

**Cedar Hill Independent School District**  
**BOARD OF TRUSTEES**

Meeting Date: August 13, 2012

Presented by: Mr. Horace Williams, Superintendent of Schools

Subject: Consider Lease Agreement Amendment for Cell Tower Site at Joe Wilson Intermediate

**Action Item**

**BOARD GOAL**

This agenda item is not directly responsive to a particular Board goal. However, it does present the possibility of on-going financial benefit to the District.

**BACKGROUND INFORMATION:**

In 2006, CHISD entered into a lease agreement with MetroPCS for the location of a 75' cell tower on the Joe Wilson Intermediate site. In recent days Staff has been asked by SBA Towers, successor-in-interest to MetroPCS, to amend the original agreement to allow for an additional 416 sq. ft. of ground space for placement of *ground-level only* equipment. The incremental financial consideration would be \$650 / month, which would escalate annually in accordance with the original lease.

The proposed amendment language with a revised description of the site is attached. The amendment has been reviewed and approved by District legal counsel.

**RECOMMENDATION:**

Consider approval of the SBA Towers site lease amendment as presented.

**BOARD ACTION REQUIRED**

Motion to approve site agreement amendment with SBA Towers III, LLC.

**POLICY AUTHORIZATION:**

CDB(Legal)

**CONTACT PERSON(S):**

L. Kim Lewis, Chief Operating Officer

**FUNDING SOURCE:**

Lease proceeds would become revenue to the General Operating Fund (199).

**ENCLOSURES:**

Site lease amended agreement including revised site map

## AMENDMENT TO COMMUNICATIONS SITE LEASE AGREEMENT

**THIS AMENDMENT TO COMMUNICATIONS SITE LEASE AGREEMENT** (hereinafter referred to as "Amendment") is executed this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between **CEDAR HILL INDEPENDENT SCHOOL DISTRICT**, having an address of 285 Uptown Blvd., Building 300, Cedar Hill, Texas 75104 ("Owner"), and **SBA TOWERS III LLC, a Florida limited liability company**, as successor-in-interest to MetroPCS Texas, LLC, having a principal office located at 5900 Broken Sound Parkway, NW, Boca Raton, Florida 33487 ("Lessee").

**WHEREAS**, Owner and MetroPCS Texas, LLC, a Delaware limited liability company entered into that certain unrecorded Communications Lease Agreement dated January 17, 2007 (the "Agreement") as disclosed by that certain Assignment Agreement dated June 27, 2008, filed May 5, 2009 and recorded as Instrument File No. 200900126807, in the Real Property Records of Dallas County Texas, whereby Owner leased to Lessee certain land owned by Owner located at 975 Pickard Road, City of Cedar Hill, County of Dallas, State of Texas (the "Site") as more particularly described in the attached Exhibit "A" and in the Agreement for the construction and operation of a wireless communications facility; and

**WHEREAS**, Owner and Lessee desire to amend the Agreement to reflect the expansion of the Site.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto covenant, agree and bind themselves to the following modifications to the Agreement:

1. **Section 1, Premises and Use**, of the Agreement is hereby amended as follows:

Owner hereby leases to Lessee an additional 416 square feet of ground space (the "Expanded Site") for a total leased space of 916 square feet of ground space as described in Exhibit "A" attached hereto and made a part hereof. This legal description shall replace the existing legal description attached to the Agreement and shall serve as the legal description of the Site for all purposes under the Agreement. Owner and Lessee agree that a revised Site legal description with access and utility easements can be substituted with a survey as soon as it becomes available.

2. The Site as referenced on Exhibit "A" of the Agreement is hereby deleted in its entirety and replaced with the Exhibit "A" attached hereto and made a part hereof.
3. **Section 3, Rent**, of the Agreement is hereby amended as follows:

As consideration for the Expanded Site, Owner shall receive an additional Six Hundred Fifty and No/100 Dollars (\$650.00) per month (the "Additional Rent"). The Additional Rent shall be due upon the commencement of any construction activities at the Expanded Site by Lessee or any of Lessee's sublessees. Lessee shall provide ten (10) days written notice to Owner prior to the commencement of such construction. The Additional Rent will be escalated in accordance with the escalation outlined in the Agreement.

In the event that Lessee is unable to secure a sublease for the Expanded Site or if Lessee is unable to obtain or maintain, through no fault of Lessee, any license, permit or other Governmental Approval necessary to the construction and operation of the structures related to the use of the Expanded Site, this Amendment shall be null and void and Lessee shall have no further rights or obligations related to the Expanded Site.

4. **Section 5, Assignment/Subletting**, of the Agreement is hereby deleted in its entirety and replaced with the following:

Lessee will not assign or transfer this Agreement without the prior written consent of Owner, provided, however, Lessee shall have the right to sublease or assign its rights under this Agreement without any approval or consent of Owner to (a) the Lessee's principal, affiliates, or subsidiaries of its principal; (b) to any entity which acquires all or substantially all of Lessee's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition or other business reorganization; or (c) to any entity which acquires or receives an interest in the majority of communication towers of the Lessee in the market defined by the Federal Communications Commission in which the Property is located; or (d) to any entity who is in the business of owning and operating telecommunication towers or (e) to Lessee's lenders. As to other parties, this Agreement may not be sold, assigned or transferred, nor shall Lessee have the right to freely sublet or transfer space to any new third parties (sublessees) on the Site and/or Expanded Site without the written consent of the Owner, which such consent will not be unreasonably withheld or delayed. Notwithstanding the above, Lessee shall have the right to freely sublet or transfer space to any of its existing third parties (sublessees) on the Site and/or Expanded Site without obtaining the prior written consent of Owner. Any sublease that is entered into by Lessee shall be subject to

the provisions of this Agreement, which shall be binding upon the successors, assigns, heirs and legal representatives of the respective parties hereto.

5. **Section 6, Notices**, of the Agreement is hereby amended to reflect the Lessee's current address as follows:

If to Lessee: SBA Towers III LLC  
Attn: Site Administration  
5900 Broken Sound Pkwy, NW  
Boca Raton, FL 33487  
RE: Cedar Hill South / TX12866-A

6. This Amendment will be governed by and construed and enforced in accordance with the laws of the state in which the Site is located without regard to principles of conflicts of law.
7. Except as specifically set forth in this Amendment, the Agreement is otherwise unmodified and remains in full force and effect and is hereby ratified and reaffirmed. In the event of any inconsistencies between the Agreement and this Amendment, the terms of this Amendment shall take precedence.
8. This Amendment shall be effective as of the date last executed by both parties.

[Signatures to appear on the following pages]

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed this  
\_\_\_\_ day of \_\_\_\_\_, 2012.

**OWNER:**

**CEDAR HILL INDEPENDENT  
SCHOOL DISTRICT**

**WITNESSES:**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
(print name)

\_\_\_\_\_  
(print name)

STATE OF \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ }

I, the undersigned, a Notary Public for the state and county aforesaid, do hereby certify that \_\_\_\_\_ personally came before me this day and acknowledged that he/she is \_\_\_\_\_ for **CEDAR HILL INDEPENDENT SCHOOL DISTRICT**, and acknowledged, on behalf of said district, the due execution of the foregoing instrument.

WITNESS MY HAND and official seal in the state and county last aforesaid the \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
(print name)

My commission expires on \_\_\_\_\_

**LESSEE:**

**WITNESSES:**

**SBA TOWERS III LLC,  
A Florida limited liability company**

By: \_\_\_\_\_  
Name: Alyssa Houlihan  
Title: Director of Leasing  
Date: \_\_\_\_\_

\_\_\_\_\_  
(print name) \_\_\_\_\_  
  
\_\_\_\_\_  
(print name) \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF PALM BEACH

I, the undersigned, a Notary Public for the state and county aforesaid, do hereby certify that **ALYSSA HOULIHAN** personally came before me this day and acknowledged that she is Director of Leasing for **SBA TOWERS III LLC, a Florida limited liability company**, and acknowledged, on behalf of said company, the due execution of the foregoing instrument.

WITNESS MY HAND and official seal in the state and county last aforesaid the \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
(print name)

My commission expires on \_\_\_\_\_

**EXHIBIT "A"**

**REVISED SITE LEGAL DESCRIPTION**

WILL BE INSERTED UPON COMPLETION OF SURVEY

Lessee and Owner agree that a revised Site legal description with access and utility easements can be substituted with a survey as soon as it becomes available.

