

RESOLUTION NO. 2018-22

A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF BENTON CITY TO SIGN THE FIRST AMENDMENT TO COMMUNICATION SITE LICENSE AGREEMENT

WHEREAS, the City of Benton City previously entered into a Communications Site License Agreement with New Cingular Wireless PCS, LLC, also known as AT&T Mobility Corporation, for the communication facilities located at the City's water tower; and

WHEREAS, the Licensee New Cingular Wireless PCS, LLC, has requested that the City amend the License Agreement to increase the size of the equipment area and receive in consideration of the increased area an increase in the license fees by \$450.00 to install a back-up generator for the facility; and

WHEREAS, the City of Benton City finds that the project is a benefit to the City as the back-up generator will provide additional support to the communications tower in times of emergency as well as a benefit to the City in the increased license fees; and

WHEREAS, the City of Benton City and New Cingular Wireless PCS, LLC agree to enter into an amendment to the Communication Site License Agreement. **NOW, THEREFORE,**

THE CITY COUNCIL OF THE CITY OF BENTON CITY, WASHINGTON, hereby resolves as follows:

That the Mayor of the City of Benton City, Washington, is hereby authorized and directed to sign the First Amendment to Communication Site License Agreement dated August ____, 2018, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference; and to take all necessary steps required to complete this transaction.

ADOPTED this 21 day of August 2018, by the City Council of the City of Benton City, Washington, and signed in authentication of its passage this 21 day of August 2018.


Resolution 2018- 22 filed and recorded in the office of the City Clerk of the City of Benton City, Washington, this 21 day of August 2018.



Linda Lehman, Mayor

Attest:

Approved as to Form:


Stephanie Haug, MMC
City Clerk/Treasurer
Kerr Law Group
City Attorney

Market: WA/OR/ID
Cell Site Number: KP0435
Cell Site Name: KIONA
Fixed Asset Number: 10099803

**FIRST AMENDMENT TO COMMUNICATION SITE LICENSE AGREEMENT
(Water Tower Location)**

THIS FIRST AMENDMENT TO COMMUNICATION SITE LICENSE AGREEMENT ("First Amendment") dated as of the latter of the signature dates below, is by and between CITY OF BENTON CITY, a Municipal Corporation, having a mailing address of 1009 Dale Ave., Suite A, P.O. Box 70, Benton City, Washington 99320 ("**Licensor**") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 575 Morosgo Drive, Atlanta, GA 30324 ("**Licensee**").

WHEREAS, Licensor and Licensee entered into a Communication Site License Agreement dated June 17, 2008, whereby Licensor licensed to Licensee certain Premises, therein described, that are a portion of the property located at 1499 12th Street, Benton City, Benton County, Washington ("Agreement");

WHEREAS, Licensor and Licensee desire to amend the Agreement to increase the size of the Equipment Area; and

WHEREAS, Licensor and Licensee desire to adjust the License Fees in conjunction with the modifications to the Agreement contained herein; and

WHEREAS, Licensor and Licensee desire to update the notice addresses contained in the Agreement; and

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

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

- 1. New Equipment Area.** Licensor agrees to increase the size of the Equipment Area leased to Licensee by an extension of four (4) feet across the full southern end of the Equipment Area. Upon the execution of this First Amendment, Licensor leases to Licensee the additional area described on attached Exhibit A-1 ("New Equipment Area"). Licensor's execution of this First Amendment will signify Licensor's approval of Exhibit A-1. Exhibit A-1 hereby supplements Exhibit A to the Agreement. The Equipment Area under the Agreement prior to this First Amendment in addition to the New Equipment Area under this First Amendment shall be the Equipment Area under the Agreement.
- 2. Generator.** Licensee shall have the right to install, repair, maintain, modify, replace, remove, utilize and operate (including but not limited to, operation as may be required by applicable law) the equipment as more completely described on attached Exhibit A-1,

including without limitation a concrete pad, generator thereon, and a back-up power supply. Licensee shall have the right to access the Premises pursuant to the terms of the Agreement. The generator shall remain the property of Licensee, and Licensee shall have the right to remove or modify said generator at any time, except that any modification that increases the decibel level of the generator shall require Licensor approval.

- 3. License Fees.** Commencing upon installation of a concrete pad within the New Equipment Area (“Increase Commencement Date”), the License Fees shall be increased by Four Hundred Fifty and No/100 Dollars (\$450.00) per month, subject to further adjustments, if any, as provided in the Agreement; and provided further that, any partial month occurring after the Increase Commencement Date, the increased License Fees amount shall be pro-rated. Payment of the License Fees increase shall be payable per the License Fees payment terms in the Agreement.
- 4. Facilities Concealment.** Licensee shall, at its sole expense, remove arborvitae trees currently surrounding the entire Equipment Area, and shall purchase and install bottom lock fence slats within the chain link fence surrounding all of Licensee’s facilities in the Equipment Area in order to visually conceal the facilities. Licensee shall provide Licensor with the name of fence slat brand and supplier and shall provide Licensor with the opportunity to choose and approve the style and color of slats to be installed.
- 5. Other.** Licensor represents and warrants that, to its knowledge, no conditions exist within the New Equipment Area or otherwise on the Premises and New Equipment Area are located that would adversely impact Licensee’s permitting and/or installation of a generator within the New Equipment Area. Licensee shall prepare, execute and file all required applications to obtain any government approvals for Licensee’s use of the New Equipment Area under this First Amendment. Where applicable law governs how the generator will be used, Licensee may use the generator in the manner set forth under applicable law. Licensee may terminate this First Amendment by written notice to Licensor at any time, and the License Fee increase set forth in Section 3 hereof shall not take effect or shall be cancelled, as applicable, following any such termination, provided that accrual and payment of the License Fees increase shall be required for each day Licensee occupies the New Equipment Area that is the subject of this First Amendment. Within one hundred twenty (120) days after termination of this First Amendment, Licensee shall remove its equipment from the New Equipment Area including footings and improvements attached to the land and underground; provided that any portions of the equipment that Licensee fails to remove within such period and cessation of Licensee’s operations at the New Equipment Area shall be deemed abandoned. Licensee shall repair any damage, to the New Equipment Area caused by its removal activities. Should Licensee fail to remove any of its equipment and/or improvements from the New Equipment Area within one hundred twenty (120) days after termination of this First Amendment, Licensor shall be authorized to abate and remove such equipment and improvements and return the New Equipment Area to its original state and shall be authorized to collect the costs of such abatement, removal, and/or restoration from the Licensee.
- 6. Notices.** Section 16 of the Agreement is hereby deleted in its entirety and replaced with the following:

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:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #: KP0435; Cell Site Name: KIONA(WA)
Fixed Asset #: 10099803
575 Morosgo Drive
Atlanta, GA 30324

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

New Cingular Wireless PCS, LLC
AT&T Legal Department – Network Operations
Attn: Network Counsel
Re: Cell Site #: KP0435; Cell Site Name: KIONA(WA)
Fixed Asset #: 10099803
208 S. Akard Street
Dallas, TX 75202-4206

If to Licensor:

City of Benton City
Attn: City Clerk-Treasurer
708 9th Street
PO Box 70
Benton City, WA 99320
Telephone: (509) 588-3322
Fax: (509) 588-3323

With a copy to:

Kerr Law Group
7025 West Grandridge Blvd., Suite A
Kennewick, WA 99336
Telephone: (509) 735-1542
Fax: (509) 735-0506

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

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. The rights granted to Licensee herein are in addition to and not intended to limit any rights of Licensee in the Agreement. Unless otherwise specified herein or unless the context requires otherwise, the terms in the Agreement shall apply to the New Equipment Area.
8. **Capitalized Terms.** All capitalized terms used but not defined herein shall have the same meanings as defined in the Agreement.

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

“LICENSOR”

CITY OF BENTON CITY

By: *L. Lehman*
 Name: Linda Lehman
 Title: Mayor
 Date: 9/4/18

LICENSOR ACKNOWLEDGMENT

INDIVIDUAL ACKNOWLEDGMENT

STATE OF Washington)
) ss:
 COUNTY OF Benton)

BE IT REMEMBERED, that on this 4 day of September, 2018 before me, the subscriber, a person authorized to take oaths in the State of Washington, personally appeared Linda Lehman who, being duly sworn on his/her/their oath, deposed and made proof to my satisfaction that he/she/they is/are the person(s) named in the within instrument; and I, having first made known to him/her/them the contents thereof, he/she/they did acknowledge that he/she/they signed, sealed and delivered the same as his/her/their voluntary act and deed for the purposes therein contained.



Stephanie M Haug
 Notary Public in and for the State of Washington
 Residing at Kennewick
 My Commission Expires: 12/17/19

“LICENSEE”

New Cingular Wireless PCS, LLC
a Delaware limited liability company

By: AT&T Mobility Corporation

Its: Manager

By: _____

Name: _____

Title: _____

Date: _____

LICENSEE ACKNOWLEDGMENT

STATE OF _____)

)ss:

COUNTY OF _____)

On the ____ day of _____, 20__ 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 in and for the State of _____

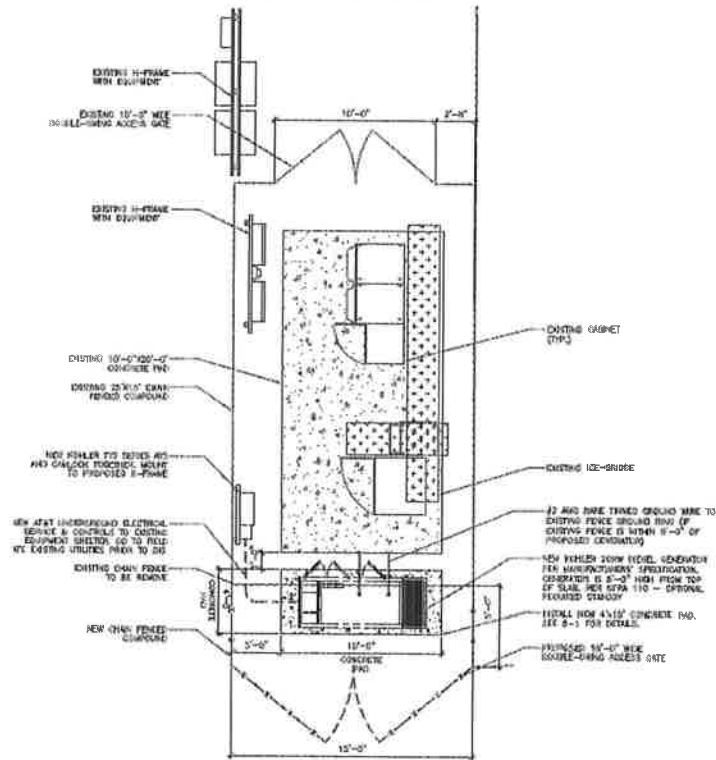
Residing at _____

My Commission Expires: _____

EXHIBIT A-1
NEW EQUIPMENT AREA
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to the FIRST AMENDMENT TO COMMUNICATION SITE LICENSE AGREEMENT dated _____, 2018, by and between City of Benton City, as Licensor, and New Cingular Wireless PCS LLC, a Delaware limited liability company, as Licensee.

The New Equipment Area is described and/or depicted as follows:



Notes:

1. THIS EXHIBIT MAY BE REPLACED BY A LAND SURVEY AND/OR CONSTRUCTION DRAWINGS OF THE PREMISES ONCE RECEIVED BY LICENSEE.
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.