

**ORDINANCE NO. 13-03**

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AUTHORIZING THE MAYOR AND THE ACTING CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY, TO ENTER INTO A FIFTH AMENDMENT TO THE LEASE AGREEMENT WITH NEW CINGULAR WIRELESS PCS, LLC ("AT&T"), A DELAWARE LIMITED LIABILITY COMPANY, SUCCESSOR BY MERGER TO BELLSOUTH MOBILITY, LLC, SUCCESSOR BY CONVERSION TO BELL SOUTH MOBILITY, INC. IN THE FORM ATTACHED HERETO AS EXHIBIT "1", EXTENDING THE TERMS OF A PRIOR LEASE DATED APRIL 28, 1992, AS AMENDED ON MARCH 1, 1993 AND AS FIRST EXTENDED ON JUNE 29, 1998, AND AS SECOND EXTENDED ON DECEMBER 17, 2004, WHEREBY NEW CINGULAR WIRELESS PCS, LLC LEASES CITY PROPERTY, 1,300 SQUARE FEET OF LAND WITHIN MCDONALD PARK, TOGETHER WITH INGRESS AND EGRESS, LOCATED AT 1185 WEST 74 STREET, HIALEAH, FLORIDA, TO CONSTRUCT, OPERATE AND MAINTAIN A COMMUNICATIONS FACILITY, TO WIT: A 100-FOOT MONOPOLE STRUCTURE, FOR AN ADDITIONAL FIVE-YEAR TERM, COMMENCING ON NOVEMBER 20, 2012 THROUGH NOVEMBER 19, 2017, WITH AN AMENDMENT PROVIDING FOR ANNUAL RENTAL IN AN AMOUNT OF \$68,258.45 WITH A 5% ANNUAL INCREASE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, on April 28, 1992, the City and BellSouth Mobility, Inc. entered into a lease agreement for 5 years, with 4 additional 5-year renewals, to construct, maintain and operate a monopole tower on a portion of McDonald Park; and

**WHEREAS**, on March 1, 1993, the City and BellSouth amended the lease agreement ("First Amendment") to grant the City the first option to purchase the structure and improvements if BellSouth elected to terminate the lease at the end of the fourth extension period for \$100.00 and to provide for a commencement date of November 20, 1992; and

**WHEREAS**, pursuant to Hialeah, Fla., Ordinance 98-80 (June 29, 1998), the City granted the first extension to the lease through November 19, 2002, after negotiating additional monetary and other incentives to the city ("Second Amendment"); and

**WHEREAS**, pursuant to Hialeah, Fla., Ordinance 04-85 (Dec. 17, 2004), the City granted the second extension of the lease through November 19, 2007, after negotiating an increase in annual monetary rental payments and the elimination of in-kind contributions ("Fourth Amendment"); and

**WHEREAS**, pursuant to Hialeah, Fla., Ordinance 07-98 (Nov. 29, 2007), the City granted the third extension of the lease through November 19, 2012; and

**WHEREAS**, the City and New Cingular Wireless PSC, LLC desires to grant a fourth extension of the lease through November 19, 2017.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

**Section 1:** The facts and recitations contained in the preamble to this ordinance are hereby incorporated and adopted by reference thereto as if fully set forth herein.

**Section 2:** The City of Hialeah, Florida hereby authorize the Mayor and the Acting City Clerk, as attesting witness, on behalf of the City, to enter into Fifth Amendment to Lease Agreement with New Cingular Wireless PSC, LLC, a Delaware limited liability company, successor by merger to Bellsouth Mobility, LLC, successor by conversion to Bell South Mobility, Inc., in the form attached hereto as Exhibit "1", extending the terms of a prior lease dated April 28, 1992, as amended on March 1, 1993

and as first extended on June 29, 1998, and as second extended on December 17, 2004, whereby New Cingular Wireless PSC, LLC leases city property, 1300 square feet of land within McDonald Park, together with ingress and egress, located at 1185 West 74 Street, Hialeah, Florida, to construct, operate and maintain a communications facility, to wit: a 100-foot monopole, for an additional five-year term, commencing on November 20, 2012 through November 19, 2017, with an amendment providing for annual rent in the amount of \$68,258.45 with a 5% yearly increase.

**Section 2: Repeal of Ordinances in Conflict.**

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

**Section 3: Penalties.**

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be assessed a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the City may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

**Section 4: Inclusion in Code.**

The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the City of Hialeah, as an addition or amendment thereto, and the sections of this ordinance shall be renumbered to conform to the uniform numbering system of the Code.

**Section 5: Severability Clause.**

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

**Section 6: Effective Date.**

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED and ADOPTED this 22 day of January, 2013.

THE FOREGOING ORDINANCE  
OF THE CITY OF HIALEAH WAS  
PUBLISHED IN ACCORDANCE  
WITH THE PROVISIONS OF  
FLORIDA STATUTE 166.041  
PRIOR TO FINAL READING.

  
\_\_\_\_\_  
Isis Garcia-Martinez  
Council President

Attest:

Approved on this 27 day of Jan, 2013.

  
\_\_\_\_\_  
Marbelys L. Fatjo Acting City Clerk

  
\_\_\_\_\_  
Mayor Carlos Hernandez

Approved as to form and legal sufficiency:

  
\_\_\_\_\_  
William M. Grodrick, City Attorney

Ordinance was adopted by a unanimous vote with Councilmembers, Caragol, Casals-Muñoz, Cue-Fuente, Garcia-Martinez, Gonzalez, Hernandez and Lozano voting "Yes".

**FIFTH AMENDMENT TO LEASE BETWEEN THE  
CITY OF HIALEAH AND AT&T**

This amendment ("Fifth Amendment") to Lease Agreement ("Agreement") between the City of Hialeah ("City") and New Cingular Wireless, PCS, LLC ("AT&T"), a Delaware limited liability company, successor by merger to Bellsouth Mobility, LLC, successor by conversion, to Bell South Mobility, Inc., is made this \_\_\_ day of \_\_\_\_\_, 2013.

**Recitals.**

A. On April 28, 1992, the City and BellSouth Mobility, Inc. entered into a lease agreement for 5 years, with 4 additional 5-year renewals, to construct, maintain and operate a monopole tower on a portion of McDonald Park.

B. On March 1, 1993, the City and BellSouth amended the lease agreement ("First Amendment") to grant the City the first option to purchase the structure and improvements if BellSouth elected to terminate the lease at the end of the fourth extension period for \$100.00 and to provide for a commencement date of November 20, 1992.

C. Pursuant to Hialeah, Fla., Ordinance 98-80 (June 29, 1998), the City granted the first extension to the lease through November 19, 2002, after negotiating additional monetary and other incentives to the city ("Second Amendment").

D. Pursuant to Hialeah, Fla., Ordinance 04-85 (Dec. 17, 2004), the City granted the second extension of the lease through November 19, 2007, after negotiating an increase in annual monetary rental payments and the elimination of in-kind contributions; and ("Third Amendment").

E. Pursuant to Hialeah, Fla., Ordinance 07-98 (Nov. 29, 2007), the City granted the third extension of the lease through November 19, 2012.

F. The City and New Cingular Wireless PSC, LLC desires to grant a fourth extension of the lease through November 19, 2017.

**NOW, THEREFORE**, in consideration of the premises and for other good and valuable consideration, the receipt and adequacy of which the parties acknowledge, the parties agree as follows:

1. **Recitals.** The recitals are true and correct and incorporated in this Fourth Amendment.

2. **Rental.**

a. 2.1 Commencing on November 1, 2012, AT&T shall pay the annual rental in the amount of \$68,258.45 [City acknowledges receipt of this initial

payment.] Said annual rental shall be paid in one lump sum payment. The annual rental shall be increased five (5%) percent each year.

- 3. **Defined terms.** Unless as expressly amended in this Fourth Amendment, the Agreement and Amendments are in full force and effect in accordance with its provisions.

**IN WITNESS WHEREOF**, the City and New Cingular Wireless, PCS, LLC have executed this Fifth Amendment the day and year set forth in the first paragraph of this Fifth Amendment.

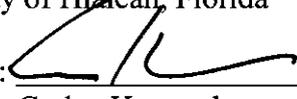
Signed, sealed and delivered  
in the presence of:

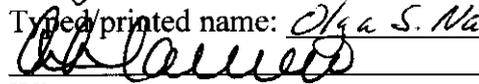
City of Hialeah  
501 Palm Avenue, 4th Floor  
Hialeah, Florida 33010

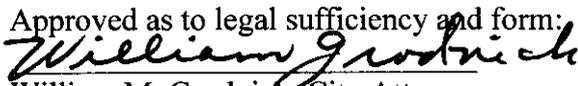
Attest:

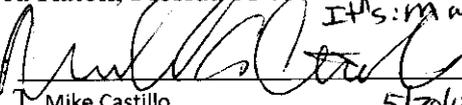
Authorized signature on behalf of  
City of Hialeah, Florida

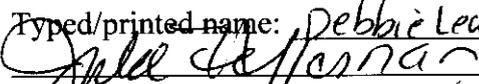
  
Marbelys Fatjo  
Acting City Clerk

By:  3/19/13  
Carlos Hernandez Date  
Mayor

(SEAL)  
  
Witness  
Typed/printed name: Olga S. Nasco  
  
Witness  
Typed/printed name: Aimee Lauro

Approved as to legal sufficiency and form:  
  
William M. Grodnick, City Attorney

New Cingular Wireless, PCS, LLC, a Delaware   
5201 Congress Avenue limited liability company  
Boca Raton, Florida 33487 By: AT&T Mobility Corporation  
IT's: Manager  
By:   
Mike Castillo 5/30/13 Date  
Director - Construction &  
Engineering - Florida

  
Witness  
Typed/printed name: Debbie Lewis  
  
Witness  
Typed/printed name: Julie Heenan