

MEMORANDUM

TO: **Real Estate & Transportation Committee**
Commissioner Mike Musick, Chairman
Commissioner Bill Read
Commissioner Chad McLeod

FROM: City Attorney's Office

DATE: May 15, 2023

RE: **First Amendment to Option and Lease Agreement with
New Cingular Wireless PCS, LLC**

Attached hereto for your consideration is a proposed First Amendment to the Option and Lease Agreement (Agreement) between the City, Orlando Utilities Commission (OUC) and New Cingular Wireless PCS, LLC (New Cingular) for the lease of 2,500 square feet of land for its cell tower and related equipment located at 2727 East Lake Parker Drive (Lakeland Electric's Technical Training Center). This land is jointly owned by the both the City (60% ownership interest) and OUC (40% ownership interest).

The original Agreement, with then BellSouth Mobility, Inc., was approved by the City Commission and OUC on October 20, 1998. The Agreement was for an initial term of ten (10) years and included three (3) additional five (5) year renewal options. The current Agreement is now in its third and final renewal period which will expire on October 19, 2023. Accordingly, the parties to the Agreement are seeking to amend the Agreement to provide for additional renewal periods, adjust the rental rate and clarify specified terms/conditions.

This First Amendment seeks to provide six (6) additional five (5) year renewal periods, the first of which would be effective on October 20, 2023, subject to City Commission and OUC approval. The first three (3) renewal periods may be automatically exercised by New Cingular. The remaining three (3) renewal periods require mutual written agreement of the parties. However, the City and OUC retain the right to relocate New Cingular during any renewal period in the event of a sale or redevelopment of the site. If the parties are unable to agree on a relocation site, then the Agreement can be terminated. In addition, if New Cingular terminates the Agreement at any time prior to the expiration of an extended term it will be required to pay for the total rent due for the remaining months of that term, provided that such payment does not exceed \$75,000.00.

Pursuant to this First Amendment, the rent paid by New Cingular to the City and OUC will be \$31,482.11 per year commencing October 20, 2023 during the five (5) year renewal period, which represents a 15% increase from the current rental rate. Thereafter, rent will be subject to an increase of 15% for each subsequent five (5) year renewal. The total revenue generated for the first three (3) renewal periods pursuant to this First Amendment, if exercised, is \$546,608.13 of which the City will

receive \$327,964.88 for its 60% ownership interest in the land, with the remaining rent paid to OUC based on its 40% ownership interest. Except as provided in this First Amendment, all terms and conditions of the original Agreement remain in full force and effect, including the option for the City and OUC to terminate the Agreement in the event the land is sold or redeveloped if relocation is not feasible.

It is recommended that the City Commission approve this First Amendment with New Cingular and authorize the appropriate City officials to execute all corresponding documents on behalf of the City.

Attachment





FIRST AMENDMENT TO OPTION AND LEASE AGREEMENT

THIS FIRST AMENDMENT TO OPTION AND LEASE AGREEMENT (this “**Amendment**”) is made and entered into this 15th day of May 2023 (the “**Effective Date**”), by and between **CITY OF LAKE LAND and THE ORLANDO UTILITIES COMMISSION AND THE CITY OF ORLANDO** (having a mailing address of 501 East Lemon Street, Attn. Contracts Admin, Lakeland, FL 33801) (“**LESSOR**”), and **NEW CINGULAR WIRELESS PCS, LLC**, a Delaware limited liability company, successor by merger to BellSouth Mobility LLC, a Georgia limited liability company, successor by corporate election with BellSouth Mobility Inc., a Georgia corporation (having a mailing address of Attention: Network Real Estate Administration, Re: Cell Site #: 813793, Cell Site Name: FL LAKE PARKER (LK PARKER DR), Fixed Asset No. 10016567, 1025 Lenox Park Blvd NE, 3rd Floor, Atlanta, GA 30319) (“**TENANT**”).

WHEREAS, LESSOR and TENANT entered into that certain Option and Lease Agreement dated October 20, 1998 (the “**Agreement**”), covering certain real property, together with easements for ingress, egress and utilities thereto, as described in **Exhibit “A”** attached hereto (the “**Site**”; and

WHEREAS, the Agreement has an original term (including all extension terms) that will terminate on October 19, 2023 (the “**Original Term**”) and the parties desire to amend the Agreement to extend the Original Term and as otherwise set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, the sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. AMENDMENTS. The Agreement is hereby amended as follows:

(a) **Renewal Terms.** In addition to the three (3) extended terms set forth in Section 3 of the Agreement (all of which have been exercised and the last of which ends on October 19, 2023), TENANT shall have the option to extend the Agreement for six (6) additional consecutive five (5) year periods, the first of which would commence on October 20, 2023 (each, an “**Extended Term**”). The first (3) Extended Terms shall be deemed automatically exercised by TENANT unless TENANT gives LESSOR written notice of its intention not to so extend the term at least ninety (90) days prior to the end of the then current Extended Term. The second three (3) Extended Terms may each be exercised by TENANT only upon the mutual written agreement of LESSOR and TENANT. If any such extension option is not exercised, then the term of the Agreement shall expire at the end of the then current Extended Term. All references herein to the term of the Agreement shall include the term as it is extended provided in this Amendment. If all such options to extend are exercised, then the final expiration of the Agreement shall occur on October 19, 2053.

(b) **Rental.** Notwithstanding any provision of Section 4 of the Agreement to the contrary and in lieu of any other increases in rent set forth in the Agreement, the annual rental for the Extended Terms shall be as follows:

<u>Additional Extended Term</u>	<u>Annual Rental</u>
1 st	\$20,700.00
2 nd	\$23,805.00
3 rd	\$27,375.75
4 th	\$31,482.11
5 th	\$36,204.43
6 th	\$41,635.09

The annual rental for the Extended Terms shall be payable in the same manner as the annual rental for the initial term.

(c) **Holding Over.** Section 5 of the Agreement is hereby amended by deleting the term “second (2)” wherever it appears therein and substituting the term “last” in lieu thereof.

(d) **Sale or Redevelopment of Site.** Section 12 is hereby deleted in its entirety and the following is substituted in lieu thereof:

SALE OR REDEVELOPMENT OF SITE.

(a) **SALE.** Should LESSOR, at any time during the initial term or any extended term of the Agreement, decide to sell the Site, or all or any part of the LESSOR’s Surrounding Property, as described in Exhibit C, to a third party (other than the TENANT), LESSOR shall provide written notice of its intent to sell to TENANT no later than one hundred eighty (180) days prior to marketing the Site and/or LESSOR’s Surrounding Property identified in Exhibit C. Any such sale shall be subject to this Agreement.

(b) **RELOCATION.** LESSOR may relocate TENANT’s facilities or any part thereof, to an alternate ground location on LESSOR’s property that is reasonably acceptable to TENANT, provided, however, that any relocation will: (i) be at TENANT’s sole cost and expense if such relocation request occurs only one (1) time during the term of the Agreement or any renewals thereof and is required by change of laws or regulations or re-development of the site by LESSOR; (ii) be performed exclusively by TENANT or TENANT’s contractors; (iii) not result in any interruption of the communications service provided from the TENANT’s facilities; (iv) not impair or in any manner alter the quality of communications service provided from the TENANT’s facilities; and (v) be done in strict accordance with the terms and conditions set forth herein. Upon relocation of the TENANT’s facilities, any access and utility easements provided to TENANT will be relocated as required upon mutual written agreement of the parties and at TENANT’s sole expense. If relocation is required more than one (1) time and or not required due to one of the reasons provided in item (i) above, then LESSOR shall pay fifty percent (50%) of the cost of relocation (such cost to include, without limitation, TENANT’s attorneys’ fees, title fees, survey fees, escrow fees, environmental fees, instrument recording fees).

LESSOR may exercise its relocation right under this Section by delivering written notice to TENANT not less than eighteen (18) months prior to the proposed redevelopment/relocation date (the "Relocation Notice"). In the Relocation Notice, LESSOR will propose an alternate site on LESSOR's property, provided such alternate site is reasonably available, to which TENANT may relocate the TENANT's facilities. TENANT will have sixty (60) days from the date it receives the Notice to evaluate LESSOR's proposed relocation site, during which period TENANT will have the right to conduct all tests as TENANT deems necessary or desirable to determine the feasibility of the proposed relocation site. If TENANT fails to approve of the proposed relocation site in writing within the sixty (60) day period, then TENANT will be deemed to have disapproved the proposed relocation site. If TENANT disapproves of the relocation site, then LESSOR may thereafter propose another relocation site by Notice to TENANT in the manner set forth above. Any relocation site that LESSOR and TENANT agree upon in writing is referred to as the "Relocation Site." TENANT and LESSOR will execute a written agreement concerning the location and dimensions of the Relocation Site (the "Relocation Agreement") and schedule for relocation ("Relocation Period"). Notwithstanding anything to the contrary contained herein, if TENANT advises LESSOR that TENANT reasonably believes that it will be unable to complete such relocation by the expiration of Relocation Period and TENANT prior thereto has used good faith efforts to effectuate such relocation, the parties agree to extend such Relocation Period for an additional reasonably mutually agreeable time period, but in no event shall such time period exceed one hundred twenty (120) days. However, if the parties are unable to agree upon a Relocation Site within the Relocation Period, including any extension thereof, either party may terminate the Agreement in accordance with the provisions set forth in the Agreement, and any unused Rent shall be promptly refunded to TENANT.

Upon relocation of the TENANT's facilities or any part thereof, to the Relocation Site, all references to the Site in the Agreement will be deemed to be references to the Relocation Site. LESSOR and TENANT agree that the Relocation Site (including any access and utility easements) will be surveyed by a licensed surveyor at TENANT's sole expense. The survey will then become a part of the Agreement and will control as to the description of the Site. An accurate copy of all documents describing the Relocation Site will, at TENANT's sole expense, be recorded in the official records of the county where the Relocation Site is located. Except as expressly provided in this provision, LESSOR and TENANT agree that in no event will the relocation of the TENANT's facilities or any part thereof, affect, alter, modify or otherwise change any of the terms and conditions of the Agreement.

(e) **Notice.** Section 20 of the Agreement is hereby amended to reflect the following notice address for TENANT:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration Re: Cell Site #: 813793
Cell Site Name: FL LAKE PARKER (LK PARKER DR)
Fixed Asset No. 10016567
1025 Lenox Park Blvd. NE
3rd Floor
Atlanta, Georgia 30319

and to:

AT&T Legal Department -- Network
Attention: Network Counsel
Re: Fixed Asset No. 10016567
208 S. Akard Street
Dallas, Texas 75202-4206

with a copy to:

Crown Castle South LLC
General Counsel
Attention: Legal - Real Estate Department
2000 Corporate Drive
Canonsburg, Pennsylvania 15317

(f) **Termination.** Section 22 of the Agreement is hereby deleted in its entirety and the following is substituted in lieu thereof:

TERMINATION. (a) Notwithstanding any other termination rights available to TENANT under this Agreement, TENANT, at its sole and absolute discretion, shall have the right to terminate this Agreement with ninety (90) days prior written notice to LESSOR and a lump sum payment to LESSOR in an amount equal to the total rent due for the remaining months of the then current Extended Term; provided, however, in no event shall such payment exceed Seventy Five Thousand and No/100 Dollars (\$75,000.00). The rental rate shall be computed at the rate which is in effect for the then current Extended Term. Upon termination TENANT shall execute, upon request of the LESSOR, a written cancellation of the Agreement upon the TENANT vacating the Site or upon termination of the Agreement, in recordable form and TENANT shall have no further obligations, other than TENANT's obligation to remove its property as hereinafter provided.

(b) Notwithstanding any other termination rights available to LESSOR under this Agreement, LESSOR, reserves the right to terminate this Agreement upon eighteen (18) months prior written notice to TENANT if: (i) LESSOR should accept a bona-fide offer from a third party to purchase the Site and the purchaser thereof (the "Purchaser") does not agree to accept an assignment of the Agreement to permit TENANT's

continued occupancy following such purchase. For purposes of this provision, LESSOR shall have no further obligation, as it relates to this Agreement, to TENANT, should the new Purchaser accept such assignment upon purchase of the property; or (ii) in the event that LESSOR determines in good faith to redevelop the Site and TENANT is unable to relocate on LESSOR's property as set forth in the Agreement; or (iii) to comply with local, state or federal regulations.

(g) **Representation.** Section 27 of the Agreement is hereby deleted in its entirety.

2. **MISCELLANEOUS.**

(a) **Full Force and Effect.** All of the terms, provisions, covenants and agreements contained in the Agreement are hereby incorporated herein by reference in the same manner and to the same extent as if all such terms, provisions, covenants and agreements were fully set forth herein. LESSOR and TENANT ratify, confirm and adopt the Agreement as of the date hereof for purposes of compliance with Florida Statute Ch. 695.01 (as amended) and acknowledge that there are no defaults under the Agreement or events or circumstances which, with the giving of notice or passage of time or both, would ripen into events of default. Except as otherwise expressly amended herein, all the terms and conditions of the Agreement shall remain and continue in full force and effect. Capitalized terms used herein and not otherwise defined shall have the meaning for such term set forth in the Agreement. In case of any inconsistency between the Agreement and this Amendment, the terms and conditions of this Amendment shall govern and control.

(b) **Binding Effect.** This Amendment shall be binding upon the heirs, legal representatives, successors and assigns of the parties. The parties shall execute and deliver such further and additional instruments, agreements and other documents as may be necessary to evidence or carry out the provisions of this Amendment.

(c) **IRS Form W-9.** LESSOR agrees to provide TENANT with a completed IRS Form W-9, or its equivalent, upon execution of this Amendment and at such other times as may be reasonably requested by TENANT. In the event the Property is transferred, the succeeding LESSOR shall have a duty at the time of such transfer to provide TENANT with a Change of Ownership Form as provided by TENANT and a completed IRS Form W-9, or its equivalent, and other related paper work to effect a transfer in rent to the new LESSOR. If LESSOR fails to provide the IRS Form W-9 within thirty (30) days after TENANT's request, TENANT may take any reasonable action necessary to comply with IRS regulations including, but not limited to, withholding applicable taxes from rent payments.

(d) **Representations and Warranties.** LESSOR represents and warrants that:

(i) LESSOR is duly authorized to and has the full power and authority to enter into this Amendment and to perform all of LESSOR's obligations under the Agreement as amended hereby.

(ii) TENANT is not currently in default under the Agreement, and to LESSOR's knowledge, no event or condition has occurred or presently exists which, with notice or the passage of time or both, would constitute a default by TENANT under the Agreement.

(iii) LESSOR agrees to provide such further assurances as may be requested to carry out and evidence the full intent of the parties under the Agreement as amended hereby, and ensure TENANT's continuous and uninterrupted use, possession and quiet enjoyment of the Property under the Agreement as amended hereby.

(e) **Entire Agreement.** This Amendment supersedes all agreements previously made between the parties relating to its subject matter.

(f) **Counterparts.** This Amendment may be, acknowledged and delivered by electronic and digital signatures and in any number of counterparts, and each such counterpart shall constitute an original, but together such counterparts shall constitute only one instrument.

(g) **Electronic Signatures.** Each party agrees that the electronic signatures of the parties included in this Amendment are intended to authenticate this writing and to have the same force and effect as manual signatures. As used herein, "electronic signature" means any electronic sound, symbol, or process attached to or logically associated with this Amendment and executed and adopted by a party with the intent to sign such Amendment, including facsimile or email electronic signatures.

[Signatures appear on the following pages.]

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Option and Lease Agreement effective as of the Effective Date.

LESSOR:

CITY OF LAKELAND,
a Florida municipal corporation

ATTEST:

By: _____
Name: Kelly S. Koos
Its: City Clerk

By: _____
Name: H. William Mutz
Its: Mayor

Approved as to form and correctness:

By: _____
Palmer C. Davis, City Attorney

LESSOR:

THE ORLANDO UTILITIES COMMISSION

ATTEST:

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

Approved as to form and correctness:

By: _____
Name: _____

LESSOR:

CITY OF ORLANDO

ATTEST:

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

Approved as to form and correctness:

By: _____
Name: _____

TENANT:

NEW CINGULAR WIRELESS PCS, LLC,
a Delaware limited liability company

By: **CROWN CASTLE SOUTH LLC,**
a Delaware limited liability company
Its: Attorney-in-Fact

By: _____(SEAL)
Name: _____
Its: _____

EXHIBIT "A"

LEGAL DESCRIPTION (50'X50' LEASE AREA) (AS FURNISHED)

A tract of land in the Northwest $\frac{1}{4}$ of Section 4, township 28 South, Range 24 East, Polk County, Florida and being more particularly described as follows:

Commencing at the Northwest corner of the Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of said Section 4; thence along the North line of said Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$, North $89^{\circ} 55' 56''$ East, a distance of 1332.48 feet; thence South $88^{\circ} 29' 24''$ West, a distance of 520.58 feet; thence South $80^{\circ} 52' 07''$ West, a distance of 431.05 feet; thence South $4^{\circ} 50' 43''$ West, a distance of 818.02 feet; thence South $40^{\circ} 05' 28''$ East, a distance of 98.80 feet; thence South $49^{\circ} 54' 38''$ West, a distance of 85.58 feet to the POINT OF BEGINNING; thence South $40^{\circ} 05' 28''$ East, a distance of 50.00 feet; thence South $49^{\circ} 54' 32''$ West, a distance of 50.00 feet; thence North $40^{\circ} 05' 28''$ West, a distance of 50.00 feet; thence North $49^{\circ} 54' 32''$ East, a distance of 50.00 feet to the POINT OF BEGINNING; said described tract containing 0.0574 acre, more or less.

Together with:

INGRESS/EGRESS AND UTILITY EASEMENT DESCRIPTION (AS FURNISHED)

**LEGAL DESCRIPTION: (20' INGRESS/EGRESS & UTILITY EASEMENT)
(TRACT LYING IN SECTION 4, TOWNSHIP 28 SOUTH, RANGE 24 EAST PER O.R.
BOOK 2340, PAGE 1900, POLK COUNTY, FLORIDA)**

Commencing at the NW corner of the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of said Section 4; thence along the North line of the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of said Section 4, North $89^{\circ} 55' 56''$ East, a distance of 188.46 feet to the POINT OF BEGINNING; thence North $3^{\circ} 23' 11''$ West, a distance of 142.32 feet; thence North $88^{\circ} 36' 41''$ West, a distance of 283.72 feet; thence North $82^{\circ} 27' 08''$ West, a distance of 381.57 feet; thence South $80^{\circ} 11' 33''$ West, a distance of 142.88 feet to the Easterly right-of-way line of East Lake Parker Drive; thence along said Easterly right-of-way line, North $29^{\circ} 30' 43''$ West, a distance of 21.23 feet; thence departing said right-of-way line North $80^{\circ} 11' 33''$ East, a distance of 152.85 feet; thence South $82^{\circ} 27' 08''$ East, a distance of 383.91 feet; thence South $88^{\circ} 36' 41''$ East, a distance of 300.78 feet; thence South $3^{\circ} 23' 11''$ East, a distance of 181.25 feet; thence South $89^{\circ} 55' 56''$ West, a distance of 20.00 feet to the POINT OF BEGINNING; said described tract containing 0.4474 acre, more or less.

AND:

**LEGAL DESCRIPTION: (20' INGRESS/EGRESS & UTILITY EASEMENT)
(TRACT LYING IN THE NW 1/4 OF SECTION 4, TOWNSHIP 28 SOUTH, RANGE 24
EAST, PER TITLE COMMITMENT NO. CA359075)**

Commencing at the NW corner of the SE 1/4 of the NW 1/4 of said Section 4; thence along the North line of the Se 1/4 of the NW 1/4 of said Section 4, North 89° 55' 56" East, a distance of 185.46 feet to the POINT OF BEGINNING; thence departing said North line, South 3° 23' 10" East, a distance of 35.24 feet; thence South 17° 27' 28" East, a distance of 554.77 feet; thence South 10° 50' 31" West, a distance of 185.59 feet; thence South 72° 11' 33" East, a distance of 108.73 feet; thence South 5° 10' 35" West, a distance of 252.59 feet; thence South 39° 15' 13" East, a distance of 110.88 feet; thence North 49° 34' 32" East, a distance of 20.00 feet; thence North 39° 15' 13" West, a distance of 102.39 feet; thence North 5° 10' 35" East, a distance of 280.43 feet; thence North 72° 11' 33" West, a distance of 107.04 feet; thence North 10° 50' 31" East, a distance of 172.93 feet; thence North 17° 27' 28" West, a distance of 557.34 feet; thence North 3° 23' 10" West, a distance of 31.81 feet to the said North line of the Se 1/4 of the NW 1/4; thence South 89° 55' 56" West, a distance of 20.00 feet to the POINT OF BEGINNING; said described tract containing 0.8892 acre, more or less.