



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		March 28, 2011		
Department:		Customer and Utility Services		
Department Head		Mark Israelson		
Agenda Coordinator (include phone #): Nancy Rodriguez X7510				
CAPTION				
<p>A Resolution of the City Council of the City of Plano, Texas, amending a Communication Facilities License Agreement approved by Plano City Council on December 14, 1998, and a First Amendment to Communications Facilities License approved by Plano City Council on March 12, 2009, by and between the City of Plano, Texas, and AT&T Mobility Texas LLC, a Delaware limited liability company, to install, and operate telecommunications ground equipment in certain specific premises; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.</p>				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	2010-11 and forward	Prior Year (CIP Only)	Current Year	Future Years
		TOTALS		
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	17,760	17,760	35,520
BALANCE	0	17,760	17,760	35,520
FUND(S): WATER & SEWER FUND				
<p>COMMENTS: Approval of this item will result in \$17,760 of additional revenue per year for the Communication Facilities License Agreement between the City of Plano and AT&T Mobility. Revenues received will increase 3% per year on the anniversary date. Current annual revenues projected from this agreement (after this amendment is approved) are \$45,607.</p> <p>STRATEGIC PLAN GOAL: Communication Facilities License Agreements relate to the City's Goal of Financially Strong City with Service Excellence.</p>				
SUMMARY OF ITEM				
<p>This Resolution amends an existing Communications Facilities License originally approved by City Council on December 14, 1998, and a First Amendment to Communications Facilities License approved by City Council on March 12, 2009, modifying rental fees and updating equipment.</p>				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	

A Resolution of the City Council of the City of Plano, Texas, amending a Communication Facilities License Agreement approved by Plano City Council on December 14, 1998, and a First Amendment to Communications Facilities License approved by Plano City Council on March 12, 2009, by and between the City of Plano, Texas, and AT&T Mobility Texas LLC, a Delaware limited liability company, to install, and operate telecommunications ground equipment in certain specific premises; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

WHEREAS, the City Council wishes to amend a communications facilities license originally approved on December 14, 1998, a First Amendment to Communications Facilities License approved on March 12, 2009, and to approve the amendment attached hereto as Exhibit A ("Amendment"); and

WHEREAS, upon full review and consideration of the Amendment and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager or his authorized designee should be authorized to execute the Amendment on behalf of the City of Plano.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section 1. The terms and conditions of the Amendment, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section 2. The City Manager or his authorized designee is hereby authorized to execute the Amendment and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Amendment.

Section 3. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED on this the 28th day of March, 2011.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

Cell Site No. DX1038/FA10003666
Market: North Texas
Address: 940 Stewart Avenue, Plano, Texas

SECOND AMENDMENT TO COMMUNICATIONS FACILITIES LICENSE

THIS SECOND AMENDMENT TO COMMUNICATIONS FACILITIES LICENSE AGREEMENT (“Amendment”), dated as of the latter of the signature dates below, is by and between City of Plano, having a mailing address of 4120 West Plano Parkway, Plano, Texas 75093 (hereinafter referred to as “Licensor”) and New Cingular Wireless PCS, LLC, a Delaware limited liability company, successor to Southwestern Bell Wireless, Inc., having a mailing address of 12555 Cingular Way, Alpharetta, GA 30004 (hereinafter referred to as “Licensee”).

WHEREAS, Licensor and Licensee entered into a Communications Facilities License dated December 14, 1998, and into a First Amendment to Communications Facilities License on March 12, 2009, whereby Licensor licensed to Licensee certain Premises, therein described, that are a portion of the Property located at 940 Stewart Avenue, Plano, Texas ("Agreement"); and

WHEREAS, Licensor and Licensee desire to modify, as set forth herein, the rent payable under the Agreement; and

WHEREAS, Licensee desires to alter and make improvements to the Property or Premises by adding three (3) LTE antennas, adding one (1) RRU and one (1) surge suppression box behind each LTE antenna; and running 200 linear feet of new fiber all as indicated below and on the site plan attached hereto as Exhibit “A” and incorporated herein by reference; and

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

WHEREAS, Licensor 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, Licensor and Licensee agree as follows:

1. **Rent.** Appendix “B” Payment Terms and Conditions of the Agreement is hereby deleted in its entirety and replaced the following:

Commencing upon full execution hereof, the Rental Fee shall be increased by Seventeen Thousand Seven Hundred Sixty and 00/100 Dollars (\$17,760.00) per annum so that the total annual Rental Fee shall thereafter be in the amount of Forty-Five Thousand Six Hundred Seven

and 42/100 Dollars (\$45,607.42). Such increase represents the compensation for the addition of three new antennas, the new fiber, new RRUs, and surge suppression boxes and is subject to future adjustments as provided in the Agreement.

Beginning on or before the anniversary date of the Effective Date of the Agreement, the Amendment shall be on the same terms and conditions as set forth in the Agreement except that Rental Fees shall be increased each year by three percent (3%) of the previous year's Rental Fee.

2. **Equipment.** Licensor consents to the installation of new antennas, new fiber, new RRUs, and surge suppression boxes, all in a manner in accordance with the site plan attached hereto as Exhibit "A" and incorporated herein by reference.

3. **Notices.** Section 18 of the 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 Licensee: New Cingular Wireless PCS, LLC (for certified mail)
Attn: Network Real Estate Administration
Re: Cell Site #1038; Cell Site Name: Hwy 190/Jupiter; Fixed Asset #10003666
12555 Cingular Way
Alpharetta, GA 30004

New Cingular Wireless PCS, LLC (for overnight mail)
Attn: Network Real Estate Administration
Re: Cell Site #1038; Cell Site Name: Hwy 190/Jupiter; Fixed Asset #. 10003666
12555 Cingular Way
Alpharetta, GA 30004

With a copy to: New Cingular Wireless PCS, LLC
Attn: Legal Department
Re: Cell Site #1038; Cell Site Name: Hwy 190/Jupiter; Fixed Asset #. 10003666
15 East Midland Ave.
Paramus, NJ 07652

If to Licensor: City of Plano
Public Works Department
Attn: Margie Stephens
4120 West Plano Parkway
Plano, Texas 75093

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.

4. **Memorandum of License.** 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 License substantially in the form of the Attachment 1. Either party may record this memorandum at any time, in its absolute discretion.

5. **Use of Premises.** Section 7.01 is hereby modified to add the following:

5.1 **Notification Before Construction Begins.** Prior to commencing construction on any work within City rights of way, Company shall give twenty-four (24) hours advance notice to the City of Plano's Utility Operations Superintendent, Pumping Facilities, at 972-727-1623.

5.2 **Work Inside Fenced Area.** Motorized equipment is prohibited inside the fenced area at any work site under this Agreement unless twenty-four (24) hour notice has been given to use a crane or manlift. Company's personnel shall only perform job tasks by manual labor inside any fenced area at the work site .

5.3 **Back Fill Operations.** Prior to and upon completion of backfill operations, Company shall give twenty-four (24) hour advance notice to the City of Plano's Utility Operations Superintendent, Pumping Facilities, at 972-727-1623 for inspection of site. Work shall not commence until inspection is completed by City.

5.4 **Irrigation Repairs.** Irrigation repairs shall be completed by a State of Texas Licensed Irrigator.

5.5 **Engineering Fee.** Company shall reimburse the City of Plano for the required engineering consultant fee which is incurred upon company's submittal of plans for review to any equipment is replaced/installed on the City's infrastructure. Once the City of Plano submits the bill, Company shall have thirty (30) days to pay.

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

7. **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 Amendment on the dates set forth below.

CITY OF PLANO, TEXAS

By: _____
Bruce D. Glasscock
CITY MANAGER
1520 Avenue K
PO Box 860358
Plano, TX 75086-0358

APPROVED AS TO FORM:

BY: _____
Diane C. Wetherbee, CITY ATTORNEY

Date: _____

By Authority of Resolution No. _____

New Cingular Wireless PCS, LLC,
a Delaware limited liability company,
by AT&T Mobility Corporation, its Manager

By: _____
Name: Greg Holloway
Title: Area Manager-RE&C NTX
Network Ops
Date: _____

LICENSOR ACKNOWLEDGEMENT

STATE OF TEXAS

COUNTY OF COLLIN

BEFORE ME, the undersigned authority, A Notary Public in and for the State of Texas, on this day personally appeared Bruce D. Glasscock known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for and as the act of the CITY OF PLANO, of the State of Texas, Collin County, Texas, and as the City Manager thereof, and for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this _____ day of _____, 2011.

Notary Public in and for the State of Texas

My Commission Expires _____

LICENSEE ACKNOWLEDGEMENT

STATE OF TEXAS

COUNTY OF DALLAS

BEFORE ME, the undersigned authority, on this day personally appeared Greg Holloway, Area Manager-RE&C NTX Network Ops of New Cingular Wireless PCS, LLC., a Delaware limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said New Cingular Wireless PCS, LLC, and that he executed the same as the act of such Limited Liability Company for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this _____ day of _____, 2011.

Notary Public in and for the State of Texas

My Commission Expires _____

