

CITY OF DAPHNE
ORDINANCE 2017 –20

**AN ORDINANCE CONSENTING TO THE LEASE OF CERTAIN
PROPERTY BY THE UTILITES BOARD OF THE CITY OF DAPHNE**

WHEREAS, the Utilities Board of the City of Daphne (“Daphne Utilities”) is required to receive the consent of the City of Daphne under the provisions of Ala. Code §11-50-314(a)(10) before it leases property; and

WHEREAS, the management of Daphne Utilities has determined that it is in the best interest of Daphne Utilities to lease certain parts of its property to AT&T Mobility Corporation as described in detail in Exhibit “A –Fourth Amendment to Lease”; and

WHEREAS, the Board of Directors of Daphne Utilities has approved the lease of the property to AT&T Mobility Corporation as described in Exhibit “A – Fourth Amendment to Lease”.

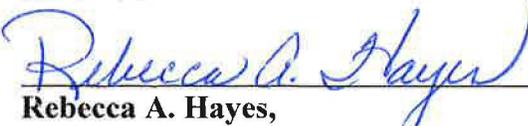
NOW, THEREFORE, BE IT ORDAINED that the City Council of the City of Daphne does hereby consent to the lease by Daphne Utilities of the property described in Exhibit “A – Fourth Amendment to Lease”, to AT&T Mobility Corporation.

ADOPTED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA on this 20th day of March, 2017.



Dane Haygood,
Mayor

ATTEST:



Rebecca A. Hayes,
City Clerk

Exhibit "A"

Market: Gulf Coast (AL)
Cell Site Number: _____
Cell Site Name: Daphne
Fixed Asset Number: 10024210

FOURTH AMENDMENT TO LEASE

THIS FOURTH AMENDMENT TO LEASE ("**Fourth Amendment**"), dated as of the latter of the signature dates below ("**Effective Date**"), is by and between the Utilities Board of the City of Daphne, having a mailing address of P.O. Box 2550, Daphne, AL 36526 ("**Lessor**") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 575 Morosgo Drive, Atlanta, GA 30324, successor by merger to BellSouth Mobility, LLC ("**Lessee**").

WHEREAS, Lessor and Lessee entered into a Lease dated October 1, 1993, as amended by that certain Addendum to Lease dated December 1, 1996, that certain Second Amendment to Lease Agreement dated March 29, 2004, and that certain Third Amendment to Lease dated August 28, 2006 (collectively, the "**Agreement**"), whereby Lessor leased to Lessee certain Premises therein described, that include space on a water tower and surrounding land, and are a portion of the Property located at 125 Lake Shore Drive, Daphne, AL; and

WHEREAS, Lessor and Lessee desire to amend the equipment provision, the rent, and the term of the Agreement; and

WHEREAS, Lessor and Lessee desire to amend the Agreement to update Lessee's notice address; and

WHEREAS, Lessor and Lessee, 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, Lessor and Lessee agree as follows:

- 1. Representations and Warranties.** Lessor and Lessee each represents and warrants to the other party that: (i) it has the right, power and authority to enter into the Agreement, as amended herein; (ii) no consent, approval, authorization or order of, and no notice to or filing with any court, governmental authority or third party is required in connection with the execution and performance of the Agreement, except for the approval of the Daphne City Council, which has been obtained; and (iii) the Agreement constitutes a legal, valid and binding obligation of such party, enforceable in accordance with its terms.
- 2. Equipment.** Lessee shall have the right to locate up to twelve (12) antennas and all ancillary equipment on the Premises. Lessee may modify, expand, or relocate its equipment on the Premises at any time during the term; provided, however, that Lessee's operations or placement of equipment cannot interfere with the operation of the Premises, the water tower, or ancillary equipment of Lessor or other tenants then-located on the Premises.

3. **Term.** The term of the Agreement shall be amended to provide a new term of five (5) years commencing on the Effective Date. The term will automatically renew for two (2) consecutive additional periods of five (5) years each upon the same terms and conditions of the Agreement, unless Lessee notifies Lessor in writing of Lessee's intention not to renew the Agreement at least sixty (60) days prior to the expiration of the then-existing term

4 **Rent.** Commencing on the Effective Date, the total Rent payable under the Agreement shall be Twenty Thousand Five Hundred and no/100 Dollars (\$20,500.00) per year, to be paid in equal monthly installments of One Thousand Seven Hundred Eight and 33/100 Dollars (\$1,708.33) (the "Rent"). In a partial year occurring after the Effective Date, Rent will be prorated. The Rent shall be increased by ten percent (10%) every 5 years, beginning on the fifth anniversary of the Effective Date.

In addition to Rent, Lessor and Lessee agree and acknowledge that Lessee shall pay to Lessor a one-time payment of Five Thousand and no/100 Dollars (\$5,000.00) within sixty (60) days of receipt of the fully executed originals of this Fourth Amendment.

5. **Tower Maintenance.** Lessor shall maintain the water tower and the Property in good and safe condition, provided, however, in the event that the water tower is removed from operation by Lessor, then upon twelve (12) months' prior written notice to Lessee, Lessor shall be relieved of its obligation to maintain the water tower. As of the Effective Date, Lessor has no intention of ceasing to operate the water tower.

6. **Notice.** The Agreement is hereby amended to reflect Lessee's current notice address as follows:

If to Licensee: New Cingular Wireless PCS, LLC
By: AT&T Mobility Corporation,
Attn: Network Real Estate Administration
Re: Cell Site #: _____, Cell Site Name: Daphne (AL)
FA No: 10024210
575 Morosgo Dr.
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

Attn: Legal Department,
Re: Cell Site #: _____, Cell Site Name: Daphne (AL)
FA No: 10024210
208 S. Akard Street
Dallas, Texas, 75202-4206

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

8. **Capitalized Terms.** All capitalized terms used but not defined herein shall have the same meanings as defined in the Agreement.

[REMAINDER OF PAGE INTENTIONALL LEFT BLANK]

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

The parties have caused their properly authorized representatives to execute and seal this Fourth Amendment on the dates set forth below.

“LESSOR”

Utilities Board of the City of Daphne

By: _____
Name: _____
Title: _____
Date: _____

“LESSOR”

New Cingular Wireless PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

By: _____
Name: _____
Title: _____
Date: _____

LESSOR ACKNOWLEDGEMENT

STATE OF _____

COUNTY OF _____

I CERTIFY that on _____, 2017, _____ personally came before me and acknowledged under oath that he or she:

- (a) is the _____ of the Utilities Board of the City of Daphne, who is named in the attached instrument,
- (b) was authorized to execute this instrument on behalf of the municipality; and
- (c) executed the instrument as the act of the municipality.

Signature of Notary

Printed Name: _____

Notary Public No.: _____

My Commission Expires: _____

LESSEE ACKNOWLEDGEMENT

STATE OF _____

COUNTY OF _____

On the ____ day of _____, 2017 before me personally appeared _____, and acknowledged under oath that he/she is the _____ of AT&T Mobility Corporation, Manager of New Cingular Wireless PCS, LLC, a Delaware limited liability company, named in the attached instrument, and as such was authorized to execute this instrument on behalf of the limited liability company.

Signature of Notary

Printed Name: _____

Notary Public No.: _____

My Commission Expires: _____