CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: December 12, 2016

ITEM: Iowa Wireless Services LLC, 1725 98th Street and 1755 59th Place – Approval and Acceptance of Non-Interference with Emergency Services Agreements

Resolution – Approval and Acceptance of Non-Interference Agreement – 1725 98th Street and 1755 59th Place

FINANCIAL IMPACT: Undetermined.

BACKGROUND: Through Administrative Approval, staff has approved the co-location of cellular antennas on existing structures for I-Wireless on the water tower at 1725 98th Street (MM-003258-2016) and on the Mercy Hospital building at 1755 59th Place (MM-003268-2016). As part of the approval of these new installations, a non-interference with emergency communications agreement was required to be executed.

Exhibit II is a copy of the agreements. For policy purposes, formal acceptance by the City Council of a these agreements is required.

CITY COUNCIL SUBCOMMITTEE: Acceptance of this document by Council is a required formality; this item was not presented to the Development and Planning City Council Subcommittee.

OUTSTANDING ISSUES: There are no outstanding issues.

RECOMMENDATION: Adopt a resolution approving and accepting the Cellular Non-Interference Agreements between the City of West Des Moines and I-Wireless for co-location of cellular antenna at 1725 98th Street and 1755 59th Place.

Lead Staff Member: Kara V. Tragesser, AICP

STAFF REVIEWS

Department Director	
Appropriations/Finance	
Legal	
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	
Date(s) Published	N/A
Letter sent to surrounding property owners	

SUBCOMMITTEE REVIEW (if applicable)

Committee	None		
Date Reviewed			
Recommendation	Yes ☐	No ☐	Split ☐

ATTACHMENTS:

Exhibit I - Resolution
Exhibit II - Agreements

Prepared by: KTragesser Development Services, City of WDM, PO Box 65320, WDM, IA 50265-0320, 515-222-3620
When Recorded, Return to: City Clerk, City of West Des Moines, PO Box 65320, West Des Moines, IA 50265-0320

RESOLUTION

A RESOLUTION APPROVING AND ACCEPTING TWO NON-INTEREFERENCE AGREEMENTS FOR CELLULAR ANTENNA CO-LOCATIONS AT 1725 98TH STREET AND 1755 59TH PLACE FOR I-WIRELESS

WHEREAS, it is the policy of the City of West Des Moines, Iowa to approve and accept all easement and agreements conveying property and other interests to the City; and

WHEREAS, the following documents have been presented to the City for approval and acceptance; and

Cellular Non-Interference Agreement – I Wireless, 1725 98th Street
Cellular Non-Interference Agreement – I-Wireless, 1755 59th Place

WHEREAS, it is in the best interest of the citizens of the City to approve and accept the above-described documents.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA THAT the document(s) described above conveying property and other interests to the City of West Des Moines, Iowa, are hereby approved and accepted and shall be filed with the county recorder as appropriate.

PASSED AND ADOPTED this 12th day of December 2016.

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson
City Clerk

EXHIBIT II

AGREEMENT

This Agreement is entered into this ____ day of _____, 2016 by and between Iowa Wireless Services LLC (hereinafter referred to as the "Petitioner") and the City of West Des Moines ("City").

WITNESSETH:

WHEREAS, the Petitioner proposes to install cellular communication antennas on the West Des Moines Water Tower located at1725 98th Street in West Des Moines, Iowa;

WHEREAS, the Petitioner has represented and warranted to the City that operation of the Wireless Communication Facility will not interfere with the operation, transmission or reception of the City's emergency (i.e. Fire, EMS, Police, etc.) radio communication frequencies (the "City Emergency Communication Frequencies");

WHEREAS, the Petitioner has agreed that in the event interference with City Emergency Communication Frequencies occurs as a result of the construction or operation of Petitioner's Wireless Communication Facility, the Petitioner, at its sole expense, will immediately take steps described herein necessary to modify or alter the Wireless Communication Facility to eliminate the interference and prevent any future interference; and

WHEREAS, in exchange for the aforementioned warranties and representations, the City has approved the Petitioner's application for a Minor Modification permit (MM-003258-2016) to install antenna on a Wireless Communication Facility.

NOW, THEREFORE, the City and the Petitioner hereby agree as follows:

1. The Petitioner will be allowed to install the Wireless Communication Facility at 1725 98th Street, West Des Moines, Iowa, in accordance with the Minor Modification approval subject to the execution of this document.

2. Petitioner agrees that the Wireless Communication Facility will consist of equipment of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to any equipment of City operated on City Emergency Communication Frequencies which existed and were in use in the City of West Des Moines on the date this Agreement is executed by the parties. In the event any after-installed Petitioner's equipment causes such interference, and after City has notified Petitioner in writing of such interference at the address provided below, Petitioner will take all commercially reasonable steps necessary to correct and eliminate the interference, including but not limited to, at Petitioner's option, powering down such equipment and later powering up such equipment for intermittent testing (with the City's prior approval). In no event will the City amend, modify or revoke Minor Modification or future modifications to add antenna or demand that Petitioner relocate or alter its Wireless Communication Facility as long as Petitioner is making a good faith effort to remedy the interference issue and achieves such remedy within a reasonable period of time. In the event said interference can not be eliminated, the Petitioner, at its sole expense, agrees to remove from operation the equipment which causes the interference in order to eliminate said interference and prevent any future interference. Petitioner acknowledges that there will not be an

adequate remedy at law for noncompliance with the provisions of this Paragraph and therefore, the City shall have the right to equitable remedies, such as, without limitation, injunctive relief and specific performance.

3. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

CITY:

City Manager
City of West Des Moines, Iowa
4200 Mills Civic Parkway
West Des Moines, IA 50265

With a copy to:

City Attorney
City of West Des Moines, Iowa
4200 Mills Civic Parkway
West Des Moines, IA 50265

PETITIONER:

President and CEO
J. Craven Shumaker
Iowa Wireless Service LLC
7600 Office Plaza Drive South Suite 150
West Des Moines IA 50265

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

Dated this _____ day of _____, 2016.

[Signature pages follow]

Iowa Wireless Service LLC

By: J. Craven Shumaker
Title: President and CEO

STATE OF IOWA)
) SS
COUNTY OF DALLAS)

On November 21, 2016, before me, the undersigned, notary public, personally appeared J. Craven Shumaker, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature Elizabeth A. VanZomeren (Seal)

Printed Name: Elizabeth A. VanZomeren

ELIZABETH A VAN ZOMEREN
MY COMMISSION EXPIRES
SEPT 10 2017
COMMISSION NO. 754702
NOTARIAL SEAL - STATE OF IOWA

CITY OF WEST DES MOINES, IOWA

_____
Steven K. Gaer, Mayor

Attest:

_____
Ryan Jacobson, City Clerk

STATE OF IOWA)
) SS
COUNTY OF POLK)

On this _____ day of _____, 2016, before me, the undersigned, a Notary Public in and for said County and State personally appeared Steven K. Gaer and Ryan Jacobson, to me personally known, who being by me duly sworn, did say that they are the Mayor and City Clerk of the City of West Des Moines, Iowa, a municipal corporation, executing the within and foregoing instrument and acknowledged that they executed the same as their voluntary act and deed of the City of West Des Moines, by it and by them voluntarily executed.

_____
Notary Public in and for the State of Iowa

AGREEMENT

This Agreement is entered into this ____ day of _____, 2016 by and between Iowa Wireless Services LLC, a Delaware limited liability company, (hereinafter referred to as the "Petitioner") and the City of West Des Moines ("City").

WITNESSETH:

WHEREAS, the Petitioner proposes to install cellular communication antennas on a structure located at 1755 59th Place (also known as Mercy West Lakes Hospital) in West Des Moines, Iowa;

WHEREAS, the Petitioner has represented and warranted to the City that operation of the Wireless Communication Facility will not interfere with the operation, transmission or reception of the City's emergency (i.e. Fire, EMS, Police, etc.) radio communication frequencies (the "City Emergency Communication Frequencies");

WHEREAS, the Petitioner has agreed that in the event interference with City Emergency Communication Frequencies occurs as a result of the construction or operation of Petitioner's Wireless Communication Facility, the Petitioner, at its sole expense, will immediately take steps described herein necessary to modify or alter the Wireless Communication Facility to eliminate the interference and prevent any future interference; and

WHEREAS, in exchange for the aforementioned warranties and representations, the City has approved the Petitioner's application for a Minor Modification permit (MM-003268-2016) to install antenna on a Wireless Communication Facility.

NOW, THEREFORE, the City and the Petitioner hereby agree as follows:

1. The Petitioner will be allowed to install the Wireless Communication Facility at 1755 59th Place, West Des Moines, Iowa, in accordance with the Minor Modification approval subject to the execution of this document.

2. Petitioner agrees that the Wireless Communication Facility will consist of equipment of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to any equipment of City operated on City Emergency Communication Frequencies which existed and were in use in the City of West Des Moines on the date this Agreement is executed by the parties. In the event any after-installed Petitioner's equipment causes such interference, and after City has notified Petitioner in writing of such interference at the address provided below, Petitioner will take all commercially reasonable steps necessary to correct and eliminate the interference, including but not limited to, at Petitioner's option, powering down such equipment and later powering up such equipment for intermittent testing (with the City's prior approval). In no event will the City amend, modify or revoke Minor Modification or future modifications to add antenna or demand that Petitioner relocate or alter its Wireless Communication Facility as long as Petitioner is making a good faith effort to remedy the interference issue and achieves such remedy within a reasonable period of time. In the event said interference can not be eliminated, the Petitioner, at its sole expense, agrees to remove from operation the equipment which causes the interference in order to eliminate said

interference and prevent any future interference. Petitioner acknowledges that there will not be an adequate remedy at law for noncompliance with the provisions of this Paragraph and therefore, the City shall have the right to equitable remedies, such as, without limitation, injunctive relief and specific performance.

3. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

CITY:

City Manager
City of West Des Moines, Iowa
4200 Mills Civic Parkway
West Des Moines, IA 50265

With a copy to:

City Attorney
City of West Des Moines, Iowa
4200 Mills Civic Parkway
West Des Moines, IA 50265

PETITIONER:

J. Craven Shumaker, President & CEO
Iowa Wireless Service LLC
7600 Office Plaza Drive South Suite 150
West Des Moines IA 50265

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

Dated this _____ day of _____, 2016.

[Signature pages follow]

Iowa Wireless Service LLC

By: J. Craven Shumaker
Title: President & CEO

STATE OF IOWA)
) SS
COUNTY OF DALLAS)

On November 21, 2016, before me, the undersigned, notary public, personally appeared J. Craven Shumaker, President & CEO of Iowa Wireless Services, LLC, a Delaware limited liability company, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (Seal)

Printed Name: Elizabeth A. Van Zomeren

ELIZABETH A VAN ZOMEREN
MY COMMISSION EXPIRES
SEPT
10
20
COMMISSION NO. 764702
NOTARIAL SEAL - STATE OF IOWA

CITY OF WEST DES MOINES, IOWA

_____
Steven K. Gaer, Mayor

Attest:

_____
Ryan Jacobson, City Clerk

STATE OF IOWA)
) SS
COUNTY OF POLK)

On this _____ day of _____, 2016, before me, the undersigned, a Notary Public in and for said County and State personally appeared Steven K. Gaer and Ryan Jacobson, to me personally known, who being by me duly sworn, did say that they are the Mayor and City Clerk of the City of West Des Moines, Iowa, a municipal corporation, executing the within and foregoing instrument and acknowledged that they executed the same as their voluntary act and deed of the City of West Des Moines, by it and by them voluntarily executed.

_____
Notary Public in and for the State of Iowa