 2017 11:22 AM  
**To:** 'Brett Smith' <bsmith@blackdotwireless.com>  
**Subject:** RE: T-MOBILE PROPOSAL

Hi Brett-

I received your email and have discussed it internally. We do feel there is merit to your offer, and will seriously consider it.

Because we are a municipal government we do require some time to approve such a proposal. We do not have a Public Works or Village Board meeting until the first week in March. We have an election in February so we do not have a board meeting in late February. Can we extend the offer period to March 10<sup>th</sup> to allow us to work thru this. We have a Village Board meeting on March 7<sup>th</sup> at which this proposal would be decided upon.

Please let me know. Thanks, Craig

Craig L. Berndt, P.E.  
Director, Public Works  
Village of Allouez  
1900 Libal Street  
Green Bay, WI 54301  
(920) 448-2800



[Craig@villageofallouez.com](mailto:Craig@villageofallouez.com)

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**From:** Brett Smith [<mailto:bsmith@blackdotwireless.com>]  
**Sent:** Tuesday, February 14, 2017 5:13 PM  
**To:** Craig Berndt <[Craig@villageofallouez.com](mailto:Craig@villageofallouez.com)>  
**Subject:** T-MOBILE PROPOSAL

Mr. Berndt,

Thank you for taking the time to review this proposal from my client. As I explained the current term ends 06/17/17 and my client needs to make a business decision now as to whether or not they will exercise the option for an additional five years.

In order for T-Mobile to be able to sustain this lease they will need your help as a strategic partner.

I have attached a term sheet along with a boiler plate amendment the carrier uses for extensions.

Brett Smith  
Senior Lease Consultant

**BLACKDOT**

27271 Las Ramblas - Suite 300, Mission Viejo, CA 92691

P: 949-502-3846 | F: 949-502-3946 | M: 949-943-6849

<http://www.blackdotwireless.com>

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## LEASE EXTENSION PROPOSAL – TERM SHEET

**To:** Craig Berndt  
**From:** Brett Smith on behalf of T-Mobile  
**Subject:** Site #: ML94469B | Lease #: 132689 | Focus #: WS-300852.1  
**Date:** February 14, 2017

On the terms and conditions set forth below, T-Mobile would consider extending its existing lease agreement for the site located at:

**Property / Site Address:** 2616 S Webster Ave Green Bay, Wisconsin 54301

**Current Term Expiration Date:** Jun 7, 2017

### New Rent

A.	New Base Rent	\$2,050.12
B.	New Rent Frequency	Monthly
C.	New Escalations	12 %
D.	New Escalation Frequency	Term

### New Term

A.	Number of Renewal Terms	5
B.	Renewal Term Length (months)	60

### Rent Guarantee Period

A.	Rent Guarantee Period (months)	48
B.	Rent Guarantee Value	\$98,405.76

### Other

- A. Please verify or write in the correct legal ownership for this Property. Is this correct? Yes / No  
The Village Of Allouez
- B. Please verify or write in the correct address for the Property where the Site is located. Is this correct? Yes / No  
2616 S Webster Ave Green Bay, Wisconsin 54301
- C. Please verify or write in the correct address for notice and correspondence. Is this correct? Yes / No  
1900 Libal Street Green Bay, Wisconsin 54301

Landlord Initial: \_\_\_\_\_

Tenant Initial: \_\_\_\_\_

**\*\*This proposal will expire at the close of business 10 days from the date of this Term Sheet unless extended by a T-Mobile officer or director. Landlord may consent to the above terms outlined above by initialing as indicated above and returning to T-Mobile (add POC). Please note that this proposal is not a binding commitment and is subject to review and approval of documentation by all parties. Participation in this program is not required and T-Mobile will continue to abide by the terms of the original Lease Agreement between the parties, including exercising termination rights where they exist. If the parties agree to move forward with the proposed lease extension, they will enter into a mutually acceptable lease amendment, which documents the agreed upon terms and conditions in this Term Sheet.**

**[NUMBER OF AMENDMENT] AMENDMENT TO [LEASE TITLE]**

This [NUMBER OF AMENDMENT] Amendment to [LEASE TITLE] ("**Amendment**") is effective as of the date of execution by the last party to sign (the "**Effective Date**") by and between [LL VESTING], a [LL ENTITY] ("**Landlord**") and [TMO VESTING], a [TMO ENTITY] ("**Tenant**").

Landlord and Tenant (or their predecessors-in-interest) entered into that certain [LEASE TITLE] dated [DATE], (including all prior amendments) (the "**Lease**") regarding premises located at [ADDRESS] (the "**Premises**"), and

Landlord and Tenant desire to amend the Lease on the terms and conditions set forth herein.

NOW, for good and valuable consideration, Landlord and Tenant agree as follows:

1. **Rent.** Commencing on \_\_\_\_\_ 1, 2017, Tenant shall pay Landlord \_\_\_\_\_ dollars (\$\_\_\_\_) per month ("**Rent**") in advance, by the fifth (5<sup>th</sup>) day of each month. Where duplicate Rent would occur, a credit shall be taken by Tenant for any prepayment of Rent by Tenant. Rent shall be adjusted, effective on the first day of each successive Renewal Term, to an amount equal to \_\_\_\_\_ percent (\_\_\_\_ %) above the Rent for the immediately preceding Renewal Term.

2. **Renewal Terms.** At the expiration of the Lease, the Term of the Lease will automatically be extended for \_\_\_\_\_ additional and successive \_\_\_\_\_ year terms (each a "**Renewal Term**"), unless Lessee notifies Lessor in writing of Lessee's intention not to extend the Lease at least thirty (30) days prior to the expiration of any Renewal Term.

3. **Modification of Tenant's Obligation to Pay – Rent Guarantee.** Commencing on \_\_\_\_\_ 1, 2017, Tenant's obligation to pay Rent is guaranteed for a period of \_\_\_\_\_ (\_\_\_\_) years ("**Rent Guarantee Period**"). Tenant's obligation to pay Rent is guaranteed and this obligation shall not be subject to offset or cancellation by Tenant unless any of the following exceptions apply: a) local, state or federal laws adversely affect Tenant's ability to operate; (b) the Premises or Antenna Facilities are damaged or destroyed by wind, fire or other casualty and the Premises cannot be restored within a six-month time period; c) the Property is foreclosed upon and Tenant' is unable to maintain its' tenancy; d) Landlord requires Tenant to relocate its Antenna Facilities which adversely affect Tenant's ability to operate the Antenna Facilities; or e) Landlord breaches the Lease and the default issue is not cured within the appropriate cure period. This Rent Guarantee shall not apply to any increases in the Rent after the execution of this Amendment.



4. **Access.** Landlord shall furnish, at no additional charge to Tenant, unimpeded access to the Premises on a 24-hours-a-day, 7-days-a-week basis to Tenant and Tenant's employees, agents, contractors and other designees.

5. **Permitted Use.** The Premises may be used for: (a) the transmission and reception of communication signals; and (b) the construction, installation, operation, maintenance, repair, addition, upgrading, removal or replacement of any and all Antenna Facilities (collectively, the "**Permitted Uses**").

6. **Expansion.** Tenant shall have the right to enlarge the Premises, to the extent practicable, so that Tenant may implement any necessary upgrades and additions ("**Additional Premises**"), for an increased monthly rent of \$1.50 per square foot. Addition of coaxial cables, raceways, conduits and other ancillary equipment shall not require increased Rent.

7. **Notice.** All notices, requests, demands and other communications shall be in writing and shall be effective three (3) business days after deposit in the U.S. mail, certified, return receipt requested or upon receipt if personally delivered or sent via a nationally recognized courier to the addresses set forth below. Landlord or Tenant may from time to time designate any other address for this purpose by providing written notice to the other party.

If to Tenant, to:

T-Mobile USA, Inc.  
12920 SE 38th Street  
Bellevue, WA 98006  
Attn: Lease Compliance/  
<SITE NUMBER>

If to Landlord, to:

<LL Name>  
<LL Mailing Address>  
<City, State, Zip>

8. **Termination.** Tenant may terminate this Agreement without further liability, upon thirty (30) days prior written notice to Landlord, for any of the following reasons: (i) changes in local or state laws or regulations which adversely affect Tenant's ability to operate; (ii) a Federal Communications Commission ("**FCC**") ruling or regulation which is beyond the control of Tenant; (iii) technical or economic reasons; or (iv) if Tenant is unable to obtain any Governmental Approval required for the construction or operation of Tenant's Antenna Facilities. Additionally, upon ninety (90) days prior written notice to Landlord, Tenant may terminate this Agreement for any or no reason.

9. **Tenant Assignment.** Tenant shall have the right to assign, or otherwise transfer this Agreement, upon Tenant's delivery to Landlord of written notice of any assignment, or transfer by Tenant. Tenant shall be relieved of all liabilities and obligations and Landlord shall look solely to the assignee, or transferee for performance under this Agreement. Upon receipt

of a written request from Tenant, Landlord shall promptly execute an estoppel certificate. Tenant shall have the right to sublease the Agreement without the need for Landlord consent.

10. **Bandwidth.** Tenant shall have the right to transmit and receive on any and all frequencies for which Tenant has been granted a license by the FCC.

11. **Memorandum of Lease.** Landlord will execute a Memorandum of Lease at Tenant's request. If the Property is encumbered by a deed, mortgage or other security interest, Landlord will also execute a subordination, non-disturbance and attornment agreement.

12. **Miscellaneous.**

a. Any charges payable under this Agreement other than Rent shall be billed by Landlord to Tenant within twelve (12) months from the date in which the charges were incurred or due; otherwise the same shall be deemed time-barred and be forever waived and released by Landlord.

b. Landlord and Tenant will reasonably cooperate with each other's requests to approve permit applications and other documents related to the Property.

c. To the extent any provision contained in this Amendment conflicts with the terms of the Lease, the terms and provisions of this Amendment shall control. Unless otherwise defined herein, capitalized terms used in this Amendment have the same meanings they are given in the Lease.

d. Except as expressly set forth in this Amendment, the Lease otherwise is unmodified and remains in full force and effect. Each reference in the Lease to itself shall be deemed also to refer to this Amendment.

e. This Amendment may be executed in duplicate counterparts, each of which will be deemed an original. Signed electronic copies of this Amendment will legally bind the parties to the same extent as originals.

f. Each of the parties represent and warrant that they have the right, power, legal capacity and authority to enter into and perform their respective obligations under this Amendment. Landlord represents and warrants to Tenant that the consent or approval of a third party has either been obtained or is not required with respect to the execution of this Amendment.

g. This Amendment will be binding on and inure to the benefit of the parties herein, their heirs, executors, administrators, successors-in-interest and assigns.



IN WITNESS, the parties execute this Amendment as of the Effective Date.

**LANDLORD:**

**[INSERT NAME],**

a \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**TENANT:**

**[T-MOBILE ENTITY],**

a Delaware \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
T-Mobile Legal Approval