

CITY COUNCIL AGENDA ITEM

CITY OF SHORELINE, WASHINGTON

AGENDA TITLE: Authorizing the City Manager to Execute a Lease Agreement with New Cingular Wireless PCS, LLC for Continued Use of Portions of Hamlin Park for Wireless Transmission Facilities

DEPARTMENT: City Attorney's Office

PRESENTED BY: Julie Ainsworth-Taylor

ACTION: ☐ Ordinance ☐ Resolution ☒ Motion
 ☐ Discussion ☐ Public Hearing

PROBLEM/ISSUE STATEMENT:

In 2005, the City of Shoreline entered into a Lease Agreement with New Cingular Wireless PCS, LLC (City Clerk Receiving No. 3332) to allow for a 216 square foot portion of Hamlin Park to be utilized for a wireless transmission facility (antenna arrays) and support equipment. The antenna arrays are located on a light pole at the ball field and the rent was originally for \$12,000 per year with nominal increases annually based on an escalator and some facility expansions. The Lease has also been extended as provided by the original terms. Currently, the Lease Agreement is set to expire on June 17, 2020. For more than two years, staff has negotiated a new Lease Agreement with New Cingular Wireless PCS based on current market conditions.

Pursuant to Shoreline Municipal Code (SMC) Section 2.60.090(B), the City Council must approve a lease in excess of one (1) year or when the consideration (rent) exceeds \$50,000 per year. While the rent does not exceed the SMC's stated amount, the term of the lease does. Therefore, City Council approval and authorization for the City Manager to execute the Lease is required. Tonight, staff is requesting City Council authorization of a new Lease Agreement with New Cingular Wireless PCS for these existing wireless transmission facilities and support equipment.

Staff has negotiated a new Lease Agreement, a draft of which is attached to this staff report as Attachment A. The key features of this new Lease Agreement are as follows:

1. Lease rate based on a current market appraisal resulting in a Base Rent decrease to \$15,600 per year (\$1,300 per month) plus 12.84% leasehold excise tax with the potential for revenue sharing. The prior rent was \$1,971.94, including tax, with no revenue sharing.
2. Annual increases in Base Rent will be a standard two percent (2%) rather than based on inflation rates.
3. Revenue sharing for each new tenant that sublets from New Cingular; the City will negotiate a share of the revenue. This is second time revenue sharing has been included in the City's wireless facilities leases.

4. Initial term of five (5) years with up to three (3) successive five (5) year terms, for a maximum lease term of 20 years.

RESOURCE/FINANCIAL IMPACT:

The revenue generated from this Lease Agreement for this portion of Hamlin Park would be \$15,600 in the first year of the lease term. This base rent will be increased in subsequent years in an amount equal to two percent (2%) of the Base Rent of the previous year. Additional revenue may be generated if New Cingular sublets some of the pole space to other wireless providers. If this occurs, the City and New Cingular are to negotiate the additional amount the City will be entitled to receive.

RECOMMENDATION

Staff recommends that the City Council move to authorize the City Manager to execute the Lease Agreement with New Cingular Wireless PCS, LLC for a portion of Hamlin Park for the continued use of the site for wireless transmission facilities in a form acceptable to the City.

ATTACHMENTS:

Attachment A – DRAFT Telecommunications Facilities Lease Agreement

Approved By: City Manager **DT** City Attorney **JA-T**

TELECOMMUNICATIONS FACILITIES LEASE AGREEMENT

THIS TELECOMMUNICATIONS FACILITIES LEASE AGREEMENT is made as of the date of the final signature below, by and between CITY OF SHORELINE, a municipal corporation of the State of Washington (“Shoreline”) and New Cingular Wireless PCS, LLC, a Delaware Limited Liability Company (“Lessee”), (collectively referred to herein as the “Parties” and each individual as a “Party”).

RECITALS

WHEREAS, Shoreline is the owner of real property know as Hamlin Park a public park, King County Tax Parcel Nos. 1626049083 and 0926049017; and

WHEREAS, in 2005, Shoreline and Lessee entered into a telecommunications facilities lease agreement, referenced by City Clerk Receiving No. 3332 for a portion of King County Tax Parcel No. 1626049083; and

WHEREAS, as authorized by Shoreline Permit No. 105939 and Right-of-Way Use Permit No. 107677, Lessee constructed telecommunications facilities on a portion of Shoreline’s Hamlin Park, referenced by Lessee’s Site Name SA91 (SA1171) and Site ID 10042374; and

WHEREAS, in 2011, modifications to the telecommunication facilities were authorized by Shoreline Permit No. 117283, and in 2018, modifications were approved via Shoreline Permit WTF18-1225; and

WHEREAS, in 2010, Shoreline Right-of-Way Site Permit 116166 was issued, authorizing the installation of a utility value and trenching within the parking lot for Hamlin Park and 25th Avenue NE;

WHEREAS, pursuant to Shoreline Municipal Code (SMC) 12.15.030(C), underground use of the right-of-way requires the payment of a periodic use fee except when a utility pays a utility tax pursuant to SMC 3.32.030 and is permitted only for five (5) years; Permit 116166 expired on December 15, 2015, a new Site Permit was not obtained by Lessee; and

WHEREAS, the 2005 lease agreement was last amended in 2018, referenced by City Clerk Receiving No. 3332.03; and

WHEREAS, the 2005 lease agreement, as amended, will expire on June 17, 2020 and Lessee desires to continue leasing a portion of Hamlin Park for telecommunication purposes; and

WHEREAS, continuing to lease a portion of Hamlin Park to Lessee is not detrimental to the use and enjoyment of Hamlin Park by Shoreline residents and visitors and will provide income to Shoreline for such use.

LEASE AGREEMENT

NOW, therefore, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties mutually agree as follows:

I. DEFINITIONS.

Except when a specific definition is provided for in this Lease Agreement words and phrases will be given their usual meaning. In addition to specific definitions contained within this Lease Agreement, the following words and phrases shall have the following meanings:

“Commencement Date” means June 18, 2020.

“Day” or “Days” means a calendar day. If the deadline for any required action should fall on a Saturday, Sunday, or legally-recognized holiday, then it is excluded and the next succeeding calendar day which is neither a Saturday, Sunday, nor legal holiday shall be the deadline.

“Shoreline Municipal Code” (SMC) means the City of Shoreline’s codified rules and regulations. Any reference to the SMC is to the SMC as it exists at the time of Lease execution or as hereinafter amended.

“Telecommunications facilities” means the equipment and personal property, including but not limited to, cables, wires, conduits, ducts, pedestals, antennas, towers, electronics, equipment storage structures and other appurtenances used or to be used to transmit, receive, distribute, provide, house or offer telecommunications services.

“Telecommunications service” means the providing or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of voice, data, image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium.

II. SHORELINE HAMLIN PARK PROPERTY.

The property of interest in this Lease Agreement is a portion of a city-owned park commonly referred to Hamlin Park, situated in the City of Shoreline, King County, Washington. Hamlin Park is comprised of two (2) tax parcels, King County Tax Parcel Nos. 1626049083 and 0926049017. Exhibit A denotes the general location of the Property and provides the legal description for Parcel No. 1626049083, hereinafter the “Property”.

III. TELECOMMUNICATION FACILITIES.

Telecommunication facilities were located on the Property after the execution of a lease agreement in 2005. The constructed facilities include a 97 foot antenna/sports lighting monopole, antenna arrays,

equipment shelters, cabinets, and related improvements incidental to the provision of telecommunication services along with security fencing and landscaping (collectively the “Improvements”).

IV. LEASED PREMISES.

- A. Lessee desires to lease from Shoreline certain portions of the Property for the continued location and operation of the existing Improvements and to provide for the potential expansion of the Improvements.
- B. Shoreline hereby leases that portion of the Property consisting of a parcel of land approximately 12 feet by 18 feet as described in and depicted on the site plan attached hereto as Exhibit B (the “Leased Premises”) which identifies the boundaries of and facilities within the Leased Premises.

V. LEASE TERM.

- A. Effective as of the Commencement Date, Shoreline leases the Leased Premises to Lessee for a period of five (5) consecutive years (“Initial Term”).
- B. Unless the Lessee has notified Shoreline in writing of the Lessee’s intent not to renew this Lease Agreement at least ninety (90) calendar days prior to the expiration of the current term or provided that Lessee is not in default or violation of any of its obligations hereunder, then upon expiration of the Initial Term, this Lease Agreement will automatically extend for three (3) successive additional five (5) year terms (“Renewal Terms”) upon the same terms and conditions as contained herein, except that during any Renewal Term the total number of Renewal Terms allowed shall be deemed to be reduced by the total number of completed Renewal Terms.
- C. The maximum Lease Term of this Lease Agreement is twenty (20) consecutive years unless this Lease Agreement is terminated pursuant to the provisions set forth in Section XVI.

VI. RENT.

- A. Beginning on the Commencement Date, Lessee shall pay the amount of \$15,600.00 per year (“Base Rent”) plus a leasehold tax of 12.84% as authorized by Chapter 82.29A RCW and Chapter 3.25 SMC, for a total annual amount of \$17,603.04 (“Rent”). Rent shall be paid by Lessee in equal monthly installments of \$1,466.92 and is due on or before the first day of each calendar month after the Commencement Date.
- B. Payment shall be made to the City of Shoreline, Attn: Accounts Receivable, 17500 Midvale Avenue N, Shoreline, WA 98133-4905.
- C. If Rent is not paid in full on or before the fifth day of each calendar month, then Lessee shall pay to Shoreline a late payment charge equal to ten percent (10%) of the Base Rent, as annually adjusted.
- D. If this Lease Agreement is terminated at a time other than on the last day of the month, Rent shall be prorated as of the date of termination and, in the event of termination for any reason other than Lessee’s default, all prepaid Rents shall be refunded to the Lessee.
- E. Base Rent shall be increased on each anniversary of the Commencement Date by an amount equal to two percent (2%) of the Base Rent for the previous year.

- F. From time to time, the leasehold tax rate authorized by Chapter 82.29A RCW and Chapter 3.25 SMC may be amended. Upon the effective date of the leasehold tax, Lessee shall be responsible for paying Rent based on the amended leasehold tax amount.

VII. USES AND PURPOSE.

- A. Lessee shall have the use and occupancy of the Leased Premises for the purpose of i) constructing, maintaining and operating the Improvements and (ii) uses incidental thereto, including without limitation, testing of any kind by Lessee, its customers, or invitees, so as to provide for the transmission and reception of telecommunication signals in any and all frequencies that Lessee is allowed to use by the Federal Communications Commission Lessee shall be responsible for adherence to all federal, state and local regulations pertaining to the operation of a telecommunications facility.
- B. All Improvements, existing and future, shall be constructed and maintained at Lessee's sole expense. Notwithstanding the foregoing, Lessee shall obtain Shoreline's written consent prior to any material modifications to the Improvements, such consent will not to be unreasonably withheld, conditioned or delayed. Such consent shall not be required for substantially similar or "like for like" modifications.

VIII. RIGHT OF WAY SITE PERMIT.

- A. As required by SMC 12.15.030, Lessee shall obtain a Right-of-Way Site Permit authorizing underground rights for the utilities necessary to provide service to the Leased Premises. Such Site Permit will include underground rights for the Shoreline Hamlin Parking Area adjacent to the Leased Premises.
- B. As provided in SMC 12.15.030(C)(4), if Lessee pays a utility tax pursuant to SMC 3.32.030, no periodic use fee will be required. If Lessee is not required to pay such a fee, then a periodic use fee shall be required.
- C. A Right-of-Way Site Permit may be granted for up to five (5) years. Lessee shall be required to apply for renewal or a new permit prior to expiration of the five (5) year period. Failure of the Lessee to maintain a current and valid Right-of-Way Site Permit is a waiver of SMC 12.15.030(C)(4)'s exemption from the periodic use fee. Lessee shall be responsible for such a periodic use fee for any period of time a valid Right-of-Way Site Permit is not in effect.

IX. ACCESS.

- A. At all times during this Lease Agreement, Shoreline shall provide Lessee reasonable access to the Leased Premises so as to adequately service the Leased Premises and the Improvements. Prior to performing routinely required visits (e.g., quarterly maintenance check, monthly site cleanup, etc.), Lessee shall provide Shoreline with at least two (2) working days' notice.
- B. Lessee further agrees to give Shoreline at least five (5) working days' notice prior to the use of substantial and/or heavy equipment and/or secure a permit for the use of the public right-of-way outside of the Leased Premises that may impact the use of the right-of-way for its intended purposes.
- C. At the time of notification, Lessee will provide a point of contact associated with the project. Notices required pursuant to this Section shall be provided to Shoreline's Right-

of-Way Management Services via email row@shorelinewa.gov; phone 206-391-0266/206-396-3128; or in person at Shoreline City Hall, 17500 Midvale Ave N, Shoreline, WA.

- D. The notice provisions of this Section shall not apply in the event of any emergency where such advance notice cannot be reasonably provided due to the need for Lessee to promptly respond to the emergency. Lessee shall provide notice to Shoreline as soon as reasonably practicable after an emergency event.
- E. Lessee shall be responsible for conducting appropriate background checks of all the authorized individuals in accordance with standard wireless communications industry practices. Lessee authorized individuals visiting the Premises shall be clearly identifiable as authorized individuals of the Lessee either by uniform, identification badge or marked company vehicle.

X. MAINTENANCE OF LEASED PREMISES.

- A. The Lessee shall maintain the Leased Premises, its Improvements, and any permitted expansion of the Improvements in a good and safe condition and in a manner that complies with all applicable federal, state and local requirements. If federal, state, or local regulation requires Lessee to obtain a permit for such maintenance, then the maintenance may only be performed after obtaining any and all required and necessary permits from the governmental agency with jurisdiction.
- B. Lessee shall not permit waste, damage, or injury to the Leased Premises including any Shoreline property, public ways of Shoreline, other ways, such as private roadways, or other property, whether publicly or privately owned, located in, on or adjacent thereto.
- C. Shoreline shall have the exclusive right to inspect the Lessee's Improvements at any time during the term of this Lease Agreement to ensure compliance with the terms and conditions herein; provided, however, Lessee has the right to be present at all inspections of Lessee's Improvements, and Shoreline shall give Lessee at least one (1) working day prior written notice of such intent to inspect if Shoreline will not be entering Lessee's fenced compound area, and Shoreline shall give Lessee at least five (5) working days' prior written notice of such intent to inspect within Lessee's fenced compound.

XI. UTILITIES.

- A. Lessee shall have the right to connect, at its own expense, to any existing utility facilities at the Leased Premises including, but not limited to, electrical facilities and all such utilities shall be separately metered.
- B. Lessee shall be solely responsible for the payment of utility charges including connection charges and security deposits incurred by Lessee and the cost of any wiring, pole lines or other installations necessary to furnish such utilities to Lessee at the rates charged by the servicing utility company.
- C. Placement of utility lines which impact the public right-of-way must receive the necessary permits from Shoreline, which approval shall be timely and not unreasonably withheld. The permit will condition installation approval on restoration of the public right-of-way.

XII. SAFETY REQUIREMENTS.

- A. Lessee will maintain the Leased Premises in a safe condition. The Lessee, in accordance with applicable federal, state, and local safety requirements shall, at all times, employ ordinary care and shall install and maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public and/or workers. All structures and all lines, equipment, and connections in, over, under, and upon the Leased Premises, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition, and in good order and repair.
- B. Lessee shall properly secure the Leased Premises with a security fence, around the perimeter of the Leased Premises. No electric, razor wire, or barbed wire is permitted, provided that any existing electric, razor wire, or barbed wire securing the Leased Premises shall be permitted to remain, and Lessee shall be permitted to repair or replace any existing electric, razor wire or barbed wire securing the Leased Premises as reasonably necessary. If the security fence is compromised, Lessee shall promptly repair the fence.
- C. Shoreline reserves the general right to see that the telecommunications facility of the Lessee is constructed and maintained in a safe condition. If a violation of applicable safety regulation is found to exist by Shoreline, Shoreline will, after discussions with the Lessee, establish a reasonable time for the Lessee to make necessary repairs. Nothing in this Section precludes Shoreline from enforcing its code in its regulatory capacity if the repairs are not made within the established time frame.

XIII. LIENS.

Lessee shall not permit any lien to be imposed upon the Leased Premises as a result of work done by or on behalf of the Lessee and shall indemnify and hold Shoreline harmless against any and all expenses, including reasonable attorney's fees and court costs, in connection with any such lien. In the event Lessee fails to permit a lien to be imposed, Lessee shall remove the lien within thirty (30) calendar days of receipt of written notice of such lien.

XIV. SIGNAGE.

Lessee shall display proper signage as required by the Federal Communications Commission (FCC) as well as current signage on telecommunication facilities identifying Lessee, address and a 24 hour phone number. Signage shall be posted and clearly visible at all times.

XV. AUTHORIZATION FOR PERMIT APPLICATION.

Shoreline grants to Lessee and its employees, representatives, agents, and consultants a limited consent to prepare, execute, submit, file and present on behalf of Shoreline, as the governmental entity responsible for the public right-of-way, building, permitting, zoning or land-use applications Lessee deems necessary with the appropriate local, state and/or federal agencies so as to obtain any and all permits necessary for the operation, maintenance, and modification of the Improvements within the Leased Premises consistent with applicable law.

XVI. TERMINATION

- A. Lessee shall have the right to terminate this Lease Agreement, at any time, without cause, by providing Shoreline with one hundred eighty (180) calendar days prior written notice. Upon such termination, neither party shall have any further rights or duties hereunder, except for the following:
1. Any monies owed by either party to the other up to the date of termination shall be paid within thirty (30) calendar days of the termination date.
 2. If at any time prior to five (5) years following the Commencement Date, (a) Lessee exercises any of Lessee's rights to terminate this Lease Agreement, or (b) Lessee elects not to renew this Lease Agreement, Lessee shall pay a termination fee ("Termination Fee") equal to the amount of Rent that Lessee would have owed to Shoreline under this Lease Agreement, as amended, between the date of such early termination or election not to renew, and five (5) years following the Commencement Date. The Termination Fee will be due and payable in the same manner and on the same dates as set forth in this Lease Agreement. Notwithstanding the foregoing, Lessee will be released from any and all of its obligations under this Agreement as of the effective date of such termination and shall not be required to pay the Termination Fee if Lessee terminates this Lease Agreement due to default of Shoreline.
 3. As provided in Section XXI, Lessee shall have the duty to remove the Improvements and restore the Property.
- B. This Lease Agreement is terminable by either Party on thirty (30) calendar days prior written notice, if the other party remains in default after the applicable cure periods as provided in Section XXV.

XVII. HAZARDOUS MATERIALS.

- A. Lessee's Obligation and Indemnity. Lessee shall not (either with or without negligence) cause or permit the escape, disposal or release of any Hazardous Materials on or from the Leased Premises in any manner prohibited by law. Lessee shall indemnify and hold Shoreline harmless from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, any and all sums paid for settlement of claims, attorneys' fees, and consultants' and experts' fees) from the release of any Hazardous Materials on the Leased Premises if caused by Lessee or persons acting under Lessee.
- B. Shoreline's Obligation and Indemnity. Shoreline shall not (either with or without negligence) cause or permit the escape, disposal or release of any Hazardous Materials on or from Shoreline's Property in any manner prohibited by law. Shoreline shall indemnify and hold Lessee harmless from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, any and all sums paid for settlement of claims, attorneys' fees, and consultants' and experts' fees) from the presence or release of any Hazardous Materials on Shoreline's Property or Leased Premises unless caused by Lessee or persons acting under Lessee.
- C. For the purpose of this Section, "Hazardous Material" means any substance which is (i) designated, defined, classified or regulated as a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under any Environmental Law, as currently in effect or as hereafter amended or enacted, (ii) a petroleum hydrocarbon, including crude oil or any fraction thereof and all petroleum products, (iii) PCBs, (iv)

lead, (v) asbestos, (vi) flammable explosives, (vii) infectious materials, or (viii) radioactive materials. "Environmental Law(s)" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Sections 9601, et seq., the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901, et seq., the Toxic Substances Control Act, 15 U.S.C. Sections 2601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. 5101, et seq., and the Clean Water Act, 33 U.S.C. Sections 1251, et seq., as said laws have been supplemented or amended to date, the regulations promulgated pursuant to said laws and any other federal, state or local law, statute, rule, regulation or ordinance which regulates or proscribes the use, storage, disposal, presence, clean-up, transportation or release or threatened release into the environment of Hazardous Material.

XVIII. LICENSES AND TAXES.

Upon the Commencement Day, Lessee shall be responsible for paying personal property, business and occupation, and/or other taxes, including utility taxes imposed by Shoreline, or licenses which currently exist or may, in the future, be assessed as a direct result of the Lessee's operations of the telecommunications facilities described herein within the Lease Premises. Since the property is a public right-of-way, pursuant to RCW 84.36.010, there is no assessment of real property taxes. Lessee agrees to reimburse Shoreline for any documented personal property taxes levied against Shoreline's Property that are directly attributable to the Improvements constructed by Lessee or Lessee's predecessor in interest. Lessee reserves the right to independently challenge any such assessment, and Shoreline agrees to cooperate with Lessee in connection with any such challenge but all costs and expenses of such a challenge are to be bore solely by Lessee.

XIX. INSURANCE.

The Lessee shall, as a condition of this Lease Agreement, secure and maintain the following liability insurance policies insuring the Lessee as the Named Insured and Shoreline, and its elected and appointed officers, officials, agents, employees, representatives, and volunteers as additional insureds against claims for injuries to persons or damages to property which may arise from or in connection with the negligent acts or willful misconduct of the Lessee:

- A. Commercial general liability insurance, written on an occurrence basis, ISO CGL form 00 01 or broader covering premises, products and completed operations, contractual liability coverage with no exclusion for explosions, collapse hazards, and underground hazards with limits of:
 - 1. \$2,000,000.00 for bodily injury or death to one or more persons and for property damage resulting from any occurrence and in the aggregate;
 - 2. \$2,000,000.00 personal and advertising injury; and
 - 3. \$2,000,000.00 for products and completed operations in the aggregate.
- B. Automobile liability for owned, non-owned and hired vehicles with a limit of \$2,000,000.00 for each accident;
- C. Worker's compensation within statutory limits and employer's liability insurance with limits of \$1,000,000.00;

- D. The required limits hereunder may be met by a combination of primary and excess or umbrella insurance. The liability insurance coverage required by this Section shall be maintained by the Lessee throughout the term of this Lease Agreement, and such other period of time during which the Lessee is operating without a lease hereunder, or is engaged in the removal of its telecommunications facilities. The Lessee shall provide an insurance certificate, together with an endorsement including Shoreline, and its elected and appointed officers, officials, agents, employees, representatives, and volunteers as additional insureds on the commercial general liability and automobile liability policies, to Shoreline prior to the commencement of any work or installation of any facilities pursuant to this Lease Agreement. Any self-insured retentions in the required coverage must be declared to Shoreline. Payment of deductibles and self-insured retentions shall be the sole responsibility of the Lessee. Lessee may satisfy this requirement by obtaining the appropriate endorsement to any master policy of liability insurance Lessee may maintain. The Lessee's required general liability and automobile liability insurance shall be primary insurance as respects Shoreline, its officers, officials, employees, agents, consultants, and volunteers. Any insurance maintained by Shoreline, its officers, officials, employees, consultants, agents, and volunteers shall be in excess of the Lessee's required insurance and shall not contribute with it. Shoreline shall be provided thirty (30) days advance written notice of cancellation, except for non-payment of premium, of any coverages required in this Section that is not replaced.
- E. All insurance shall be effected under valid and enforceable policies, insured by insurers authorized to do business by the State of Washington or (if allowed by the laws of the State of Washington) surplus line carriers on the State of Washington's Insurance Commissioner's (or the functional equivalent thereof) approved list of companies qualified to do business in the State of Washington. All insurance carriers and surplus line carriers shall be rated A minus or better by A.M. Best Company.

XX. WAIVER OF CLAIMS AND RIGHTS OF SUBROGATION.

The Parties hereby waive any and all rights of action for negligence against the other on account of damage to the Improvements, the Property or to the Leased Premises resulting from any fire or other casualty of the kind covered by property insurance policies with extended coverage, regardless of whether or not, or in what amount, such insurance is carried by the parties. All policies of property insurance carried by either Party for the Improvements, the Property or the Leased Premises shall include a clause or endorsement denying to the insurer rights by way of subrogation against the other party to the extent rights have been waived by the insured before the occurrence of injury or loss.

XXI. OWNERSHIP AND REMOVAL OF IMPROVEMENTS.

- A. It is the intent of the parties that Lessee's wireless communications facility shall not constitute a fixture. Therefore, upon expiration or termination of this Lease Agreement, Lessee, at its sole expense, shall remove all Improvements to a depth of six feet (6'), excluding conduit, and restore the Leased Premises as nearly as reasonably possible to its original condition, without, however, being required to replace any trees or other plants removed, or alter the then existing grading completed within forty-five (45) calendar days after receiving written notice from Shoreline requiring removal of the Improvements and restoration of the Leased Premises.

- B. Additional time may be granted upon the discretion of Shoreline which approval shall not be unreasonably withheld. In the event that Improvements, including telecommunications facilities or other equipment are left upon the Property and/or within the Leased Premises after expiration or termination and not removed by the Lessee upon forty-five (45) calendar days written notice from Shoreline, then at Shoreline's option, the facilities shall be removed and stored at the expense of Lessee.
- C. Stored Improvements, including telecommunications facilities, which are not claimed by the Lessee within six (6) months from expiration or termination shall become the property of Shoreline with any and all costs of storage and/or disposal the sole responsibility of the Lessee.
- D. This Section shall survive termination or expiration of this Lease Agreement.

XXII. GENERAL INDEMNIFICATION.

- A. Lessee covenants not to bring suit against Shoreline and hereby agrees to defend, indemnify, and hold harmless Shoreline, its appointed and elected officers, employees, agents and volunteers from and against any and all liability, loss, costs, damage, and expense, including costs and reasonable attorney fees in defense thereof, and including claims by the Lessee's own employees to which the Lessee might otherwise be immune under Title 51 RCW, because of actions, claims or lawsuits for damages resulting from personal or bodily injury, including death at any time resulting therefrom, sustained or alleged to have been sustained by any person or persons, and on account of damage to property, arising or alleged to have arisen directly or indirectly out of or in consequence of Lessee's performance or breach of this Lease Agreement, whether such injuries to persons or damage to property is due to the negligence of the Lessee, its agents, employees, representatives or assigns. This provision shall be inapplicable to the extent such damage or injury arises from the negligence or willful misconduct of Shoreline. This provision waiving immunity for claims arising out of Title 51 RCW was specifically negotiated by the parties.
- B. Shoreline covenants not to bring suit against Lessee and hereby agrees to defend, indemnify, and hold harmless Lessee, its directors, officers, employees and agents from and against any and all liability, loss, costs, damage, and expense, including costs and attorney fees in defense thereof, and including claims by the Lessee's own employees to which Shoreline might otherwise be immune under Title 51 RCW, because of actions, claims or lawsuits for damages resulting from personal or bodily injury, including death at any time resulting therefrom, sustained or alleged to have been sustained by any person or persons, and on account of damage to property, arising or alleged to have arisen directly or indirectly out of or in consequence of Shoreline's performance or breach of this Lease Agreement, whether such injuries to persons or damage to property is due to the negligence of Shoreline, its officers, employees, agents and volunteers. This provision shall be inapplicable to the extent such damage or injury is judicially found to be caused by the negligence of Lessee. This provision waiving immunity for claims arising out of Title 51 RCW was specifically negotiated by the parties.
- C. Lessee assumes the risk of damage to its facilities located within the Leased Premises or adjacent rights-of-way from activities conducted by Shoreline, its officers, employees, agents, and volunteers, except for damage caused by Shoreline's negligence or willful misconduct. The Lessee releases and waives any and all claims against Shoreline, its officers, employees, agents, and volunteers for damage to or destruction

of the Lessee's facilities except to the extent any such damage or destruction is caused by the negligent, grossly negligent or willful and malicious action of the Shoreline, its officers, employees, agents, or volunteers. Nothing in this Section shall waive any claims for breach of this Lease Agreement.

- D. This Section shall survive termination or expiration of this Lease Agreement.

XXIII. RIGHTS GRANTED – PUBLIC EASEMENT.

This Lease Agreement does not convey any right, title or interest in the Leased Premises, the Property, or any other property of Shoreline, but shall be deemed the right only to use and occupy the Leased Premises for the limited purposes and term stated in this Lease Agreement. Further, this Lease Agreement shall not be construed as any warranty of title.

XXIV. QUIET ENJOYMENT.

Shoreline covenants that Lessee, on paying Rent and performing the covenants of this Lease Agreement, shall peaceably and quietly have, hold and enjoy the Leased Premises

XXV. DEFAULT.

- A. Notice of Default; Cure Period. In the event that there is a default by Shoreline or Lessee (the "Defaulting Party") with respect to any of the provisions of this Lease Agreement or Shoreline's or Lessee's obligations under this Lease Agreement, the other party (the "Non-Defaulting Party") shall give the Defaulting Party written notice of such default. After receipt of such written notice, the Defaulting Party shall have thirty (30) calendar days in which to cure any monetary default and sixty (60) calendar days in which to cure any non-monetary default. The Defaulting Party shall have such extended periods as may be required beyond the sixty (60) calendar day cure period to cure any non-monetary default if the nature of the cure is such that it reasonably requires more than sixty (60) calendar days to cure, and Defaulting Party commences the cure within the sixty (60) calendar day period and thereafter continuously and diligently pursues the cure to completion. The Non-Defaulting Party may not maintain any action or effect any remedies for default against the Defaulting Party unless and until the Defaulting Party has failed to cure the same within the time periods provided in this Section.
- B. Consequences of Lessee's Default. Shoreline acknowledges that under the terms of this Lease Agreement, Lessee has the right to terminate this Lease Agreement at any time upon one hundred eighty (180) calendar days' notice. Accordingly, in the event that Shoreline maintains any action or effects any remedies for default against Lessee, resulting in Lessee's dispossession or removal, (i) the Rent shall be paid up to the date of such dispossession or removal and (ii) Shoreline shall be entitled to recover from Lessee, in lieu of any other damages, as liquidated, final damages, a sum equal to six months' Rent or the Termination Fee, whichever is less. In no event shall Lessee be liable to Shoreline for consequential, indirect, speculative or punitive damages in connection with or arising out of any default.

- C. Consequences of Shoreline's Default. In the event that Shoreline is in default beyond the applicable periods set forth above, Lessee may, at its option, upon written notice: (i) terminate the Lease Agreement, vacate the Leased Premises and be relieved from all further obligations under this Lease Agreement; (ii) perform the obligation(s) of Shoreline specified in such notice, in which case any expenditures reasonably made by Lessee in so doing shall be deemed paid for the account of Shoreline and Shoreline agrees to reimburse Lessee for said expenditures upon demand; (iii) take any actions that are consistent with Lessee's rights; (iv) sue for injunctive relief, and/or sue for specific performance, and/or sue for damages, and/or set-off from Rent any amount reasonably expended by Lessee as a result of such default.

XXVI. ASSIGNMENT AND SUBLEASE.

- A. Lessee has the right, at its sole discretion, to assign its interest in this Lease Agreement. Assignment of this Lease Agreement by Lessee shall be effective upon Lessee sending written notice to Shoreline and shall relieve Lessee from any further liability or obligation.
- B. As on the Commencement Date, Lessee has no subleases for use or occupancy of Improvements within the Leased Premises.
- C. If, after full execution of this Lease Agreement, Lessee enters into any future sublease, license or agreement to a similar right of use or occupancy in the Leased Premises to an unaffiliated third party not already a sublessee on the Leased Premises, Lessee agrees to pay Shoreline an additional amount to be negotiated in good faith between the parties at the time of sublet.
- D. Lessee shall have sole discretion as to whether, and on what terms, to sublease, license or otherwise allow occupancy of the Leased Premises and there shall be no express or implied obligation of Lessee to do so.
- E. Notwithstanding anything in this Section to the contrary, Shoreline shall not be entitled to a share of rental, license or other similar payments for any sublease or license to any sublessee of Lessee or any successors and/or assignees of such sublessee who commenced use of the Leased Premises prior to the effective date of this Lease Agreement.
- F. Upon request to Shoreline from any leasehold mortgagee, Shoreline agrees to give the holder of such leasehold mortgage written notice of any default by Lessee and an opportunity to cure any such default within fifteen (15) working days after such notice with respect to monetary defaults and within a commercially reasonable period of time after such notice with respect to any non-monetary default.

XXVII. MISCELLANEOUS

- A. Public Records Act. Lessee acknowledges that Shoreline is a public agency subject to Washington's Public Records Act, chapter 42.56 RCW, and that this Lease Agreement and all documents existing or produced related to this Lease Agreement may be deemed a public record as defined in the Public Records Act and that if Shoreline receives a public records request, unless a statute exempts disclosure, Shoreline must disclose the record to the requestor.
- B. Nondiscrimination. In hiring or employment made possible or resulting from this Lease Agreement, there shall be no unlawful discrimination against any employee or applicant

for employment because of sex, age (except minimum age and retirement provisions), race, color, creed, national origin, marital status, sexual orientation, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical handicap or the use of a trained dog guide or service animal by a person with a disability, unless based upon a bona fide occupational qualification. This requirement shall apply to but not be limited to the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. No person shall be denied or subjected to discrimination in receipt or the benefit of any services or activities made possible by or resulting from this Lease Agreement on the grounds of sex, race, color, creed, national origin, age (except minimum age and retirement provisions), marital status, sexual orientation, honorably discharged veteran or military status, or in the presence of any sensory, mental or physical handicap, or the use of a trained dog guide or service animal by a person with a disability.

- C. Applicable Law. This Lease Agreement and the performance thereof shall be governed, interpreted, construed and regulated in accordance with the laws of the State of Washington where the Leased Premises is located. The parties agree that the venue for any litigation arising out of this Lease Agreement shall be King County Superior Court. The substantially prevailing party in any litigation arising hereunder shall be entitled to its reasonable attorney's fees and court costs, including appeals, if any.
- D. Recording. Lessee shall have the right to record a memorandum of this Lease Agreement with the King County Recorder's Office. Shoreline shall execute and deliver such a memorandum, for no additional consideration, promptly upon Lessee's request.
- E. Entire Agreement. Shoreline and Lessee agree that this Lease Agreement is the entire agreement and contains all of the agreements, promises and understandings between Shoreline and Lessee. No oral agreements, promises or understandings regarding the subject matter of this Lease Agreement shall be binding upon either Shoreline or Lessee in any dispute, controversy or proceeding at law. Any addition, variation or modification to this Lease Agreement shall be void and ineffective unless mutually agreed upon, made in writing, and signed by the parties hereto.
- F. Captions. The captions preceding the Sections of this Lease Agreement are intended only for convenience of reference and in no way define, limit or describe the scope of this Lease Agreement or the intent of any provision hereof.
- G. Notices. All notices hereunder shall be in writing and shall be given by (i) established national courier service which maintains delivery records, (ii) hand delivery, or (iii) certified or registered mail, postage prepaid, return receipt requested. Notices are effective upon receipt, or upon attempted delivery if delivery is refused or if delivery is impossible because of failure to provide reasonable means for accomplishing delivery. Notices shall be addressed to the appropriate party at the address set forth below, as modified in writing from time to time by such party:

Lessee's Notice Address:

New Cingular Wireless PCS, LLC

Attn: Network Real Estate Administration

Re: Cell Site #: SA91

Cell Site Name: Shoreline Hamlin Park (WA)); Fixed Asset No.: 10042374

1025 Lenox Park Blvd. NE

3rd Floor

Atlanta, GA 30319

With a required copy of the notice sent to the address above to AT&T Legal at:
New Cingular Wireless PCS, LLC
Attn: AT&T Legal Department – Network Operations
Re: Cell Site #: SA91
Cell Site Name: Shoreline Hamlin Park (WA); Fixed Asset No: 10042374
208 S. Akard Street
Dallas, Texas, 75202-4206

A copy sent to the Legal Department is an administrative step which alone does not constitute legal notice.

Shoreline's Notice Address:
City Manager
City of Shoreline
17500 Midvale Avenue North
Shoreline, WA 98133-4905

- H. Severability. Any provision or part of this Lease Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon Shoreline and the Lessee, who agree that the Lease Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- I. IRS Form W-9. Shoreline agrees to provide Lessee with a completed IRS Form W-9, or its equivalent, upon execution of this Lease Agreement and at such other times as may be reasonably requested by Lessee.
- J. Counterpart Originals. This Lease Agreement may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original Lease Agreement, and all of which shall constitute one Lease Agreement. The execution of one counterpart by a Party shall have the same force and effect as if that Party had signed all other counterparts.
- K. Authority to Execute. Each person executing this Lease Agreement on behalf of a Party represents and warrants that he or she is fully authorized to execute and deliver this Lease Agreement on behalf of the Party for which he or she is signing. The Parties hereby warrant to each other that each has full power and authority to enter into this Lease Agreement and to undertake the actions contemplated herein and that this Lease Agreement is enforceable in accordance with its terms

IN WITNESS WHEREOF, Shoreline and Lessee having read the foregoing and intending to be legally bound hereby, have executed this Lease Agreement as of the day and year this Lease Agreement is fully executed.

SHORELINE:

CITY OF SHORELINE,
a municipal corporation of the State of Washington

By: _____

Print Name: _____

Print Title (if any): _____

Date: _____

APPROVED AS TO FORM ONLY

By: _____

Print Name: _____

Print Title: Assistant City Attorney

Date: _____

State of Washington)

) SS.

County of King)

I certify that I know or have satisfactory evidence that Debbie Tarry, as City Manager for the City of Shoreline, is the person(s) who appeared before me, and acknowledged that she has the authority to sign and deliver this instrument, and said act was of her free and voluntary act for the uses and purposes set forth.

Dated this _____ day of _____, 2020.

Notary Public in and for the State of Washington,

residing at_____.

My commission expires_____

[Lessee Execution Page Follows]

LESSEE:

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

By: AT&T Mobility Corporation

Its: Manager

By: _____

Print Name: _____

Print Title (if any): _____

Date: _____

State of _____)

) ss.

County of _____)

I certify that I know or have satisfactory evidence that _____, as _____ for AT&T Mobility Corporation, manager of New Cingular Wireless PCS, LLC, a Delaware limited liability company, is the person(s) who appeared before me, and acknowledged that he/she has the authority to sign and deliver this instrument, and said act was of his/her free and voluntary act for the uses and purposes set forth.

Dated this _____ day of _____, 2020.

Notary Public in and for the State of _____,

residing at_____.

My commission expires_____

EXHIBIT "A"

Description of Shoreline's Property

That portion of the Southeast quarter of the Northwest quarter of Section 16, Township 26 North, Range 4 East, W.M., described as follows:

Beginning at the concrete monument set for the center of said Section 16;

THENCE North 0°35'03" East along the North-South center line of said Section, 772.23 feet to a point thereon which is South 0°35'03" West 553.42 feet from the Northeast corner of said Southeast quarter of the Northwest quarter of Section 16, and the True Point of Beginning;

THENCE North 87°51'27" West 984.38 feet;

THENCE North 20°08'23" East 276.31 feet;

THENCE North 11°46'33" East 294.29 feet to a point on the North line of the Southeast quarter of the Northwest quarter of Section 16;

THENCE South 87°52'40" East 834.73 feet to the Northeast corner of said Southeast quarter of the Northwest quarter;

THENCE South 0°35'03" West 553.42 feet to the true point of beginning.

EXHIBIT “B”

Description of Leased Premises and Site Plan

