

EMERGENCY

City of Cincinnati

An Ordinance No. \_\_\_\_\_ - 2020

CHM

**AUTHORIZING** the City Manager to execute an *Amendment to Lease* with New Cingular Wireless PCS, LLC to extend the term of an existing lease pertaining to space on the City-owned water tower located at 6141 Campus Lane in the Mt. Washington neighborhood of Cincinnati.

WHEREAS, the City of Cincinnati owns the water tower located at 6141 Campus Lane in Cincinnati, which is under the management and control of the Greater Cincinnati Water Works (“GCWW”); and

WHEREAS, the City and New Cingular Wireless PCS, LLC (as successor in interest to Cincinnati SMSA Limited Partnership, a subsidiary of AT&T, Inc.) (“NCWPCS”) are parties to a *Lease of Space* dated November 2, 1998 under which NCWPCS leases from the City space on the water tower and associated ground space for the installation and operation of voice and data communications equipment, for a term of 20 years; and

WHEREAS, the term of the *Lease of Space* expired on November 1, 2018, and the lease has continued on a month-to-month basis since that time, and the City and NCWPCS desire to ratify the *Lease of Space* and extend its term for up to an additional 20 years (i.e. an initial term with three 5-year renewal options), on the terms and conditions set forth in the *Amendment to Lease* attached to this ordinance as Attachment A; and

WHEREAS, the City has determined that the area leased by NCWPCS is not needed for a municipal purpose; and

WHEREAS, the City’s Real Estate Services Division has determined, by appraisal, that the base rent set forth in the *Amendment to Lease* (namely, \$70,992/year, with annual increases of 4%) reflects the approximate fair market rental value of the leased area; and

WHEREAS, Section 13 of Article VIII of the Ohio Constitution provides that, to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the State, it is a public interest and proper public purpose for the State or its political subdivisions to sell, lease, exchange, or otherwise dispose of property within the State of Ohio for industry, commerce, distribution, and research; and

WHEREAS, the City has determined that it is in the best interest of the City to eliminate competitive bidding in connection with the City’s lease of the leased area to NCWPCS because NCWPCS has been utilizing space on the water tower for the past 22 years and both NCWPCS and GCWW desire to continue the mutually beneficial arrangement; and

WHEREAS, the City Planning Commission approved the *Amendment to Lease* at its meeting on July 17, 2020; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That the City Manager is hereby authorized to execute an *Amendment to Lease* with New Cingular Wireless PCS, LLC (“NCWPCS”), in substantially the form attached to this ordinance as Attachment A, pursuant to which the City of Cincinnati will ratify and extend the term of the existing *Lease of Space* pertaining to the water tower located at 6141 Campus Lane in Cincinnati, which is controlled by the Greater Cincinnati Water Works, through October 31, 2038.

Section 2. That the leased area is not needed for a municipal purpose.

Section 3. That the City’s Real Estate Services Division has determined, by appraisal, that the base rent set forth in the *Amendment to Lease* (namely, \$70,992/year, with annual increases of 4%) reflects the approximate fair market rental value of the leased area.

Section 4. That it is in the best interest of the City to eliminate competitive bidding in connection with the City’s lease of the leased area to NCWPCS because NCWPCS has been utilizing space on the water tower for the past 22 years and both NCWPCS and GCWW desire to continue the mutually beneficial arrangement.

Section 5. That the rent and other proceeds from the *Lease of Space* shall be deposited into Water Works Fund 312 “Private Lead Service Line Replacement” account 2140 for the purpose of providing financial assistance to qualified, low-income residential property owners for the costs of lead service line replacement.

Section 6. That Council authorizes the appropriate City officials to take all necessary and proper actions to fulfill the terms of the *Amendment to Lease* and this ordinance, including without limitation executing any and all ancillary documents.

Section 7. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the

terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is to enable the City to promptly execute the *Amendment to Lease* to extend the term so that the additional proceeds generated by the *Amendment to Lease* may provide financial assistance to qualified, low-income residential property owners for the costs of lead service line replacement at the earliest possible time.

Passed: \_\_\_\_\_, 2020

\_\_\_\_\_  
John Cranley, Mayor

Attest: \_\_\_\_\_  
Clerk

ATTACHMENT A

## AMENDMENT TO LEASE

This Amendment to Lease ("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 **New Cingular Wireless PCS, LLC**, a Delaware limited liability company, as successor in interest to Cincinnati SMSA Limited Partnership, a Delaware limited partnership (a subsidiary of AT&T, Inc.) (as tenant; "**NCWPCS**").

### Recitals:

A. The City and NCWPCS are parties to a *Lease of Space* dated November 2, 1998 (the "**Lease**") pursuant to which the City leases to NCWPCS space on the City's water tower and associated ground space located at 6141 Campus Lane 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 NCWPCS 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) expired on November 1, 2018, 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 **Nov 1, 2018 – Oct 31, 2023** (the "**Extended Term**"), subject to the parties' early termination rights under the Lease.

(B) Renewal Periods. Provided NCWPCS 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] Nov 1, 2023 – Oct 31, 2028; [2] Nov 1, 2028 – Oct 31, 2033; [3] Nov 1, 2033 – Oct 31, 2038). The foregoing notwithstanding, NCWPCS 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 **Nov 1, 2018**, base rent payable by NCWPCS 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 #106-2018). 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 8 (*Electrical Interference*), and section 11 (*Liability and Indemnification*) of the Lease, and without limitation of other restrictions, approvals, obligations or liability imposed upon NCWPCS under the Lease, NCWPCS shall abide by the following with respect to any {00271923-13}

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

(i) NCWPCS 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, NCWPCS 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. NCWPCS 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. NCWPCS'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 NCWPCS 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) NCWPCS shall ensure that all Changes comply with all applicable zoning requirements, including without limitation those pertaining to screening and concealment. NCWPCS 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, NCWPCS 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 NCWPCS's other obligations under section 11 (*Liability and Indemnification*) of the Lease, NCWPCS 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 caused by NCWPCS's Equipment or Changes, including without limitation any of the foregoing caused by exposure to radio frequency radiation.

(vi) NCWPCS shall ensure that the Equipment, Changes, and other activities of NCWPCS 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 NCWPCS or its contractors shall be repaired at NCWPCS's sole expense.

**4. Government Approvals.** With reference to the requirements of section 13 (*Government Approvals*) of the Lease, and without limitation of other restrictions, approvals, obligations or liability imposed upon NCWPCS under the Lease, NCWPCS 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 7 (*Access and Security*) of the Lease, and without limitation of other restrictions, approvals, obligations or liability imposed upon NCWPCS under the Lease, in order to provide for the safety and security of the City's employees and contractors, NCWPCS 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 NCWPCS's proprietary information).

**6. Notices.** With reference to section 14 (*Notices*) of the Lease, NCWPCS's notice address shall be updated as follows:

New Cingular Wireless PCS, LLC  
Attn: Network Real Estate Administration  
Re: Cell Site #: SOH1154  
Cell Site Name: MT WASHINGTON; Fixed Asset No.: 10011669  
1025 Lenox Park Blvd. NE  
3<sup>rd</sup> Floor  
Atlanta, GA 30319

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 #: SOH1154  
Cell Site Name: MT WASHINGTON; Fixed Asset No: 10011669  
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.

**7. 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.

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





**City of Cincinnati,  
an Ohio municipal corporation**

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

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

STATE OF OHIO                    )  
  ) SS:  
COUNTY OF HAMILTON        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by Paula Boggs Muething, Interim City Manager of the City of Cincinnati, an Ohio municipal corporation, on behalf of the corporation. The notarial act certified hereby is an acknowledgment. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

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 (Mt. Washington Tower - 6141 Campus Lane)

	Monthly Installment	Annual Amount
<i>Extended Term:</i>		
(1) Nov 1, 2018 – Oct 31, 2019	\$5,916.02	\$70,992.24
(2) Nov 1, 2019 – Oct 31, 2020	\$6,152.66	\$73,831.92
(3) Nov 1, 2020 – Oct 31, 2021	\$6,398.77	\$76,785.24
(4) Nov 1, 2021 – Oct 31, 2022	\$6,654.72	\$79,856.64
(5) Nov 1, 2022 – Oct 31, 2023	\$6,920.91	\$83,050.92
<i>1<sup>st</sup> Renewal Period:</i>		
(1) Nov 1, 2023 – Oct 31, 2024	\$7,197.74	\$86,372.88
(2) Nov 1, 2024 – Oct 31, 2025	\$7,485.65	\$89,827.80
(3) Nov 1, 2025 – Oct 31, 2026	\$7,785.08	\$93,420.96
(4) Nov 1, 2026 – Oct 31, 2027	\$8,096.48	\$97,157.80
(5) Nov 1, 2027 – Oct 31, 2028	\$8,420.34	\$101,044.08
<i>2<sup>nd</sup> Renewal Period:</i>		
(1) Nov 1, 2028 – Oct 31, 2029	\$8,757.15	\$105,085.80
(2) Nov 1, 2029 – Oct 31, 2030	\$9,107.44	\$109,289.28
(3) Nov 1, 2030 – Oct 31, 2031	\$9,471.74	\$113,660.88
(4) Nov 1, 2031 – Oct 31, 2032	\$9,850.61	\$118,207.32
(5) Nov 1, 2032 – Oct 31, 2033	\$10,244.63	\$122,935.56
<i>3<sup>rd</sup> Renewal Period:</i>		
(1) Nov 1, 2033 – Oct 31, 2034	\$10,654.42	\$127,853.04
(2) Nov 1, 2034 – Oct 31, 2035	\$11,080.59	\$132,967.08
(3) Nov 1, 2035 – Oct 31, 2036	\$11,523.82	\$138,285.84
(4) Nov 1, 2036 – Oct 31, 2037	\$11,984.77	\$143,817.24
(5) Nov 1, 2037 – Oct 31, 2038	\$12,464.16	\$149,569.92