

FIRST AMENDMENT TO WIRELESS USE AGREEMENT

THIS FIRST AMENDMENT TO WIRELESS USE AGREEMENT ("**Amendment**"), dated as of the latter of the signature dates below (the "**Effective Date**"), is by and between the City of Las Vegas, a political subdivision of the State of Nevada (the "**City**") and New Cingular Wireless PCS, LLC, a Delaware limited liability company ("**Company**").

WHEREAS, City and Company entered into a Wireless Use Agreement dated December 19, 2018 ("**Agreement**"), whereby in exchange for certain compensation City granted to Company the right to locate, place, attach, install, operate, maintain, control, remove, reattach, reinstall, relocate, and replace Company's Equipment in or on Municipal Facilities and/or third-party property in the ROW for the purposes of operating the Company's Wireless Communication Service; and

WHEREAS, the Agreement has a term of two (2) years commencing on December 19, 2018 and expiring on December 18, 2020 (the "**Original Agreement Term**"); and

WHEREAS, the City and Company desire to extend the term of the Agreement and otherwise amend the Agreement as more particularly set forth in this Amendment; and

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Company agree as follows:

1. **Term Extension.** Following the expiration of the Original Agreement Term on December 18, 2020, the Term shall be extended for ten (10) years (the "**Term Extension**"), with the Term Extension commencing December 19, 2020 and expiring on December 18, 2030; unless it is earlier terminated by either party in accordance with the provisions of the Agreement. Any reference to the term of this Agreement shall mean the Original Agreement Term as well as the Term Extension.

2. **Attachment to Municipal Facilities.** Section 4.1 is hereby amended by adding the following subsection 4.1.10 to the end of such section:

"4.1.10 Company agrees to install and commence operation, on or before December 31, 2022, of at least one (1) Small Wireless Facility (defined herein) for 5G connectivity in the area near the City's Westside School at Washington and D Street. The Company shall also take all reasonable steps available in providing City inbuilding solutions if capacity issues arise prior to a Small Wireless Facility being installed and commencing operation in said area to ensure that City's proposed workforce development center and several start-up technology companies that will be located in this area are capitalizing on 5G speeds."

3. **Municipal Facilities Attachment Fee.** Effective January 1, 2021, Section 5.2 is hereby deleted in its entirety and replaced with the following:

"Municipal Facilities Attachment Fee. With respect to each Municipal Facility upon which a Small Wireless Facility has already been installed pursuant to this Agreement, and for which the City issues to Company a permit to install all or a portion of a Small Wireless Facility ["Small Wireless Facility" as described in the Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, Declaratory Ruling and Third Report and Order (FCC-18-133, WT Docket No. 17-79, WC Docket No. 17-84 (Sept. 26, 2018)) ("FCC Wireless Infrastructure Order")] on or before December 18, 2020, Company shall pay to the

City a quarterly fee (the "Existing Municipal Facilities Attachment Fee") in the amount of three hundred twenty six dollars and 75/100 (\$326.75) per each Small Wireless Facility, effective January 1, 2021 and continuing for each quarter throughout the term of this Agreement, for the use of each Municipal Facility, if any, upon which a Small Wireless Facility has been installed pursuant to this Agreement. With respect to each Municipal Facility for which the City issues to Company a permit to install all or a portion of a Small Wireless Facility on or after December 19, 2020, Company shall pay to the City a quarterly fee (the "Adjusted Municipal Facilities Attachment Fee") in the amount of seventy five dollars and 00/100 (\$75.00) per each Small Wireless Facility, effective on January 1, 2021 and continuing for each quarter throughout the term of this Agreement, for the use of each Municipal Facility, if any, upon which a Small Wireless Facility has been installed pursuant to this Agreement. Existing Municipal Facilities Attachment Fee and the Adjusted Municipal Facilities Attachment Fee shall collectively be referred to in this Agreement as the "Municipal Facilities Attachment Fee". The aggregate Municipal Facilities Attachment Fee (including both Existing Municipal Facilities Attachment Fee and the Adjusted Municipal Facilities Attachment Fee, as applicable) with respect to each calendar quarter of a year during the term shall be an amount equal to the total number of Small Wireless Facilities to which are attached on any Municipal Facility at any time during the calendar quarter multiplied by the Existing Municipal Facilities Attachment Fee or the Adjusted Municipal Facilities Attachment Fee, as applicable, and shall be due and payable not later than forty-five (45) days after each calendar quarter. City represents and covenants that City owns all Municipal Facilities for the use of which it is collecting from Company the Existing Municipal Facilities Attachment Fee or the Adjusted Municipal Facilities Attachment Fee, as applicable, pursuant to this Subsection 5.2. The City and Company may by mutual written consent agree upon the provision of Company services to the City in lieu of payment of the Existing Municipal Facilities Attachment Fee or the Adjusted Municipal Facilities Attachment Fee, as applicable. For the avoidance of doubt, it is understood and agreed that the Existing Municipal Facilities Attachment Fee and the Adjusted Municipal Facilities Attachment Fee, as applicable, shall be calculated on a per Small Wireless Facility basis and not on a per Municipal Facility basis."

4. **Adjustment to Municipal Facilities Attachment Fee.** Effective January 1, 2021, Section 5.3 is hereby deleted in its entirety and replaced with the following:

"Adjustment to Municipal Facilities Attachment Fee. Effective commencing on January 1, 2021 and continuing annually thereafter during the term, the Existing Municipal Facilities Attachment Fee and the Adjusted Municipal Facilities Attachment Fee shall be adjusted (rounded to the nearest whole dollar) by a percentage amount equal to two and one-half percent (2.5%)."

5. Section 5.5.1 only is hereby deleted in its entirety.

6. **Commencement of Installation and Operation.** Section 6.1 is hereby amended by adding the following sentence to the end of such section:

"The foregoing deadlines to Commence Installation and Commence Operation of an approved expansion or new installation of Company's Equipment may be extended for an additional six (6) months upon approval by the City, which approval shall not be unreasonably withheld, conditioned, or delayed."

7. **Mutual Waiver.** Section 5.7 is hereby deleted in its entirety and replaced with the following:

"Mutual Waiver. Notwithstanding any other terms and conditions of this Agreement, the terms of applicable Laws, or the terms of any new Laws or clarifications of existing Laws, the Parties for themselves and their permitted successors and assigns, do hereby knowingly and voluntarily waive any and all rights they may have to challenge the fees, rates, timelines, deadlines, terms or conditions of this Agreement during the entire term of this Agreement, including any Term Extension. This mutual waiver is a material term of this Agreement."

8. Effective November 1, 2020, the City's delivery address set forth in Section 6.3 of the Agreement as "City of Las Vegas, Land Development Counter #15, 1st Floor, 333 N. Rancho Drive, Las Vegas, NV 89106" is hereby deleted in its entirety and replaced with the following:

**City of Las Vegas, Land Development Counter #15
1st Floor, 495 South Main Street
Las Vegas, NV 89101**

9. **Notices.** Company's notice address set forth in Section Section 10.1 of the Agreement is hereby deleted in its entirety and replaced with the following:

**If to Company:
New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
RE: Cell Site Name: City of Las Vegas Wireless MLA (NV)
1025 Lenox Park Blvd NE, 3rd Floor
Atlanta, GA 30319**

with a copy to:

**New Cingular Wireless PCS, LLC
AT&T Legal Department – Network
RE: Cell Site Name: City of Las Vegas Wireless MLA (NV)
208 S. Akard Street
Dallas, TX 75202-4206**

10. **Records; Audits.** A Section 13.3.1 shall be added to the Agreement to read as follows:

13.3.1 Audit. Company shall keep complete and accurate business records concerning the fees and other amounts due pursuant to the Agreement for a period of at least five (5) years or, if such period is greater, until such time as the City has completed any pending audit through the payment of all fees and other amounts determined by the City to be due or through the resolution of any disputed amounts. Company agrees to reimburse the City for the City's reasonable, actual and documented costs and expenses to conduct each audit not to exceed the sum of ten thousand dollars (\$10,000) per audit within fifteen (15) business days after receiving a written invoice from City. Without waiving any City rights or protections afforded to City under Nevada law outside the context of a City audit as contemplated herein, including without limitation those rights stated in NRS 268.020, if the City's audit reveals that Company has overpaid its fees and other sums due to the City under the Agreement, then the City shall in its sole option either reimburse Company for any such overpayment

within fifteen (15) business days of the City's receipt of Company's invoice or provide Company a credit against future fees due and owing by Company to the City.

11. **Exhibit A.** "Exhibit A-Equipment" is hereby deleted in its entirety and replaced with the new "Exhibit A-Equipment" attached to this Amendment and incorporated into the Agreement by reference.

12. **Other Terms and Conditions Remain.** In the event of any inconsistencies between the Agreement and this Amendment, the terms of this Amendment shall control. Except as expressly set forth in this Amendment, the Agreement otherwise is unmodified and remains in full force and effect. Each reference in the Agreement to itself shall be deemed also to refer to this Amendment.

13. **Capitalized Terms.** All capitalized terms used but not defined herein shall have the same meanings as defined in the Agreement.

14. **Counterpart Signatures.** This Amendment may be executed in counterparts. All such counterparts will constitute the same contract and the signature of any party to any counterpart will be deemed a signature to, and may be appended to, any other counterpart. Executed copies hereof may be delivered by facsimile or e-mail and upon receipt will be deemed originals and binding upon the parties hereto, regardless of whether originals are delivered thereafter.

IN WITNESS WHEREOF, the parties have caused this First Amendment To Wireless Use Agreement to be effective as of the last date written below.

CITY:

City of Las Vegas

By: _____

Carolyn G. Goodman, Mayor

Date: _____

COMPANY:

New Cingular Wireless PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation

Its: Manager

By: _____

Print Name: James Bess

Its: Director Construction Engineering

Date: December 3, 2020

ATTEST:

LuAnn D. Holmes, MMC

City Clerk

Date

APPROVED AS TO FORM:

[Signature]

Dimitri P. Dalacas
Deputy City Attorney

Deputy City Attorney

12/3/2020
Date

Exhibit A-Equipment

NOTE
THESE DRAWINGS HAVE BEEN CREATED BASED ON STRUCTURAL CALCULATIONS
PERFORMED BY BLACK & VEATCH CONFIRMING THAT THE STRUCTURE HAS
SUFFICIENT STRENGTH TO SUPPORT THE PROPOSED LOADS.

NOTES
1. REFER TO THE NOTES FOR THIS NOTE FOR THE AZIMUTH INFORMATION.
2. ALL EQUIPMENT TO BE PAINTED TO MATCH EXISTING STRUCTURE.
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