

Cell Site No.: DX-3831
Cell Site Name: KILLEEN AIRPORT TERMINAL BLG
Fixed Asset No.: 10105531
Market: N. TX
Address: 8101 Clear Creek Road

FIRST AMENDMENT TO COMMUNICATIONS FACILITIES LICENSE

THIS FIRST AMENDMENT TO COMMUNICATIONS FACILITIES LICENSE (“**First Amendment**”), dated as of the latter of the signature dates below (the “**Effective Date**”), is by and between the City of Killeen, Texas, a home rule municipal corporation, having a mailing address of 8101 South Clear Creek Road, Box C, Killeen, TX 76549 (hereinafter referred to as “**City**”), and New Cingular Wireless PCS, LLC, a Delaware limited liability company, successor by merger to Texas Cellular Telephone Company, LP, dba AT&T Wireless Services, having a mailing address of 575 Morosgo Drive NE, Atlanta, GA 30324 (hereinafter referred to as “**Licensee**”).

WHEREAS, City (or its respective predecessor-in-interest) and Licensee (or its respective predecessor-in-interest) entered into a Communications Facilities License dated July 26, 2004 (hereinafter, the “**Agreement**”), whereby City leased to Licensee certain Premises, therein described, that are a portion of the Property (“**Property**”) located at 8101 Clear Creek Road, Killeen, TX; and

WHEREAS, the current term of the Agreement will expire on August 31, 2017, and the parties mutually desire to renew the Agreement, memorialize such renewal period and modify the Agreement in certain other respects, all on the terms and conditions contained herein; and

WHEREAS, City and Licensee desire to amend the Agreement to extend the term of the Agreement; and

WHEREAS, City and Licensee desire to amend the Agreement to adjust the Rent Payment (as defined below) in conjunction with the modifications to the Agreement contained herein; and

WHEREAS, City and Licensee desire to amend the Agreement to modify the notice section thereof; and

WHEREAS, City and Licensee desire to amend the Agreement to permit Licensee to add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including but not limited to emergency 911 communication services; and

WHEREAS, City and Licensee, in their mutual interest, wish to amend the Agreement as set forth below accordingly.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Licensee agree that the recitals set forth above are incorporated herein as if set forth in their entirety and further agree as follows:

1. **Extension of Term.** The term of the Agreement shall be extended to provide that the Agreement has a new initial term of five (5) years (“**New Initial Term**”) commencing on

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September 1, 2017 (“**New Term Commencement Date**”). As of the New Term Commencement Date, the term provided in the Agreement and any extensions thereof, as applicable, shall be void and of no further force and consequence. The Agreement will automatically renew, commencing on the expiration of the New Initial Term, for up to five (5) separate consecutive additional periods of five (5) years each (each such five (5) year additional period is hereinafter referred to as an “**Additional Extension Term**” and each such Additional Extension Term shall be considered an Extension Term under the Agreement), upon the same terms and conditions of the Agreement, as amended herein, without further action by Licensee unless Licensee notifies City in writing of Licensee’s intention not to renew the Agreement at least sixty (60) days prior to the expiration of the then current Additional Extension Term. The New Initial Term, the Additional Extension Term are collectively referred to as the Term (“**Term**”).

2. **Rent Payment.** Commencing on September 1, 2017, the current Rent Payment payable under the Agreement shall be Two Thousand Four Hundred and No/100 Dollars (\$2,400.00) per month (the “**Rent Payment**”), and shall continue during the Term, subject to adjustment as provided herein. Section 4 of the Agreement shall be amended to provide that Rent Payment shall be adjusted as follows: in year two (2) of the New Initial Term and each year thereafter, including throughout any Additional Extension Term exercised, the monthly Rent Payment will increase by two percent (2%) over the Rent Payment paid during the previous year.

3. **Charges.** All charges payable under the Agreement such as utilities and taxes shall be billed by City within one (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by City, and shall not be payable by Licensee. The foregoing shall not apply to monthly rent which is due and payable without a requirement that it be billed by City. The provisions of this subparagraph shall survive the termination or expiration of the Agreement.

4. **Acknowledgement.** City acknowledges that: 1) this First Amendment is entered into of the City’s free will and volition; 2) City has read and understands this First Amendment and the underlying Agreement and, prior to execution of this First Amendment, was free to consult with counsel of its choosing regarding City’s decision to enter into this First Amendment and to have counsel review the terms and conditions of this First Amendment; 3) City has been advised and is informed that should City not enter into this First Amendment, the underlying Agreement between City and Licensee, including any termination or non-renewal provision therein, would remain in full force and effect.

5. **Notices.** Section 19 of the Agreement is hereby deleted in its entirety and replaced with the following:

“(a) NOTICES. All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows:

If to Licensee:

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New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #: DX-3831
Cell Site Name: KILLEEN AIRPORT TERMINAL BLG (TX); Fixed Asset No.: 10105531
575 Morosgo Drive NE
Atlanta, GA 30324

With a required copy of the notice sent to the address above to AT&T Legal at:

New Cingular Wireless PCS, LLC
Attn: AT&T Legal Department
Re: Cell Site #: DX-3831
Cell Site Name: KILLEEN AIRPORT TERMINAL BLG (TX); Fixed Asset No: 10105531
208 S. Akard Street
Dallas, Texas, 75202-4206

A copy sent to the Legal Department is an administrative step which alone does not constitute legal notice.

And as to City:

City of Killeen, Texas
Attn: Assistant Executive Director of Aviation
8101 South Clear Creek Road
Box C
Killeen, TX 76549

(b) In the event of a change in ownership, transfer or sale of the Property, within ten (10) days of such transfer, City will send the below documents to Licensee. In the event Licensee does not receive such appropriate documents, Licensee shall not be responsible for any failure to pay the current landlord

- (i) New deed to Property
- (ii) New W-9
- (iii) New Payment Direction Form
- (iv) Full contact information for new City including all phone numbers

Either party hereto may change the place for the giving of notice to it by thirty (30) days prior written notice to the other as provided herein.”

6. **Memorandum of Agreement.** Either party will, at any time upon fifteen (15) days prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum of Agreement substantially in the form of the Attachment 1. Either party may record this memorandum at any time, in its absolute discretion.

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7. **Other Terms and Conditions Remain.** In the event of any inconsistencies between the Agreement and this First Amendment, the terms of this First Amendment shall control. Except as expressly set forth in this First 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 First Amendment.

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

[NO MORE TEXT ON THIS PAGE - SIGNATURES TO FOLLOW ON NEXT PAGE]

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IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute this First Amendment on the dates set forth below.

CITY:
City of Killeen, Texas,
a home rule municipal corporation

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

By: AT&T Mobility Corporation
Its: Manager

By: _____ *KMD*

Print Name: Glenn Morrison *m*

Title: City Manager

Date: _____

By: _____

Print Name: _____

Title: _____

Date: _____

[ACKNOWLEDGMENTS APPEAR ON THE NEXT PAGE]

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Attachment 1

Memorandum of Agreement

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Exhibit A

Copy of Agreement