

FOR BOARD ACTION

Agenda Item # 5

Meeting Date:

5/28/13

SUBJECT: Amendments to Five New Cingular Wireless Antenna Site Agreements

PREPARED BY: Doug Rovang, Sr. Civil Engineer

ITEM DESCRIPTION:

New Cingular Wireless PCS, LLC (AT&T) is proposing to upgrade its five (5) sites to 4G wireless capability. Proposed Amendments to the Site Agreements listed below have been received:

- Baihly Water Tower: Site Agreement dated July 14, 2000 (2301 Baihly Summit Dr SW)
- Airport Water Tower Site: Site Agreement dated October 25, 2005 (7017 11th Ave SW)
- Southeast Water Tower Site: Site Agreement dated April 5, 2007 (501 20th St SE)
- Willow High Water Tower Site: Site Agreement dated October 15, 2008
- Saint Marys Water Tower Site: Site Agreement dated December 15, 1999 (901 4th St SW)

The proposed Amendments would accomplish the following:

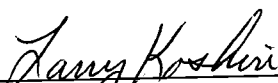
- 1) Upgrade the listing of AT&T equipment allowed to be installed at each water storage tank site (which would increase the number of physical antennas on the top of the most of the tanks, but would reduce the number of cables extending from the ground up through the internal dry riser to the top of the tanks);
- 2) Update the annual rental amount at each site to reflect the equipment (antenna equivalents) to be installed at the five (5) sites. Current and proposed 2013 rate information for each site is shown below:

	<u>Current 2013 Annual Site Rent</u>	<u>Proposed 2014 Annual Site Rent*</u>
<u>Baihly Water Tower Site:</u>	\$19,573.54	\$15,375.00 + CPI-U Adjustment
<u>Airport Water Tower Site:</u>	\$18,162.11	\$18,836.00 + CPI-U Adjustment
<u>Southeast Water Tower Site:</u>	\$15,744.73	\$18,836.00 + CPI-U Adjustment
<u>Willow High Water Tower Site:</u>	\$15,744.73	\$18,836.00 + CPI-U Adjustment
<u>Saint Marys Water Tower Site:</u>	\$27,451.46	\$21,836.00 + CPI-U Adjustment

*New rent to begin January 1, 2014. 2013 rent has been paid for each site.

Rent thereafter would be adjusted annually based on the corresponding change in the CPI-U.

- 3) Establishes a new "initial" term for each of the five (5) AT&T Site Agreements which would extend from January 1, 2013, to December 31, 2018. (The current 5-year period termination dates for the five Site Agreements range from 2014 to 2018.)
- 4) T-Mobile would have the right to terminate the Site Agreement at the end of the new "initial" term, and at the end of the succeeding five-year terms by providing such notice at least 90 days


General Manager

May 22, 2013
Date

ROCHESTER PUBLIC UTILITIES

FOR BOARD ACTION

Agenda Item # 5

Meeting Date:

5/28/13

prior to the expiration of the five-year period. RPU (the City) is required to provide no less than 360 days notice of non-renewal.

FOR CAPITAL PURCHASES/BIDS/MAJOR PROJECTS:

Not Applicable.

UTILITY BOARD ACTION REQUIRED:

Management recommends the Utility Board approve the five (5) proposed Amendments to the above-listed New Cingular Wireless PCS, LLC (AT&T) Site Agreements, and request the Mayor and City Clerk to execute the Amendments.

General Manager

Date

ROCHESTER PUBLIC UTILITIES

SECOND AMENDMENT TO SITE AGREEMENT

THIS SECOND AMENDMENT TO SITE AGREEMENT ("AMENDMENT") is made and entered into by and between the City of Rochester, a Minnesota Municipal Corporation, ("CITY") acting through its Rochester Public Utilities, whose address is 4000 East River Road NE, Rochester, Minnesota 55906, and New Cingular Wireless PCS, LLC a Delaware limited liability company (hereinafter, "LESSEE") this ____ day of _____, 2013.

Recitals

The parties hereto recite, declare and agree as follows:

A. CITY and LESSEE entered into the following Agreement and Amendment:

Baihly Water Tower Site (AT&T Site SOUTHWEST ROCHESTER): Site Agreement dated July 14, 2000 with respect to Leased Premises located at 2301 Baihly Hills Dr SW, Rochester, Minnesota.

Baihly Water Tower Site (AT&T Site SOUTHWEST ROCHESTER): First Amendment dated November 18, 2003 to Site Agreement dated July 14, 2000 with respect to Leased Premises located at 2301 Baihly Summit Drive SW (formerly 2301 Baihly Hills Dr SW), Rochester, Minnesota.

B. CITY and LESSEE desire to enter into this Second Amendment in order to modify and amend certain provisions of the above Agreement and first Amendment.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CITY and LESSEE covenant and agree as follows:

1. Effective with the signing of this Second Amendment, Paragraphs 2 "TERM" and 3 "OPTION TERMS" of the original Agreement and Paragraphs 1 "PROPERTY" and 4 "RENT" of the original Agreement as replaced by the first Amendment will be deleted in their entirety and replaced with the following:

1. PROPERTY. The property interests hereby leased (collectively, the "Leased Premises") and granted by CITY include the following:

Baihly Water Tower Site: 2301 Baihly Summit Drive SW (formerly 2301 Baihly Hills Dr SW). Real property comprised of sufficient land area to locate an approximately twelve (12) foot by twenty-eight (28) foot single story equipment enclosure, water tower ("Structure") exterior space at the top of the water storage spheroid for attachment of nine (9) antenna assemblies totaling twelve (12) antenna equivalents:

- 6 – antenna assemblies (approximately 8" wide and 53" high) totaling 6 antenna equivalents;
- 1 – antenna assembly (approximately 12" wide and 96" high) totaling 2 antenna equivalents;
- 1 – antenna assembly (approximately 12" wide and 76" high) totaling 2 antenna equivalents;
- 1 – antenna assembly (approximately 12" wide and 56" high) totaling 2 antenna equivalents;

cables required to connect equipment and antennas:

- 6 – coax cable runs (each not to exceed 2" diameter) with transition to ½" jumpers installed from within the top of the dry riser to antenna assemblies;
- 2 - ¾" DC cables;
- 1 - 1½" fiber cable;

non-exclusive easements required to run utility lines/cables, and a non-exclusive easement across CITY's property for access in or upon the CITY's real property ("CITY's Property"). CITY's property is legally described and Leased Premises are shown in relationship to CITY's property in Exhibit "A" attached hereto, and the locations of the antennas on the Structure are depicted in Exhibit "B" attached hereto, which exhibits replace Exhibit A and Exhibit B to the November 18, 2003 first Amendment, respectively. (An "antenna equivalent" is defined as follows: a single transmit/receive antenna, a single transmit antenna, or a single receive antenna is considered an antenna equivalent. For example, a di-mode antenna is two antenna equivalents, a tri-mode antenna is three antenna equivalents, and a quad-mode antenna is four antenna equivalents.)

2. TERM. The new initial term of this Agreement shall commence on July 1, 2013, and shall terminate on December 31, 2018 ("New Initial Term").
3. OPTION TERMS. Following the expiration of the New Initial Term, LESSEE may extend the term of the Agreement for three (3) additional five (5) year option periods (each an "Option Period"). Unless (a) CITY delivers to LESSEE written notice of non-renewal to LESSEE no later than Three Hundred Sixty (360) days prior to the expiration of the Initial Term or applicable Option Period, or (b) LESSEE gives CITY written notice of its intention not to extend at least Ninety (90) days prior to the expiration of the New Initial Term or applicable Option Period, the applicable Option Period shall be deemed effective.
4. RENT. LESSEE has paid CITY 2013 rent in accordance with the original Agreement. The LESSEE shall pay CITY 2014 rent equivalent to \$15,375.00 adjusted to reflect the 2013 change in the Consumer Price Index for all Urban Customers (CPI-U) on or before January 1, 2014 for the year January 1, 2014 through December 31, 2014. The rental year shall run from January 1 to December 31 of each year and rent for each year will be due on or before January 1 of such year. The rental amount shall be adjusted annually

based on the Consumer Price Index for All Urban Customers (CPI-U). If this Agreement is terminated for any reason other than LESSEE's default, any prepaid rents for the period after termination will be refunded to LESSEE.

2. LESSEE's notice addresses in the original Agreement are deleted in their entirety and replaced with the following:

If to LESSEE, notice should be sent to the following:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #:MPLSMN3616; Cell Site Name: Southwest Rochester
Fixed Asset NO: ????
PO Box 1630
Alpharetta, GA 30009

3. The terms and conditions of the Agreement are incorporated herein by this reference, and capitalized terms used in this Second Amendment shall have the same meanings such terms are given in the Agreement. Except as specifically set forth herein, this Amendment shall in no way modify, alter or amend the remaining terms of the Agreement, all of which are ratified by the parties and shall remain in full force and effect. To the extent there is any conflict between the terms and conditions of the Agreement and this Second Amendment, the terms and conditions of this Second Amendment will govern and control.
4. LESSEE represents and warrants to CITY that the consent or approval of no third party, including, without limitation, a lender, is required with respect to the execution of this Amendment, or if any such third party consent or approval is required, LESSEE has obtained any and all such consents or approvals.

IN WITNESS WHEREOF, the parties have executed this Second Amendment as of the day and year first above written.

Signature page to Site Agreement Amendment between City of Rochester, a Minnesota municipal corporation and New Cingular Wireless PCS, LLC (Second Amendment to Baihly Water Tower Site Agreement).

CITY:

City of Rochester, a Minnesota municipal corporation

By: _____

Print Name: _____
 Its: Mayor

[MUNICIPAL SEAL]

Attest: _____

Print Name: _____
 Its: City Clerk

Approved as to Form: _____

Print Name: _____
 Its: City Attorney

By: _____

Print Name: _____
 Its: General Manager, Rochester Public Utilities

Address: City of Rochester
 c/o Rochester Public Utilities
 4000 East River Road NE
 Rochester, MN 55905
 Phone: (507) 280-1510

Federal Tax ID No.: 41-6005494

STATE OF MINNESOTA)
)SS
COUNTY OF OLMSTED)

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by _____, _____, _____, and _____, the Mayor, City Clerk, City Attorney and Rochester Public Utilities General Manager, respectively, of the City of Rochester, a Minnesota municipal corporation, on behalf of the corporation.

[seal]

Notary Public
My commission expires _____

Signature page to Site Agreement Amendment between City of Rochester, a Minnesota municipal corporation and New Cingular Wireless PCS, LLC (Second Amendment to Baihly Water Tower Site Agreement).

LESSEE:

New Cingular Wireless PCS, LLC
a Delaware limited liability company

By: _____
Name: _____
Title: _____

STATE OF _____)
)SS
COUNTY OF _____)

The foregoing instrument was acknowledged before me on this _____ day of _____, 2013, by _____ the _____ of New Cingular Wireless PCS,
Name Title

LLC, and that being duly authorized, this person executed the foregoing instrument on behalf of the limited liability company.

[seal]

Notary Public
My commission expires _____

FIRST AMENDMENT TO SITE AGREEMENT

THIS FIRST AMENDMENT TO SITE AGREEMENT ("AMENDMENT") is made and entered into by and between the City of Rochester, a Minnesota Municipal Corporation, ("CITY") acting through its Rochester Public Utilities, whose address is 4000 East River Road NE, Rochester, Minnesota 55906, and New Cingular Wireless PCS, LLC a Delaware limited liability company (hereinafter, "LESSEE") this ____ day of _____, 2013.

Recitals

The parties hereto recite, declare and agree as follows:

A. CITY and LESSEE entered into the following Agreement:

Airport Water Tower Site (AT&T Site ROCHESTER AIRPORT): Site Agreement dated October 25, 2005 with respect to Leased Premises located at 7037 11th Ave SW, Rochester, Minnesota.

B. CITY and LESSEE desire to enter into this Amendment in order to modify and amend certain provisions of the above Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CITY and LESSEE covenant and agree as follows:

1. Effective with the signing of this Amendment, Paragraph 1 "PROPERTY", Paragraph 2 "TERM", Paragraph 3 "OPTION TERMS" and Paragraph 4 "RENT" of the Agreement will be deleted in their entirety and replaced with the following:

1. PROPERTY. The property interests hereby leased (collectively, the "Leased Premises") and granted by CITY include the following:

Airport Water Tower Site: Located at 7017 11th Ave SW (formerly 7037 11th Ave SW). Real property comprised of sufficient land area to locate an 11.5' by 20' single story equipment enclosure, water tower ("Structure") exterior space at the top of the water storage spheroid for attachment of six (6) antenna assemblies totaling eighteen (18) antenna equivalents:

- 3 – antenna assemblies (approximately 12" wide and 76" high) totaling 6 antenna equivalents;
- 3 – antenna assemblies (approximately 12" wide and 72" high) totaling 12 antenna equivalents;

cables required to connect equipment and antennas:

- 12 – 7/8" cable runs, with transition to 1/2" jumpers installed from within the top of the dry riser to antenna assemblies;
- 2 - 3/4" DC cables;
- 1 - 1 1/2" fiber cable;

non-exclusive easements required to run utility lines/cables, and a non-exclusive easement across CITY's property for access in or upon the CITY's real property ("CITY's Property"). CITY's property is legally described and Leased Premises are shown in relationship to CITY's property in Exhibit "A" attached hereto, and the locations of the antennas on the Structure are depicted in Exhibit "B" attached hereto, which exhibits replace Exhibit A and Exhibit B to the October 25, 2005 Agreement, respectively. (An "antenna equivalent" is defined as follows: a single transmit/receive antenna, a single transmit antenna, or a single receive antenna is considered an antenna equivalent. For example, a di-mode antenna is two antenna equivalents, a tri-mode antenna is three antenna equivalents, and a quad-mode antenna is four antenna equivalents.)

2. TERM. The new initial term of this Agreement shall commence on July 1, 2013, and shall terminate on December 31, 2018 ("New Initial Term").
 3. OPTION TERMS. Following the expiration of the New Initial Term, LESSEE may extend the term of the Agreement for three (3) additional five (5) year option periods (each an "Option Period"). Unless (a) CITY delivers to LESSEE written notice of non-renewal to LESSEE no later than Three Hundred Sixty (360) days prior to the expiration of the Initial Term or applicable Option Period, or (b) LESSEE gives CITY written notice of its intention not to extend at least Ninety (90) days prior to the expiration of the New Initial Term or applicable Option Period, the applicable Option Period shall be deemed effective.
 4. RENT. LESSEE has paid CITY 2013 rent in accordance with the original Agreement. The LESSEE shall pay CITY 2014 rent equivalent to \$18,836.00 adjusted to reflect the 2013 change in the Consumer Price Index for all Urban Customers (CPI-U) on or before January 1, 2014 for the year January 1, 2014 through December 31, 2014. The rental year shall run from January 1 to December 31 of each year and rent for each year will be due on or before January 1 of such year. The rental amount shall be adjusted annually based on the Consumer Price Index for All Urban Customers (CPI-U). If this Agreement is terminated for any reason other than LESSEE's default, any prepaid rents for the period after termination will be refunded to LESSEE.
2. LESSEE's notice addresses in the Agreement are deleted in their entirety and replaced with the following:

If to LESSEE, notice should be sent to the following:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #:MPLSMN3297; Cell Site Name: Rochester Airport
Fixed Asset NO: ???
PO Box 1630
Alpharetta, GA 30009

3. The terms and conditions of the Agreement are incorporated herein by this reference, and capitalized terms used in this Amendment shall have the same meanings such terms are given in the Agreement. Except as specifically set forth herein, this Amendment shall in no way modify, alter or amend the remaining terms of the Agreement, all of which are ratified by the parties and shall remain in full force and effect. To the extent there is any conflict between the terms and conditions of the Agreement and this Amendment, the terms and conditions of this Amendment will govern and control.
4. LESSEE represents and warrants to CITY that the consent or approval of no third party, including, without limitation, a lender, is required with respect to the execution of this Amendment, or if any such third party consent or approval is required, LESSEE has obtained any and all such consents or approvals.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the day and year first above written.

Signature page to Site Agreement Amendment between City of Rochester, a Minnesota municipal corporation and New Cingular Wireless PCS, LLC (First Amendment to Airport Water Tower Site Agreement).

CITY:

City of Rochester, a Minnesota municipal corporation

By: _____

Print Name: _____
 Its: Mayor

[MUNICIPAL SEAL]

Attest: _____

Print Name: _____
 Its: City Clerk

Approved as to Form: _____

Print Name: _____
 Its: City Attorney

By: _____

Print Name: _____
 Its: General Manager, Rochester Public Utilities

Address: City of Rochester
 c/o Rochester Public Utilities
 4000 East River Road NE
 Rochester, MN 55905
 Phone: (507) 280-1510

Federal Tax ID No.: 41-6005494

STATE OF MINNESOTA)
)SS
COUNTY OF OLMSTED)

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by _____, _____, _____ and _____, the Mayor, City Clerk, City Attorney and Rochester Public Utilities General Manager, respectively, of the City of Rochester, a Minnesota municipal corporation, on behalf of the corporation.

[seal]

Notary Public
My commission expires _____

Signature page to Site Agreement Amendment between City of Rochester, a Minnesota municipal corporation and New Cingular Wireless PCS, LLC (First Amendment to Airport Water Tower Site Agreement).

LESSEE:

New Cingular Wireless PCS, LLC
a Delaware limited liability company

By: _____
Name: _____
Title: _____

STATE OF _____)
)SS
COUNTY OF _____)

The foregoing instrument was acknowledged before me on this _____ day of _____, 2013, by
_____ the _____ of New Cingular Wireless PCS,
Name Title

LLC, and that being duly authorized, this person executed the foregoing instrument on behalf of the limited liability company.

Notary Public
My commission expires _____

[seal]

Amendment to Site Agreement between City of Rochester, a Minnesota municipal corporation and New Cingular Wireless PCS, LLC (First Amendment to Airport Water Tower Site Agreement).

SITE NAME: Airport Water Tower Site SW, Rochester, MN

EXHIBIT A

LEGAL DESCRIPTION OF CITY'S PROPERTY

Real property located in Olmsted County, Minnesota and more particularly described as follows:

North 100 feet of the East 100 feet of Lot 1, L.C. Industrial Park

CT PLAT PARCEL NO. 05 2071 101

Located in the NE 1/4, NE 1/4, SEC 10, T105N, R14W

Legal Description of the City's Airport Water Tower site located at 7037 11th Avenue SW, Rochester, Minnesota.

Amendment to Site Agreement between City of Rochester, a Minnesota municipal corporation and New Cingular Wireless PCS, LLC (First Amendment to Airport Water Tower Site Agreement).

SITE NAME: Airport Water Tower Site SW, Rochester, MN

EXHIBIT A (Continued)

SKETCH AND DESCRIPTION OF LEASED PREMISES SHOWN IN RELATION TO CITY'S PROPERTY:

SEE ATTACHED

Amendment to Site Agreement between City of Rochester, a Minnesota municipal corporation and New Cingular Wireless PCS, LLC (First Amendment to Airport Water Tower Site Agreement).

SITE NAME: Airport Water Tower Site SW, Rochester, MN

EXHIBIT B

DRAWINGS SHOWING LOCATIONS OF ANTENNAS, CABLES AND EQUIPMENT AT THE SITE:

SEE ATTACHED

FIRST AMENDMENT TO SITE AGREEMENT

THIS FIRST AMENDMENT TO SITE AGREEMENT ("AMENDMENT") is made and entered into by and between the City of Rochester, a Minnesota Municipal Corporation, ("CITY") acting through its Rochester Public Utilities, whose address is 4000 East River Road NE, Rochester, Minnesota 55906, and New Cingular Wireless PCS, LLC a Delaware limited liability company (hereinafter, "LESSEE") this ____ day of _____, 2013.

Recitals

The parties hereto recite, declare and agree as follows:

A. CITY and LESSEE entered into the following Agreement:

Southeast Water Tower Site (AT&T Site MEADOW PARK): Site Agreement dated April 5, 2007 with respect to Leased Premises located at 501 20th St SE, Rochester, Minnesota.

B. CITY and LESSEE desire to enter into this Amendment in order to modify and amend certain provisions of the above Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CITY and LESSEE covenant and agree as follows:

1. Effective with the signing of this Amendment, Paragraph 1 "PROPERTY", Paragraph 2 "TERM", Paragraph 3 "OPTION TERMS" and Paragraph 4 "RENT" of the Agreement will be deleted in their entirety and replaced with the following:

1. PROPERTY. The property interests hereby leased (collectively, the "Leased Premises") and granted by CITY include the following:

Southeast Water Tower Site: Located at 501 20th Ave SE. Real property comprised of sufficient land area to locate an 11.5' by 20' single story equipment enclosure, water tower ("Structure") exterior space at the tank walkway level for attachment of nine (9) antenna assemblies totaling eighteen (18) antenna equivalents:

- 7 – antenna assemblies (approximately 12" wide and 76" high) totaling 14 antenna equivalents;
- 1 – antenna assembly (approximately 12" wide and 96" high) totaling 2 antenna equivalents;
- 1 – antenna assembly (approximately 12" wide and 60" high) totaling 2 antenna equivalents;

cables required to connect equipment and antennas:

- 12 - cable runs (each not to exceed 2" diameter);
- 2 - 3/4" DC cables;
- 1 - 1 1/2" fiber cable;

non-exclusive easements required to run utility lines/cables, and a non-exclusive easement across CITY's property for access in or upon the CITY's real property ("CITY's Property"). CITY's property is legally described and Leased Premises are shown in relationship to CITY's property in Exhibit "A" attached hereto, and the locations of the antennas on the Structure are depicted in Exhibit "B" attached hereto, which exhibits replace Exhibit A and Exhibit B to the October 15, 2008 Agreement, respectively. (An "antenna equivalent" is defined as follows: a single transmit/receive antenna, a single transmit antenna, or a single receive antenna is considered an antenna equivalent. For example, a di-mode antenna is two antenna equivalents, a tri-mode antenna is three antenna equivalents, and a quad-mode antenna is four antenna equivalents.)

2. TERM. The new initial term of this Agreement shall commence on July 1, 2013, and shall terminate on December 31, 2018 ("New Initial Term").
 3. OPTION TERMS. Following the expiration of the New Initial Term, LESSEE may extend the term of the Agreement for three (3) additional five (5) year option periods (each an "Option Period"). Unless (a) CITY delivers to LESSEE written notice of non-renewal to LESSEE no later than Three Hundred Sixty (360) days prior to the expiration of the Initial Term or applicable Option Period, or (b) LESSEE gives CITY written notice of its intention not to extend at least Ninety (90) days prior to the expiration of the New Initial Term or applicable Option Period, the applicable Option Period shall be deemed effective.
 4. RENT. LESSEE has paid CITY 2013 rent in accordance with the original Agreement. The LESSEE shall pay CITY 2014 rent equivalent to \$18,836.00 adjusted to reflect the 2013 change in the Consumer Price Index for all Urban Customers (CPI-U) on or before January 1, 2014 for the year January 1, 2014 through December 31, 2014. The rental year shall run from January 1 to December 31 of each year and rent for each year will be due on or before January 1 of such year. The rental amount shall be adjusted annually based on the Consumer Price Index for All Urban Customers (CPI-U). If this Agreement is terminated for any reason other than LESSEE's default, any prepaid rents for the period after termination will be refunded to LESSEE.
2. LESSEE's notice addresses in the Agreement are deleted in their entirety and replaced with the following:

If to LESSEE, notice should be sent to the following:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #:MPLSMN3403; Cell Site Name: Meadow Park
Fixed Asset NO: 10114795
PO Box 1630
Alpharetta, GA 30009

3. The terms and conditions of the Agreement are incorporated herein by this reference, and capitalized terms used in this Amendment shall have the same meanings such terms are given in the Agreement. Except as specifically set forth herein, this Amendment shall in no way modify, alter or amend the remaining terms of the Agreement, all of which are ratified by the parties and shall remain in full force and effect. To the extent there is any conflict between the terms and conditions of the Agreement and this Amendment, the terms and conditions of this Amendment will govern and control.
4. LESSEE represents and warrants to CITY that the consent or approval of no third party, including, without limitation, a lender, is required with respect to the execution of this Amendment, or if any such third party consent or approval is required, LESSEE has obtained any and all such consents or approvals.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the day and year first above written.

FIRST AMENDMENT TO SITE AGREEMENT

THIS FIRST AMENDMENT TO SITE AGREEMENT ("AMENDMENT") is made and entered into by and between the City of Rochester, a Minnesota Municipal Corporation, ("CITY") acting through its Rochester Public Utilities, whose address is 4000 East River Road NE, Rochester, Minnesota 55906, and New Cingular Wireless PCS, LLC a Delaware limited liability company (hereinafter, "LESSEE") this ____ day of _____, 2013.

Recitals

The parties hereto recite, declare and agree as follows:

A. CITY and LESSEE entered into the following Agreement:

Willow High Water Tower Site (AT&T Site BAMBER): Site Agreement dated October 15, 2008 with respect to Leased Premises located at 3811 10th Ave SW (formerly 1020 38th Street SW), Rochester, Minnesota.

B. CITY and LESSEE desire to enter into this Amendment in order to modify and amend certain provisions of the above Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CITY and LESSEE covenant and agree as follows:

1. Effective with the signing of this Amendment, Paragraph 1 "PROPERTY", Paragraph 2 "TERM", Paragraph 3 "OPTION TERMS" and Paragraph 4 "RENT" of the Agreement will be deleted in their entirety and replaced with the following:

1. PROPERTY. The property interests hereby leased (collectively, the "Leased Premises") and granted by CITY include the following:

Willow High Water Tower Site: Located at 3811 10th Ave SW (formerly 1020 38th Street SW). Real property comprised of a 15' by 20' land area on which to locate a 10' by 15' grated outdoor equipment platform, water tower ("Structure") exterior space at the top of the water storage spheroid for attachment of nine (9) antenna assemblies totaling eighteen (18) antenna equivalents:

- 8 – antenna assemblies (approximately 14" wide and 61" high) totaling 16 antenna equivalents;
- 1 – antenna assembly (approximately 12" wide and 96" high) totaling 2 antenna equivalents;

cables required to connect equipment and antennas:

- 12 - cable runs (each not to exceed 2" diameter) with transition to ½" jumpers installed from within the top of the dry riser to antenna assemblies;
- 2 - ¾" DC cables;
- 1 - 1½" fiber cable;

non-exclusive easements required to run utility lines/cables, and a non-exclusive easement across CITY's property for access in or upon the CITY's real property ("CITY's Property"). CITY's property is legally described and Leased Premises are shown in relationship to CITY's property in Exhibit "A" attached hereto, and the locations of the antennas on the Structure are depicted in Exhibit "B" attached hereto, which exhibits replace Exhibit A and Exhibit B to the October 15, 2008 Agreement, respectively. (An "antenna equivalent" is defined as follows: a single transmit/receive antenna, a single transmit antenna, or a single receive antenna is considered an antenna equivalent. For example, a di-mode antenna is two antenna equivalents, a tri-mode antenna is three antenna equivalents, and a quad-mode antenna is four antenna equivalents.)

2. TERM. The new initial term of this Agreement shall commence on July 1, 2013, and shall terminate on December 31, 2018 ("New Initial Term").
 3. OPTION TERMS. Following the expiration of the New Initial Term, LESSEE may extend the term of the Agreement for three (3) additional five (5) year option periods (each an "Option Period"). Unless (a) CITY delivers to LESSEE written notice of non-renewal to LESSEE no later than Three Hundred Sixty (360) days prior to the expiration of the Initial Term or applicable Option Period, or (b) LESSEE gives CITY written notice of its intention not to extend at least Ninety (90) days prior to the expiration of the New Initial Term or applicable Option Period, the applicable Option Period shall be deemed effective.
 4. RENT. LESSEE has paid CITY 2013 rent in accordance with the original Agreement. The LESSEE shall pay CITY 2014 rent equivalent to \$18,836.00 adjusted to reflect the 2013 change in the Consumer Price Index for all Urban Customers (CPI-U) on or before January 1, 2014 for the year January 1, 2014 through December 31, 2014. The rental year shall run from January 1 to December 31 of each year and rent for each year will be due on or before January 1 of such year. The rental amount shall be adjusted annually based on the Consumer Price Index for All Urban Customers (CPI-U). If this Agreement is terminated for any reason other than LESSEE's default, any prepaid rents for the period after termination will be refunded to LESSEE.
2. LESSEE's notice addresses in the Agreement are deleted in their entirety and replaced with the following:

If to LESSEE, notice should be sent to the following:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #:MPLSMN3616; Cell Site Name: Bamber
Fixed Asset NO: 10128800
PO Box 1630
Alpharetta, GA 30009

3. The terms and conditions of the Agreement are incorporated herein by this reference, and capitalized terms used in this Amendment shall have the same meanings such terms are given in the Agreement. Except as specifically set forth herein, this Amendment shall in no way modify, alter or amend the remaining terms of the Agreement, all of which are ratified by the parties and shall remain in full force and effect. To the extent there is any conflict between the terms and conditions of the Agreement and this Amendment, the terms and conditions of this Amendment will govern and control.
4. LESSEE represents and warrants to CITY that the consent or approval of no third party, including, without limitation, a lender, is required with respect to the execution of this Amendment, or if any such third party consent or approval is required, LESSEE has obtained any and all such consents or approvals.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the day and year first above written.

Signature page to Site Agreement Amendment between City of Rochester, a Minnesota municipal corporation and New Cingular Wireless PCS, LLC (First Amendment to Willow High Water Tower Site Agreement).

LESSEE:

New Cingular Wireless PCS, LLC
 a Delaware limited liability company

By: _____
 Name: _____
 Title: _____

STATE OF _____)
)SS
 COUNTY OF _____)

The foregoing instrument was acknowledged before me on this _____ day of _____, 2013, by
 _____ the _____ of New Cingular Wireless PCS,
 Name Title

LLC, and that being duly authorized, this person executed the foregoing instrument on behalf of the limited liability company.

[seal]

 Notary Public
 My commission expires _____

THIRD AMENDMENT TO SITE AGREEMENT

THIS THIRD AMENDMENT TO SITE AGREEMENT ("THIRD AMENDMENT") is made and entered into by and between the City of Rochester, a Minnesota Municipal Corporation, ("CITY") acting through its Rochester Public Utilities, whose address is 4000 East River Road NE, Rochester, Minnesota 55906, and New Cingular Wireless PCS, LLC a Delaware limited liability company (hereinafter, "LESSEE") this ____ day of _____, 2013.

Recitals

The parties hereto recite, declare and agree as follows:

A. CITY and LESSEE entered into the following Agreement and Amendments:

Saint Marys Water Tower Site (AT&T Site ROCHESTER 2): Site Agreement dated December 15, 1999 with respect to Leased Premises located at 929 4th St SW, Rochester, Minnesota.

Saint Marys Water Tower Site (AT&T Site ROCHESTER 2): First Amendment dated December 10, 2002 to Site Agreement dated December 15, 1999 with respect to Leased Premises located at 929 4th St SW, Rochester, Minnesota.

Saint Marys Water Tower Site (AT&T Site ROCHESTER 2): Second Amendment dated May 14, 2004 to Site Agreement dated December 15, 1999 with respect to Leased Premises located at 929 4th St SW, Rochester, Minnesota.

B. CITY and LESSEE desire to enter into this THIRD AMENDMENT in order to modify and amend certain provisions of the above Agreement and first Amendment.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CITY and LESSEE covenant and agree as follows:

1. Effective with the signing of this THIRD AMENDMENT, Paragraphs 2 "TERM" and 3 "OPTION TERMS" of the original Agreement and Paragraphs 1 "PROPERTY" and 4 "RENT" of the original Agreement as replaced by the Second Amendment will be deleted in their entirety and replaced with the following:

1. PROPERTY. The property interests hereby leased (collectively, the "Leased Premises") and granted by CITY include the following:

Saint Marys Water Tower Site: 901 4th St SW (formerly 929 4th St SW). Real property comprised of approximately 400 square feet of interior space at the second story level of the tower, water tower ("Structure") exterior space for attachment of six (6) antenna assemblies totaling eighteen (18) antenna equivalents:

6 – antenna assemblies (approximately 12" wide and 73" high) totaling 18 antenna equivalents;

cables required to connect equipment and antennas:

12 – coax cable runs (each not to exceed 2" diameter);

2 - 3/4" DC cables;

1 - 1 1/2" fiber cable;

non-exclusive easements required to run utility lines/cables, and a non-exclusive easement across CITY's property for access in or upon the CITY's real property ("CITY's Property"). CITY's property is legally described and Leased Premises are shown in relationship to CITY's property in Exhibit "A" attached hereto, and the locations of the antennas on the Structure are depicted in Exhibit "B" attached hereto, which exhibits replace Exhibit A and Exhibit B to the November 18, 2003 first Amendment, respectively. (An "antenna equivalent" is defined as follows: a single transmit/receive antenna, a single transmit antenna, or a single receive antenna is considered an antenna equivalent. For example, a di-mode antenna is two antenna equivalents, a tri-mode antenna is three antenna equivalents, and a quad-mode antenna is four antenna equivalents.)

2. TERM. The new initial term of this Agreement shall commence on July 1, 2013, and shall terminate on December 31, 2018 ("New Initial Term").
3. OPTION TERMS. Following the expiration of the New Initial Term, LESSEE may extend the term of the Agreement for three (3) additional five (5) year option periods (each an "Option Period"). Unless (a) CITY delivers to LESSEE written notice of non-renewal to LESSEE no later than Three Hundred Sixty (360) days prior to the expiration of the Initial Term or applicable Option Period, or (b) LESSEE gives CITY written notice of its intention not to extend at least Ninety (90) days prior to the expiration of the New Initial Term or applicable Option Period, the applicable Option Period shall be deemed effective.
4. RENT. LESSEE has paid CITY 2013 rent in accordance with the original Agreement. The LESSEE shall pay CITY 2014 rent equivalent to \$21,836.00 adjusted to reflect the 2013 change in the Consumer Price Index for all Urban Customers (CPI-U) on or before January 1, 2014 for the year January 1, 2014 through December 31, 2014. The rental year shall run from January 1 to December 31 of each year and rent for each year will be due on or before January 1 of such year. The rental amount shall be adjusted annually

based on the Consumer Price Index for All Urban Customers (CPI-U). If this Agreement is terminated for any reason other than LESSEE's default, any prepaid rents for the period after termination will be refunded to LESSEE.

2. LESSEE's notice addresses in the original Agreement are deleted in their entirety and replaced with the following:

If to LESSEE, notice should be sent to the following:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #: MPLSMN; Cell Site Name: Southwest Rochester
Fixed Asset NO:
PO Box 1630
Alpharetta, GA 30009

3. The terms and conditions of the Agreement are incorporated herein by this reference, and capitalized terms used in this Second Amendment shall have the same meanings such terms are given in the Agreement. Except as specifically set forth herein, this Amendment shall in no way modify, alter or amend the remaining terms of the Agreement, all of which are ratified by the parties and shall remain in full force and effect. To the extent there is any conflict between the terms and conditions of the Agreement and this Second Amendment, the terms and conditions of this Second Amendment will govern and control.
4. LESSEE represents and warrants to CITY that the consent or approval of no third party, including, without limitation, a lender, is required with respect to the execution of this Amendment, or if any such third party consent or approval is required, LESSEE has obtained any and all such consents or approvals.

IN WITNESS WHEREOF, the parties have executed this Second Amendment as of the day and year first above written.

Signature page to Site Agreement Amendment between City of Rochester, a Minnesota municipal corporation and New Cingular Wireless PCS, LLC (Third Amendment to Saint Marys Water Tower Site Agreement).

CITY:

City of Rochester, a Minnesota municipal corporation

By: _____

Print Name: _____
 Its: Mayor

[MUNICIPAL SEAL]

Attest: _____

Print Name: _____
 Its: City Clerk

Approved as to Form: _____

Print Name: _____
 Its: City Attorney

By: _____

Print Name: _____
 Its: General Manager, Rochester Public Utilities

Address: City of Rochester
 c/o Rochester Public Utilities
 4000 East River Road NE
 Rochester, MN 55905
 Phone: (507) 280-1510

Federal Tax ID No.: 41-6005494

STATE OF MINNESOTA)
)SS
COUNTY OF OLMSTED)

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by _____, _____, _____, and _____, the Mayor, City Clerk, City Attorney and Rochester Public Utilities General Manager, respectively, of the City of Rochester, a Minnesota municipal corporation, on behalf of the corporation.

[seal]

Notary Public
My commission expires _____

Signature page to Site Agreement Amendment between City of Rochester, a Minnesota municipal corporation and New Cingular Wireless PCS, LLC (Third Amendment to Saint Marys Water Tower Site Agreement).

LESSEE:

New Cingular Wireless PCS, LLC
a Delaware limited liability company

By: _____
Name: _____
Title: _____

STATE OF _____)
)SS
COUNTY OF _____)

The foregoing instrument was acknowledged before me on this _____ day of _____, 2013, by
_____ the _____ of New Cingular Wireless PCS,
 Name Title
LLC, and that being duly authorized, this person executed the foregoing instrument on behalf of the limited liability company.

[seal]

Notary Public
My commission expires _____



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve the attached five (5) Amendments to the New Cingular Wireless PCS, LLC (AT&T) Site Agreements for the five (5) sites listed below, and to request the Mayor and the City Clerk to execute those Amendments.

- 1) Baihly Water Tower Site
- 2) Airport Water Tower Site
- 3) Southeast Water Tower Site
- 4) Willow High Water Tower Site
- 5) Saint Marys Water Tower Site

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 28th day of May, 2013.

President

Secretary