



**AGENDA ITEM FORM**

**SUBJECT: First Amendment to Ground Lease Agreement with TowerCo at Hazen Water Tower Site**

**SUMMARY:**

- Des Moines Water Works (DMWW) entered into a Ground Lease Agreement with TowerCo 2013 LLC on March 25, 2014. TowerCo is a third-party developer from Cary, North Carolina, that has agreed to construct a 175-foot wireless communication monopole structure at the Hazen Water Tower site at 48<sup>th</sup> Street and Hickman Road.
- This new monopole would have the capacity to accommodate the existing antennae and communication equipment for all three of the communication providers that are presently mounted on the Hazen Water Tower structure with the potential to accommodate other users in the future.
- Relocation of this equipment will address the negative impacts to the water tower structure caused by the equipment and improve DMWW operations at the site. The administrative and legal costs associated with management of the multiple leases and licenses at the Hazen Water Tower site will also be reduced.
- One of the conditions of the original Ground Lease Agreement states that the term of the lease shall commence twelve months from the date the lease agreement was executed which was March 25, 2014.
- For the last several months, TowerCo has been applying for the necessary jurisdictional permits and approvals that will allow construction of the monopole. TowerCo has been denied approval to erect a monopole at the Hazen Water Tower site by the State Historical Preservation Office (SHPO).
- SHPO's position regarding the denial to approve construction of the monopole is "...the proposed construction of a self-support tower nearby....would, in our opinion, result in a significant intrusion and degrade the *aesthetic quality of the tower's park-like setting*....In our opinion, this undertaking will result in adverse effects to a historic property."
- The First Amendment to Ground Lease Agreement will extend the contingency time period from 12 months from the date the lease agreement was executed to 24 months. This will allow additional time for DMWW staff and TowerCo to work with SHPO and resolve this matter.
- The First Amendment to Ground Lease Agreement has been reviewed by staff and legal counsel. A copy of the amendment is attached.

**FISCAL IMPACT:**

No fiscal impact is associated with this item.

**RECOMMENDED ACTION:**

Approve and authorize the Chairperson and CEO and General Manager to execute the First Amendment to Ground Lease Agreement with TowerCo 2013 LLC at the Hazen Water Tower site.

**BOARD REQUIRED ACTION:**

Motion to approve and authorize the Chairperson and CEO and General Manager to execute the First Amendment to Ground Lease Agreement with TowerCo 2013 LLC at the Hazen Water Tower site.

_____ / _____ Vern Rash, P.E., L.S. (date) Project Manager	_____ / _____ Danny J. Klopfer, P.E. (date) Engineering Services Manager	_____ / _____ William G. Stowe (date) CEO and General Manager
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## **FIRST AMENDMENT TO GROUND LEASE AGREEMENT**

THIS FIRST AMENDMENT TO GROUND LEASE AGREEMENT (“Amendment”) is entered as of the later of the signature dates below by and between The Board of Water Works Trustees of the City of Des Moines, Iowa, a municipality utility orgnaized and existing under Chapter 338, Code of Iowa and also known as Des Moines Water Works (“DMWW”) TowerCo 2013 LLC, a Delaware limited liability company (“Lessee”).

### **RECITALS**

A. Whereas, DMWW and Lessee are parties to that certain Ground Lease Agreement dated March 25, 2014 (the “Agreement”);

B. Whereas, DMWW and Lessee desire to amend the Agreement to extend the contingency time period under Section 4 (“Term”) of the Agreement.

NOW, THEREFORE, for and in consideration of the promises and mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree to amend the Agreement as follows:

1. **Term.** Section 4 of the Agreement which is labeled as “Term” is hereby modified by replacing “twelve (12) months” with “twenty-four (24) months”.
2. **Agreement in Full Force.** Except as expressly amended hereby, all terms and conditions of the Agreement shall remain in full force and effect, and, in the event of any inconsistencies between this Amendment and the terms of the Agreement, the terms set forth in this Amendment shall govern and control. The covenants, representations and conditions in the Agreement are mutual and dependent.
3. **Counterparts.** This Amendment may be executed in one or more counterparts which shall be construed together as one document.
4. **Successors and Assigns.** Upon full execution by Lessee and DMWW, this Amendment (i) shall be binding upon and shall inure to the benefit of each of the parties and their respective successors, assigns, receivers and trustees; and (ii) may be modified or amended only by a written agreement executed by each of the parties.
5. **Recitals.** The recitals at the beginning of this Amendment are incorporated in and made a part of this Amendment.

**[SIGNATURES APPEAR ON THE FOLLOWING PAGES.]**

**IN WITNESS WHEREOF**, the parties have executed this Amendment as of the later of the signature dates below.

**DMWW:**

**Board of Water Works Trustees of the City  
of Des Moines, Iowa**

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

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

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

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

**LESSEE:**

**TowerCo 2013 LLC**

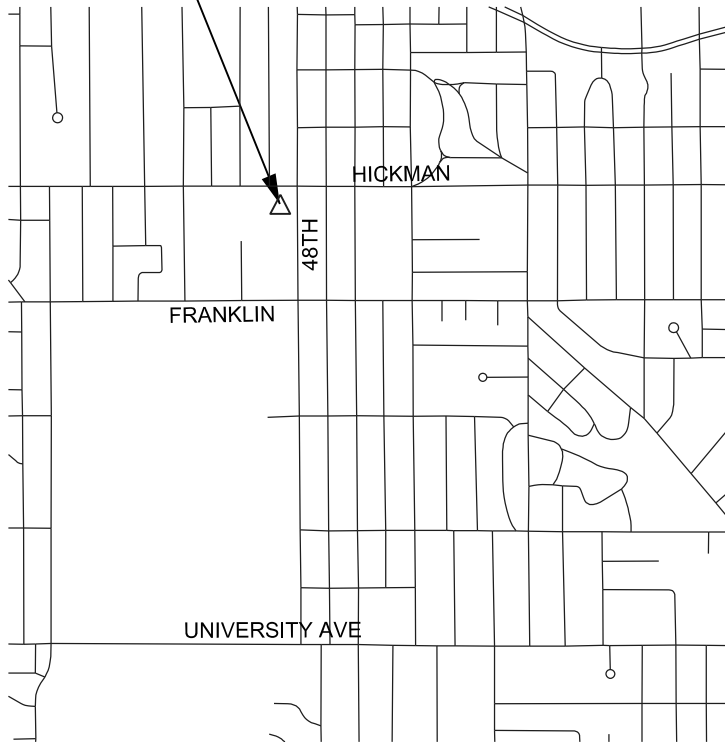
By: \_\_\_\_\_

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

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

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

PROJECT  
LOCATION



VICINITY MAP  
SCALE: NONE



**Des Moines**  
**Water Works**  
Water You Can Trust for Life  
ENGINEERING DEPARTMENT  
Des Moines, Iowa

FIRST AMENDMENT TO GROUND  
LEASE AGREEMENT WITH TOWERCO  
AT HAZEN WATER TOWER SITE