

MEMORANDUM

September 30, 2014

TO: Honorable Mayor and City Commission

VIA: Kenneth Fields, City Manager

FROM: Tom Moran, P.E., Utilities Director
Sarah B. Kirkland, Utilities Projects Administrator

SUBJECT: New Cingular Wireless PCS, LLC Site Lease Fourth Amendment

SYNOPSIS: Staff requests commission approval of the signing of the Cingular Wireless PCS, LLC cell site lease fourth amendment.

STAFF RECOMMENDATION

It is recommended that the City Commission consider taking the following action:

1. Accept the Amendment to the Cingular Wireless PCS, LLC cell site lease fourth amendment.
2. Authorize the Mayor to execute the appropriate documents, on the City's behalf.

BACKGROUND

In June of 2000, the City of Lake Wales entered into a site lease agreement with the Cingular Wireless PCS, LLC provider allowing the corporation to construct and install cellular antennae and a control building on the market Street Water Plant tower and tank yard. Cingular Wireless PCS, LLC now wishes to amend the original agreement to allow for the upgrades of its network system. There will be no additional equipment added.

The Water Division staff and Utilities Director have pre-determined that the proposed replacement and upgrade of equipment will not interfere or hamper any of its daily operational activities.

OTHER OPTIONS

Chose not to allow the Cell provider the opportunity to upgrade its facilities.

FISCAL IMPACT

This provider currently pays an annual lease of \$30,880.

ATTACHMENTS

Cingular Wireless PCS, LLC Fourth Amendment

Market: Tampa
Cell Site Number: 67182
Cell Site Name: City of Lake Wales
Fixed Asset Number: 10016558

FOURTH AMENDMENT TO TOWER OPTION AND LEASE AGREEMENT

THIS FOURTH AMENDMENT TO TOWER OPTION AND LEASE AGREEMENT ("Fourth Amendment"), dated as of the latter of the signature dates below, is by and between City of Lake Wales, a Florida municipality, having a mailing address of P.O. Box 1320, Lake Wales, FL 33859 ("Lessor") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of Suite 13-F West Tower, 575 Morosgo Drive, Atlanta, GA 30324 ("Tenant").

WHEREAS, Lessor and Tenant entered into a Tower Option and Lease Agreement dated March 19, 1998, and First Amendment dated June 9, 1998, a Corrected First Amendment dated October 22, 1998, a Second Amendment dated May 20, 2008, and Third Amendment dated May 9, 2011, whereby Lessor leased to Tenant certain Premises, therein described, that are a portion of the Property located at 138 East Sessoms Avenue, Lake Wales, FL 33853 (collectively, the "Agreement"); and

WHEREAS, Lessor and Tenant, 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, Lessor and Tenant agree as follows:

- 1. New Exhibit.** Tenant shall have the right, in its sole discretion, to add, modify, change, or relocate communication equipment as more completely described on attached Exhibit B-2. Lessor's execution of this Fourth Amendment will signify Lessor's approval of Exhibit B-2. Exhibit B-2 hereby replaces Exhibit B-1 and Exhibit B to the Agreement.
- 2. Notices.** Section 19 of the Lease Agreement is hereby deleted in its entirety and replaced with the following:

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 Tenant: New Cingular Wireless PCS, LLC
By: AT&T Mobility Corporation
Attn: Network Real Estate Administration
Re: Cell Site #:67182, Cell Site Name: City of Lake Wales (FL),
FA No: 10016558
Suite 13-F West Tower
575 Morosgo Drive

Atlanta, GA 30324

With the required copy of legal notice sent to Tenant at the address above, a copy to the Legal Department:

New Cingular Wireless PCS, LLC
Attn: Legal Department-Network
Re: Cell Site #: 67182, Cell Site Name: City of Lake Wales (FL)
FA No: 10016558
208 S. Akard Street
Dallas, TX 75020

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

If to Lessor: City of Lake Wales
P.O. Box 1320
Lake Wales, FL 33859

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.

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

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

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

“LESSOR”
City of Lake Wales
a Florida municipality

Witness Name: _____

By: _____
Name: _____
Title: _____
Date: _____

Witness Name: _____

“TENANT”

New Cingular Wireless PCS, LLC

By: AT&T Mobility Corporation

Its: Manager

By: _____

Name: _____

Title: _____

Date: _____

Witness Name: _____

Witness Name: _____

LESSOR ACKNOWLEDGEMENT

REPRESENTATIVE CAPACITY

STATE OF _____)

) ss:

COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the _____ of _____, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Notary Public: _____
My Commission Expires _____

TENANT ACKNOWLEDGEMENT

STATE OF _____)

)ss:

COUNTY OF _____)

On the ____ day of _____, 2014 before me personally appeared _____, and acknowledged under oath that he is the _____ of _____ of _____, the _____ named in the attached instrument, and as such was authorized to execute this instrument on behalf of the _____.

Notary Public: _____
My Commission Expires _____

EXHIBIT B-2
(Page 1 of 7)

EXHIBIT B-2
(Page 2 of 7)

EXHIBIT B-2
(Page 3 of 7)

EXHIBIT B-2
(Page 4 of 7)

EXHIBIT B-2
(Page 5 of 7)

EXHIBIT B-2
(Page 6 of 7)

EXHIBIT B-2
(Page 7 of 7)

Notes:

1. THIS EXHIBIT MAY BE REPLACED BY A LAND SURVEY AND/OR CONSTRUCTION DRAWINGS OF THE PREMISES ONCE RECEIVED BY TENANT.
2. ANY SETBACK OF THE PREMISES FROM THE PROPERTY'S BOUNDARIES SHALL BE THE DISTANCE REQUIRED BY THE APPLICABLE GOVERNMENTAL AUTHORITIES.
3. WIDTH OF ACCESS ROAD SHALL BE THE WIDTH REQUIRED BY THE APPLICABLE GOVERNMENTAL AUTHORITIES, INCLUDING POLICE AND FIRE DEPARTMENTS.
4. THE TYPE, NUMBER AND MOUNTING POSITIONS AND LOCATIONS OF ANTENNAS AND TRANSMISSION LINES ARE ILLUSTRATIVE ONLY. ACTUAL TYPES, NUMBERS AND MOUNTING POSITIONS MAY VARY FROM WHAT IS SHOWN ABOVE.