

## AMENDMENT TO LEASE

This Amendment is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **City of Cincinnati**, an Ohio municipal corporation (as landlord; the "**City**"), and **Cincinnati SMSA Limited Partnership**, a Delaware limited partnership (a subsidiary of AT&T, Inc.) (as tenant; "**SMSA**").

### Recitals:

A. The City and SMSA are parties to a *Lease of Space* dated June 14, 1999 (the "**Lease**") pursuant to which the City leases to SMSA space on the City's water tower and associated ground space located at 701 Covedale Avenue in Cincinnati, as more particularly described in the Lease, which is under the management and control of Greater Cincinnati Water Works ("**GCWW**"), pursuant to which SMSA operates various antennas and other telecommunications equipment at the site (collectively, the "**Equipment**"). Capitalized terms used herein but not defined herein, if any, shall have the meanings ascribed to them in the Lease.

B. The term of the Lease (having an initial term of 5 years, with 3 automatic 5-year renewals) expires on June 13, 2019, and the parties desire to extend the term.

C. The City's execution of this Amendment was authorized by Ordinance No. \_\_\_\_-2020, passed by Cincinnati City Council on \_\_\_\_\_, 2020.

NOW THEREFORE, the parties hereby agree as follows:

### 1. Extension of Term.

(A) Extended Term. With reference to section 2 (*Term*) of the Lease, the term of the Lease is hereby extended for the 5-year period from **June 14, 2019 – June 13, 2024** (the "**Extended Term**"), subject to the parties' early termination rights under the Lease.

(B) Renewal Periods. Provided SMSA is not in default under the Lease at the time of each renewal, the term of the Lease shall automatically be extended beyond the Extended Term for three (3) consecutive renewal periods of five (5) years each (namely: [1] June 14, 2024 – June 13, 2029; [2] June 14, 2029 – June 13, 2034; and [3] June 14, 2034 – June 13, 2039). The foregoing notwithstanding, SMSA may avoid such automatic renewal by notifying the City in writing, no less than six (6) months prior to the scheduled expiration date of the then current term, that the current term will not be extended.

2. Base Rent. With reference to section 4 (*Rent*) of the Lease, effective June 14, 2019, base rent payable by SMSA during the Extended Term and renewal periods shall be as set forth on Exhibit A (Base Rent Table) hereto. Payments of base rent shall be made, in advance, on the first day of each month, without demand, notice or setoff. Payments shall be made to "Greater Cincinnati Water Works", and mailed to: GCWW, 4747 Spring Grove Avenue, Cincinnati, OH 45232.

3. Modification or Additional Equipment; Coordinated Report Conditions (CR #112-2018). With reference to section 5 (*Installation and Location of Antennas or Other Telecommunication Equipment on Tower*), section 6 (*Installation and Location of Telecommunication Equipment Enclosures or Cabinets on Tower Property*), section 9 (*Electrical Interference*), and section 11 (*Liability and Indemnification*) of the Lease, and without limitation of other restrictions, approvals, obligations or liability imposed upon SMSA under the Lease, SMSA shall abide by the following with respect to any proposed

alterations, upgrades or additions to its existing Equipment, radio frequency exposure from the Equipment, or signage at the site ("**Changes**"):

(i) SMSA shall not make any Changes without in each instance the prior written consent of GCWW.

(ii) Prior to beginning any work at the site or other initiation of Changes, SMSA shall provide GCWW with copies of all plans, designs and drawings pertaining to the proposed work, and any and all other information requested by GCWW in order to evaluate such request, including without limitation radio frequency information, radio frequency tests, and other information needed to thoroughly assess any potential safety issues. SMSA shall contract with a City of Cincinnati prequalified third party inspection services firm to inspect and approve all work involving structural modifications, welding, coatings, and the like. SMSA's commencement of work at the site prior to obtaining the written consent of GCWW shall constitute an immediate default under the Lease. Upon completion of Changes, GCWW shall have the right to request that SMSA perform a radio frequency exposure study of the site, provide the results to GCWW, and work with GCWW to address any radio frequency exposure concerns.

(iii) SMSA shall ensure that all Changes comply with all applicable zoning requirements, including without limitation those pertaining to screening and concealment. SMSA shall utilize best efforts to minimize detractions from the tower's architecture or aesthetics.

(iv) If the tower is then being used by the City or any other governmental entity for telecommunications purposes, SMSA shall provide GCWW with an interference study or other evidence satisfactory to GCWW establishing that the Changes will not cause interference or damage thereto.

(v) In addition to SMSA's other obligations under section 11 (*Liability and Indemnification*) of the Lease, SMSA shall defend, indemnify and hold harmless the City, its employees, agents, contractors, licensees and invitees from and against any and all losses, damages, costs, expenses, or liability associated with the Equipment or Changes, including without limitation any of the foregoing caused by exposure to radio frequency radiation.

(vi) SMSA shall ensure that the Equipment, Changes, and other activities of SMSA and its contractors shall not interfere with the rights of utility companies that have utility facilities at the Site (e.g., Cincinnati Bell, Duke Energy, Metropolitan Sewer District of Greater Cincinnati, GCWW) to access, operate or maintain their facilities. Any damage to such facilities caused by SMSA or its contractors shall be repaired at SMSA's sole expense.

**4. Government Approvals.** With reference to the requirements of section 14 (*Governmental Approvals*) of the Lease, and without limitation of other restrictions, approvals, obligations or liability imposed upon SMSA under the Lease, SMSA shall provide the City with a copy of any and all notices of violations of federal or state regulations in connection with the Equipment, including without limitation, OSHA or FCC requirements as to radio frequency energy exposure in connection with the Equipment or Changes.

**5. Access and Security.** With reference to the requirements of section 8 (*Access and Security*) of the Lease, and without limitation of other restrictions, approvals, obligations or liability imposed upon SMSA under the Lease, in order to provide for the safety and security of the City's employees and contractors, SMSA shall:

(i) arrange for power to the Equipment to be turned off within 30 minutes of notice of the City's need to access or perform work at the water tower. The Equipment shall remain deenergized for the duration of the City's access or work per the City's notice;

(ii) provide to the City any radio frequency exposure studies conducted on the Equipment promptly upon completion;

(iii) upon the City's request, provide to the City any information reasonably needed to understand the potential radio frequency exposure from the Equipment (subject to the City signing a nondisclosure agreement for SMSA's proprietary information).

**6. Ratification.** All terms of the Lease not amended hereby or not inconsistent herewith shall remain in full force and effect and by this reference are incorporated herein as if fully rewritten herein, and the Lease, as amended hereby, is hereby ratified by the parties.

Executed by the parties on the dates indicated below their respective signatures, effective as of the later of such dates (the "**Effective Date**").

**Cincinnati SMSA Limited Partnership**

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

Printed name: \_\_\_\_\_

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

Date: \_\_\_\_\_, 2020

**City of Cincinnati**

By: \_\_\_\_\_  
Paula Boggs Muething, Interim City Manager

Date: \_\_\_\_\_, 2020

Recommended by:

\_\_\_\_\_  
Cathy Bailey, Director, Greater Cincinnati Water Works

Approved as to Form:

\_\_\_\_\_  
Assistant City Solicitor

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

Fund/Code: \_\_\_\_\_

Amount: \_\_\_\_\_

By: \_\_\_\_\_  
Karen Alder, City Finance Director

EXHIBIT A  
BASE RENT TABLE

	Monthly Installment	Annual Amount
<i>Extended Term:</i>		
(1) June 14, 2019 – June 13, 2020	\$ 5,916.03	\$ 70,992.36
(2) June 14, 2020 – June 13, 2021	\$ 6,152.67	\$ 73,832.05
(3) June 14, 2021 – June 13, 2022	\$ 6,398.78	\$ 76,785.33
(4) June 14, 2022 – June 13, 2023	\$ 6,654.73	\$ 79,856.74
(5) June 14, 2023 – June 13, 2024	\$ 6,920.92	\$ 83,051.01
<i>1<sup>st</sup> Renewal Period:</i>		
(1) June 14, 2024 – June 13, 2025	\$ 7,197.75	\$ 86,373.06
(2) June 14, 2025 – June 13, 2026	\$ 7,485.66	\$ 89,827.98
(3) June 14, 2026 – June 13, 2027	\$ 7,785.09	\$ 93,421.10
(4) June 14, 2027 – June 13, 2028	\$ 8,096.50	\$ 97,157.94
(5) June 14, 2028 – June 13, 2029	\$ 8,420.35	\$101,044.26
<i>2<sup>nd</sup> Renewal Period:</i>		
(1) June 14, 2029 – June 13, 2030	\$ 8,757.17	\$105,086.03
(2) June 14, 2030 – June 13, 2031	\$ 9,107.46	\$109,289.47
(3) June 14, 2031 – June 13, 2032	\$ 9,471.75	\$113,661.05
(4) June 14, 2032 – June 13, 2033	\$ 9,850.62	\$118,207.49
(5) June 14, 2033 – June 13, 2034	\$10,244.65	\$122,935.79
<i>3<sup>rd</sup> Renewal Period:</i>		
(1) June 14, 2034 – June 13, 2035	\$10,654.44	\$127,853.22
(2) June 14, 2035 – June 13, 2036	\$11,080.61	\$132,967.35
(3) June 14, 2036 – June 13, 2037	\$11,523.84	\$138,286.04
(4) June 14, 2037 – June 13, 2038	\$11,984.79	\$143,817.49
(5) June 14, 2038 – June 13, 2039	\$12,464.18	\$149,570.19