



General Manager
334 Front Street
Ketchikan, AK. 99901

(907) 228-5603 phone
(907) 225-5075 fax

6b(1)

TRANSMITTAL MEMORANDUM

TO: The Honorable Mayor and City Council

FROM: Karl R. Amylon, General Manager

DATE: June 22, 2020

RE: **Ordinance No. 20-1914 – Approving A New Cingular Wireless PCS, LLC Tower Structure Lease Agreement; Providing For The Filing Of Referendum Petitions; And Establishing An Effective Date**

The attached ordinance was approved in first reading at the City Council meeting of June 18, 2020. If adopted in second reading, Ordinance No. 20-1914 provides for approving a tower structure lease agreement between the City of Ketchikan d/b/a Ketchikan Public Utilities and New Cingular Wireless PCS, LLC for the use of space on the City owned cell tower adjacent to the landfill. The rationale for the lease agreement is detailed in Mr. Cushing's transmittal memorandum and requires no elaboration on the part of my office. I concur with the Telecommunications Division Manager's recommendation.

Since the term of the lease will likely extend beyond five years, approval of the tower structure lease agreement by ordinance is required.

Mr. Cushing will be attending the City Council meeting of July 2, 2020, in order to address any questions and/or concerns that Councilmembers may have.

A motion has been prepared for City Council consideration.

RECOMMENDATION

It is recommended the City Council adopt the motion approving in second reading Ordinance No. 20-1914 approving a New Cingular Wireless PCS, LLC tower structure lease agreement; providing for the filing of referendum petitions; and establishing an effective date.

Recommended Motion: I move the City Council approve in second reading Ordinance No. 20-1914 approving a New Cingular Wireless PCS, LLC tower structure lease agreement; providing for the filing of referendum petitions; and establishing an effective date.



KPU Telecommunications

2970 Tongass Avenue
Ketchikan, AK 99901

Phone (907) 225-1000
Fax (907) 225-1788

Memorandum

To: Karl R. Amylon, KPU General Manager

From: Ed Cushing, KPU Telecommunications Division Manager

Date: June 15, 2020

Subject: **Ordinance 20-1914 – Approving a New Cingular Wireless PCS, LLC Tower Structure Lease Agreement.**

The purpose of this memorandum is to request City Council approval of Ordinance 20-1914 to enter into the New Cingular Wireless PCS, LLC Tower Structure Lease Agreement. The agreement allows New Cingular Wireless PCS, LLC (AT&T Mobility) to co-locate cellular equipment on the cellular tower (located near the landfill site) owned by City of Ketchikan, d/b/a KPU Telecommunications Division.

Background:

The 'landfill tower' was constructed in 2014 as part of KPUTel's entry into the Verizon LTE in Rural America (LRA) program. The tower was constructed in anticipation of leasing excess capacity to other providers - and as required by the Ketchikan Gateway Borough code for tower construction.

KPU Telecom has negotiated the New Cingular Wireless PCS, LLC Tower Structure Lease Agreement, is comfortable with the terms and conditions, and recommends City Council approval. The rate is based on market price with the initial lease amount being \$4,117.50 per month, or \$49,410 annually.

The terms of the Agreement anticipate the lease extending beyond 5 years. Accordingly, Council approval of Ordinance 20-1914 is required. This memorandum includes a motion for passage of the Ordinance.

Recommended Motion:

I move that the City Council approve Ordinance No. 20-1914 an Ordinance of the Council of the City of Ketchikan, Alaska; Approving a New Cingular Wireless PCS, LLC Tower Structure Lease Agreement; Providing for the Filing of Referendum Petitions; and Establishing an Effective Date.

Cc: Lacey Simpson, Assistant KPU Manager
Bob Newell, City Finance Director

THE CITY OF KETCHIKAN, ALASKA

ORDINANCE NO. 20-1914

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KETCHIKAN, ALASKA; APPROVING A NEW CINGULAR WIRELESS PCS, LLC. TOWER STRUCTURE LEASE AGREEMENT; PROVIDING FOR THE FILING OF REFERENDUM PETITIONS; AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KETCHIKAN, ALASKA, AS FOLLOWS:

Section 1: Approval. The New Cingular Wireless PCS, LLC Tower Structure Lease Agreement between the City of Ketchikan and New Cingular Wireless PCS, LLC, copies of which were available to be reviewed by the City Council at the June 18, 2020 City Council meeting are hereby approved and the City Manager is authorized to enter into said agreement on behalf of the City. Copies of said agreement are available for public inspection in the Offices of the City Clerk, 334 Front Street, Ketchikan Alaska.

Section 2: Effective Date. In accordance with Charter Section 5.17, if one or more referendum petitions with signatures are properly filed within one (1) month after passage and publication of this ordinance, this ordinance shall not go into effect until the petition or petitions are finally found to be illegal and/or insufficient, or, if any such petition is found legal and sufficient, until this ordinance is approved at an election by a majority of the qualified voters voting on the question. If no referendum petition with signatures is filed, this ordinance shall go into effect one (1) month after its passage and publication.

PASSED ON FIRST READING: _____

FINAL PASSAGE: _____

Robert Sivertsen, Mayor

ATTEST:

Kim Stanker
City Clerk

EFFECTIVE		DATE:	
ROLL CALL	YEA	NAY	ABSENT
COOSE			
GAGE			
FLORA			
BERGERON			
KIFFER			
CHAPPEL			
ZENGE			
MAYOR			

Market: Alaska
Cell Site Number: JN3060
Cell Site Name: Stedman
Search Ring Name: Stedman
Fixed Asset Number: 14738341

TOWER STRUCTURE LEASE AGREEMENT

THIS TOWER STRUCTURE AGREEMENT (“**Agreement**”), dated as of the latter of the signature dates below (the “**Effective Date**”), is entered into by City of Ketchikan, Alaska, a municipal corporation, having a mailing address of 334 Front Street, Ketchikan, Alaska 99901 (“**Landlord**”) and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd. NE, 3rd Floor, Atlanta, GA 30319 (“**Tenant**”).

BACKGROUND

Landlord owns or controls that certain plot, parcel or tract of land, as described on **Exhibit 1**, improved with a tower structure (the “**Tower**”), and related ground space and parking area (**Communications Site**), together with all rights and privileges arising in connection therewith, located at 1103 Nordstrom Drive, Ketchikan, Alaska 99901, in the Borough of Ketchikan Gateway, State of Alaska (collectively, the “**Property**”). Landlord desires to grant to Tenant the right to use a portion of the Property in accordance with this Agreement.

The parties agree as follows:

1. LEASE OF PREMISES. Landlord hereby leases to Tenant a portion of the Property consisting of:

(a) Approximately 567 square feet of ground space, as described on attached **Exhibit 1**, for the placement of Tenant’s equipment (the “**Ground Space**”);

(b) The portion of the Tower at 110’ for installation and operation of Tenant’s communications equipment as listed and described on **Exhibit 2** to the Agreement, which is hereby incorporated into and made part of this Agreement (the “**Tower Space**”).;

(c) Those certain areas where Tenant’s conduits, wires, cables, cable trays and other necessary connections (and the cables, wires, and other necessary connections and improvements of such third parties related to Tenant, such as Tenant’s utility providers) are located between the Ground Space and the Tower Space (the “**Connection Space**”).

2. PERMITTED USE.

(a) Tenant may use the Premises for the transmission and reception of communications signals and the installation, construction, maintenance, operation, repair, replacement and upgrade of communications fixtures and related equipment, cables, accessories and improvements, which may include a suitable support structure, associated antennas, equipment shelters or cabinets and fencing and any other items necessary to the successful and secure use of the Premises (the “**Communication Facility**” or “**Communication Facilities**”), as well as the right to test, survey and review title on the Property;. Tenant further has the right but not the obligation to add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including, but not limited to, emergency 911 communication services, at no additional cost to Tenant or Landlord (collectively, the “**Permitted Use**”), provided that if any such addition, modification or replacement results in an increase in the Tower’s structural loading, the Landlord shall have the right to charge Tenant a reasonable increase in Rent and Tenant shall pay for any necessary structural enhancements necessary for the Tower to accommodate such increased structural loading. Notwithstanding the foregoing, in no event may Landlord change an increase in Rent for additions, modifications or replacements to the Communication Facilities located on the ground portion of the Premises. For a period of ninety (90) days following the start of construction, Landlord grants Tenant, its subtenants, licensees and sublicensees, the right to use such portions of the Surrounding Property as may reasonably be required during construction and installation of the Communication Facility. Tenant has the

right to install and operate transmission cables from the equipment shelter or cabinet to the antennas, electric lines from the main feed to the equipment shelter or cabinet., install a generator and to make other improvements, alterations, upgrades or additions appropriate for Tenant's Permitted Use, including the right to construct a fence around the Premises or equipment, install warning signs to make individuals aware of risks, install protective barriers, install any other control measures reasonably required by Tenant's safety procedures or applicable law, and undertake any other appropriate means to secure the Premises or equipment at Tenant's expense.

3. **TERM.**

(a) The initial lease term will be five (5) years (the "**Initial Term**"), commencing on the Effective Date. The Initial Term will terminate on the fifth (5th) anniversary of the Effective Date.

(b) This Agreement will automatically renew for five (5) additional five (5) year term(s) (each additional five (5) year term shall be defined as an "**Extension Term**"), upon the same terms and conditions set forth herein unless Tenant notifies Landlord in writing of Tenant's intention not to renew this Agreement at least ninety (90) days prior to the expiration of the Initial Term or the then-existing Extension Term.

(c) Unless (i) Landlord or Tenant notifies the other in writing of its intention to terminate this Agreement at least six (6) months prior to the expiration of the final Extension Term, or (ii) the Agreement is terminated as otherwise permitted by this Agreement prior to the end of the final Extension Term, this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of one (1) year, and for annual terms thereafter ("**Annual Term**") until terminated by either party hereto by giving to the other party hereto written notice of its intention to so terminate at least six (6) months prior to the end of any such Annual Term. If Tenant remains in possession of the Premises after the termination of this Agreement, then Tenant will be deemed to be occupying the Premises on a month-to-month basis (the "**Holdover Term**"), subject to the terms and conditions of this Agreement.

(d) The Initial Term, any Extension Terms, any Annual Terms and any Holdover Term are collectively referred to as the "**Term.**"

4. **RENT.**

(a) Commencing on the first day of the month following the date that Tenant commences construction (the "**Rent Commencement Date**"), Tenant will pay Landlord on or before the fifth (5th) day of each calendar month in advance, Four Thousand One Hundred Seventeen and 50/100 Dollars (\$4,117.50) (the "**Rent**"), at the address set forth above. In any partial month occurring after the Rent Commencement Date, the Rent will be prorated. The initial Rent payment will be forwarded by Tenant to Landlord within forty-five (45) days after the Rent Commencement Date.

b) Upon the first anniversary of the Commencement Date, and upon each anniversary thereafter, the monthly Rent payment due by Tenant shall increase by Two and one-half percent (2.5%).

(c) All charges payable under this Agreement such as utilities and taxes shall be billed by Landlord within one (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by Landlord, and shall not be payable by Tenant. The foregoing shall not apply to monthly Rent which is due and payable without a requirement that it be billed by Landlord. The provisions of this subsection shall survive the termination or expiration of this Agreement.

5. **APPROVALS.**

(a) Landlord agrees that Tenant's ability to use the Premises is contingent upon the suitability of the Premises and Property for the Permitted Use and Tenant's ability to obtain and maintain all Government Approvals. Landlord authorizes Tenant to prepare, execute and file all required applications to obtain Government Approvals for the Permitted Use and agrees to reasonably assist Tenant with such applications and with obtaining and maintaining the Government Approvals.

(b) Tenant has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of its choice.

(c) Tenant may also perform and obtain, at Tenant's sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigation or other tests or reports on, over, and under the Property, necessary to determine if Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system, design, operations or Government Approvals.

6. **TERMINATION.** This Agreement may be terminated, without penalty or further liability, as follows:

(a) by either party on thirty (30) days prior written notice, if the other party remains in default under Section 15 of this Agreement after the applicable cure periods;

(b) by Tenant upon written notice to Landlord, if Tenant is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now or hereafter intended by Tenant;;

;

(c) by Tenant upon written notice to Landlord for any reason or no reason, so long as Tenant pays Landlord a termination fee of Five Thousand Dollars (\$5,000.00), at any time prior to commencement of construction by Tenant; or

(d) by Tenant, after the Initial Term, upon sixty (60) days' prior written notice to Landlord for any reason or no reason, so long as Tenant pays Landlord a termination fee equal to six (6) months' Rent, at the then-current rate, provided, however, that no such termination fee will be payable on account of the termination of this Agreement by Tenant under any termination provision contained in any other Section of this Agreement, including the following: Section 5 Approvals, Section 6(a) Termination, Section 6(b) Termination, Section 6(c) Termination, Section 6(d) Termination, Section 11(d) Environmental, Section 18 Condemnation or Section 19 Casualty.

7. **INSURANCE.** During the Term, Tenant will carry in full force and effect the following types and amounts of insurance:

(b) (a) Workers compensation and employers liability insurance, as required by law covering all its employees who perform any of the obligations of Tenant under the Agreement. With employer's liability limits of \$1,000,000 each accident, \$1,000,000 by disease policy limits, and \$1,000,000 by disease each employee. If any employer or employee is not subject to the workers' compensation laws of Alaska, the insurance shall be obtained voluntarily to extend to the employer and employee coverage to the exact same extent as though the employer or employee were subject to the workers compensation laws. Commercial General liability insurance, per ISO form CG 00 01 or equivalent, covering all operations under the Agreement with limits of \$2 million combined single limit per occurrence and in the aggregate for bodily injury and property damage. Pollution legal liability coverage or self-insurance in the amount of \$300,000 per claim and in the aggregate covering third party claims for bodily injury, property damage or cleanup costs as required by law, where the pollution is caused during and by Tenant's operations under this Agreement. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella. Waiver of subrogation as respects to Landlord is required. Landlord is to be included as an additional insured by endorsement with respect to this Agreement. Tenant's policy is to be Primary and Landlord's Policy to be Non-Contributory.

(c) The policies of insurance shall be in such form and issued by such insurer eligible to do business in the state of Alaska. The policies are to be underwritten by insurers with an AM Best Financial Strength Rate of not less than A-VII. The Tenant shall furnish Landlord a certificate of insurance evidencing compliance with the foregoing requirements. Tenant will provide at least 30 days written notice to Landlord, of cancellation or non-renewal of any required coverage that is not replaced.

(d) Notwithstanding the foregoing, Tenant shall have the right to self-insure any of the required insurance under the same terms as required by this Agreement.

8. INTERFERENCE.

(a) Prior to or concurrent with the execution of this Agreement, Landlord has provided or will provide Tenant with a list of radio frequency user(s) and frequencies used on the Property as of the Effective Date. Tenant warrants that its use of the Premises will not interfere with those existing radio frequency uses on the Property, as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations.

(b) Landlord will not grant, after the Effective Date, a lease, license or any other right to any third party, if the exercise of such grant may in any way adversely affect or interfere with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will notify Tenant in writing prior to granting any third party the right to install and operate communications equipment on the Property.

(c) Landlord will not, nor will Landlord permit its employees, tenants, licensees, invitees, agents or independent contractors to interfere in any way with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will cause such interference to cease within twenty-four (24) hours after receipt of notice of interference from Tenant. In the event any such interference does not cease within the aforementioned cure period, Landlord shall cease all operations which are suspected of causing interference (except for intermittent testing to determine the cause of such interference) until the interference has been corrected.

(d) For the purposes of this Agreement, "interference" may include, but is not limited to, any use on the Property or Surrounding Property that causes electronic or physical obstruction with, or degradation of, the communications signals from the Communication Facility.

9. INDEMNIFICATION.

(a) Tenant agrees to indemnify, defend and hold Landlord harmless from and against any and all injury, loss, damage or liability, costs or expenses in connection with a third party claim (including reasonable attorneys' fees and court costs) arising directly from the installation, use, maintenance, repair or removal of the Communication Facility or Tenant's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Landlord, its employees, invitees, agents or independent contractors.

(b) Landlord agrees to indemnify, defend and hold Tenant harmless from and against any and all injury, loss, damage or liability, costs or expenses in connection with a third party claim (including reasonable attorneys' fees and court costs) arising directly from the actions or failure to act of Landlord, its employees, invitees, agents or independent contractors, or Landlord's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Tenant, its employees, agents or independent contractors.

(c) The indemnified party: (i) shall promptly provide the indemnifying party with written notice of any claim, demand, lawsuit, or the like for which it seeks indemnification pursuant to this Section 9 and provide the indemnifying party with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of the indemnifying party; and (iii) shall fully cooperate with the indemnifying party in the defense of the claim, demand, lawsuit, or the like. A delay in notice shall not relieve the indemnifying party of its indemnity obligation, except (1) to the extent the indemnifying party can show it was prejudiced by the delay; and (2) the indemnifying party shall not be liable for any settlement or litigation expenses incurred before the time when notice is given.

10. WARRANTIES.

(a) Each of Tenant and Landlord (to the extent not a natural person) each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power, and authority or capacity, as applicable, to enter into this Agreement and bind itself hereto through the party or individual set forth as signatory for the party below.

(b) Landlord represents, warrants and agrees that: (i) Landlord solely owns the Property as a legal lot in fee simple, or controls the Property by lease or license and solely owns the Tower; (ii) the Property is not and

will not be encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record or not of record, which would adversely affect Tenant's Permitted Use and enjoyment of the Premises under this Agreement; (iii) Landlord grants to Tenant sole, actual, quiet and peaceful use, enjoyment and possession of the Premises in accordance with the terms of this Agreement without hindrance or ejection by any persons lawfully claiming under Landlord ; (iv) Landlord's execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on Landlord; and (v) if the Property is or becomes encumbered by a deed to secure a debt, mortgage or other security interest, then Landlord will provide promptly to Tenant a mutually agreeable subordination, non-disturbance and attornment agreement executed by Landlord and the holder of such security interest in the form attached hereto as **Exhibit10(b)**.

11. ENVIRONMENTAL.

(a) Landlord represents and warrants that Landlord's Communications Site has not been unlawfully used by Landlord or the generation, storage, treatment or disposal of Hazardous Substances. Tenant represents and warrants that no Hazardous Substances in violation of any law will be transported to, used or stored on the Communications Site by Tenant or its agents, employees or contractors.

(b) Landlord and Tenant agree to hold harmless and indemnify the other from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of the indemnifying party for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding ("**Claims**"), to the extent arising from that party's breach of its obligations or representations under Section 11(a). Landlord agrees to hold harmless and indemnify Tenant from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of Landlord for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent arising from subsurface or other contamination of the Property with hazardous substances prior to the Effective Date or from such contamination caused by the acts or omissions of Landlord during the Term. Tenant agrees to hold harmless and indemnify Landlord from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of Tenant for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent arising from hazardous substances brought onto the Property by Tenant.

(c) The indemnification provisions contained in this Section 11 specifically include reasonable costs, expenses and fees incurred in connection with any investigation of Property conditions or any clean-up, remediation, removal or restoration work required by any governmental authority. The provisions of this Section 11 will survive the expiration or termination of this Agreement.

(d) In the event Tenant becomes aware of any hazardous materials on the Communications Site, or any environmental, health or safety condition or matter relating to the Communications Site, that, in Tenant's sole determination, renders the condition of the Premises or Property unsuitable for Tenant's use, or if Tenant believes that the leasing or continued leasing of the Premises would expose Tenant to undue risks of liability to a government agency or other third party, then Tenant will have the right, in addition to any other rights it may have at law or in equity, to terminate this Agreement upon written notice to Landlord.

12. ACCESS. At all times throughout the Term of this Agreement, and at no additional cost to Tenant,, Tenant and its employees, agents, and subcontractors, upon 24 hour advance notice to Landlord, will have twenty-four (24) hour per day, seven (7) day per week pedestrian and vehicular access ("**Access**") to and over the Property for the installation, maintenance and operation of the Communication Facility and any utilities serving the Premises. In the event of an emergency Landlord will waive 24 hour advance notice, but Tenant shall give Landlord notice prior to entry Landlord agrees to provide to Tenant such codes, keys and other instruments necessary for such Access at no additional cost to Tenant. Landlord acknowledges that in the event Tenant cannot

obtain Access to the Premises, Tenant shall incur significant damage. If Landlord fails to provide the Access granted by this Section 12, such failure shall be a default under this Agreement. In connection with such default, in addition to any other rights or remedies available to Tenant under this Agreement or at law or equity, Landlord shall pay Tenant, as liquidated damages and not as a penalty, \$500.00 per day in consideration of Tenant's damages until Landlord cures such default. Landlord and Tenant agree that Tenant's damages in the event of a denial of Access are difficult, if not impossible, to ascertain, and the liquidated damages set forth above are a reasonable approximation of such damages.

13. REMOVAL/RESTORATION. All portions of the Communication Facility brought onto the Property by Tenant (except rock work and fencing, which will become property of Landlord upon installation) will be and remain Tenant's personal property and, at Tenant's option, may be removed by Tenant at any time during or after the Term. Landlord covenants and agrees that no part of the Communication Facility constructed, erected or placed on the Premises by Tenant will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of Landlord that all improvements of every kind and nature constructed, erected or placed by Tenant on the Premises will be and remain the property of Tenant and may be removed by Tenant at any time during or after the Term. Tenant will repair any damage to the Property resulting from Tenant's removal activities. Any Property which is not removed by Tenant within one hundred twenty (120) days after expiration or earlier termination of this Agreement, shall at the option of Landlord (i) be removed and discarded or stored by Landlord at Tenant's expense, or (ii) become the property of Landlord, and Tenant shall thereafter have no rights, obligations or liabilities whatsoever with respect thereto. Tenant shall be responsible for the replacement of trees, shrubs or other vegetation damaged as a result of such removal and restoration.

14. MAINTENANCE/UTILITIES.

(a) Tenant will keep and maintain the Premises in good condition, reasonable wear and tear and damage from the elements excepted.

(b) Landlord will maintain and repair the Property and access thereto, the Tower, and all areas of the Premises where Tenant does not have exclusive control, in good and tenantable condition, subject to reasonable wear and tear and damage from the elements. Tenant will not be responsible for maintenance of Landscaping on the Property or the Premises. Landlord shall maintain the Tower's structural integrity at all times (which shall mean that at no time will Landlord allow the Tower's condition to become, or remain, overstressed under the applicable structural standards set forth in the then-current version of the ANSI TIA-222).

(c) Tenant will be responsible for paying on a monthly or quarterly basis all utilities charges for electricity, telephone service or any other utility used or consumed by Tenant on the Premises.

(d) Landlord will provide modern and sufficient utilities, including electric power and telecommunications, to the Communications Site. If modern and sufficient utilities are not provided by Landlord, Tenant will have the right to install utilities, at Tenant's expense, and to improve present utilities on the Property and the Premises by utilizing the existing pole line built to the Communications Site, subject to Landlord's written approval, which approval shall not be unreasonably withheld, delayed or conditioned.

15. DEFAULT AND RIGHT TO CURE.

(a) The following will be deemed a default by Tenant and a breach of this Agreement: (i) non-payment of Rent if such Rent remains unpaid for more than thirty (30) days after written notice from Landlord of such failure to pay; or (ii) Tenant's failure to perform any other term or condition under this Agreement within forty-five (45) days after written notice from Landlord specifying the failure. No such failure, however, will be deemed to exist if Tenant has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Tenant. If Tenant remains in default beyond any applicable cure period, then Landlord will have the right to exercise any and all rights and remedies available to it under law and equity.

(b) The following will be deemed a default by Landlord and a breach of this Agreement: (i) Landlord's failure to provide Access to the Premises as required by Section 12 within twenty-four (24) hours after written notice of such failure; (ii) Landlord's failure to cure an interference problem as required by Section 8 of this Agreement within twenty-four (24) hours after written notice of such failure; or (iii) Landlord's failure to perform any term, condition or breach of any warranty or covenant under this Agreement within forty-five (45) days after written notice from Tenant specifying the failure. No such failure, however, will be deemed to exist if Landlord has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Landlord. If Landlord remains in default beyond any applicable cure period, then Tenant will have the right to exercise any and all rights available to it under law and equity.

16. ASSIGNMENT/SUBLEASE. The Tenant shall not assign, transfer, convey, pledge, hypothecate, sublet, subcontract, or otherwise dispose of or encumber this Agreement, or the rights thereunder, nor shall the Tenant delegate any of its duties hereunder without the prior written consent of the Landlord, which shall not be unreasonably withheld, provided that Tenant may assign this Agreement to an Affiliate, as defined in Section 24(i) below. Any such attempted assignment, transfer, conveyance, pledge, hypothecation, subletting, or other disposition, or the attempted assignment, disposition or delegation of duties or rights shall be null and void and of no force or effect and shall be the grounds and cause for immediate termination of the Agreement without liability by and at the option of the Landlord.

17. NOTICES. All notices, requests and demands hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties hereto as follows:

If to Tenant: New Cingular Wireless PCS, LLC
 Attn: Network Real Estate Administration
 Re: Cell Site #: JN3060; Cell Site Name: Stedman (AK)
 Fixed Asset #: 14738341
 1025 Lenox Park Blvd NE, 3rd Floor
 Atlanta, Georgia 30319

With a copy to: New Cingular Wireless PCS, LLC
 Attn.: Legal Dept – Network Operations
 Re: Cell Site #: JN3060; Cell Site Name: Stedman (AK)
 Fixed Asset #: 14738341
 208 S. Akard Street
 Dallas, TX 75202-4206

If to Landlord: City of Ketchikan, Alaska
 Attn: City Manager
 334 Front Street
 Ketchikan, Alaska 99901

With a copy to: Ketchikan Public Utilities
Attn.: Telecommunications Division Manager
2970 Tongass Ave.
Ketchikan, AK 99901

Either party hereto may change the place for the giving of notice to it by thirty (30) days' prior written notice to the other party hereto as provided herein.

18. CONDEMNATION. In the event Landlord receives notification of any condemnation proceedings affecting the Property, Landlord will provide notice of the proceeding to Tenant within ten (10) days. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's sole, reasonable determination, to render the Premises unsuitable for Tenant, this Agreement will terminate as of the date the title vests in the condemning authority. The parties will each be entitled to pursue their own separate awards in the condemnation proceeds, which for Tenant will include, where applicable, the value of its Communication Facility, moving expenses, prepaid Rent, and business dislocation expenses.

19. CASUALTY. Landlord will provide notice to Tenant of any casualty or other harm affecting the Communication Site within five (5) days of the casualty. If any part of the Communication Facility is damaged by casualty as to render the Premises unsuitable, in Tenant's sole reasonable determination, then Tenant may terminate this Agreement, at any time after such damage or harm, by providing written notice to Landlord, which termination will be effective as of the date of such casualty. Upon such termination, Tenant will be entitled to collect all insurance proceeds payable to Tenant on account thereof. Landlord agrees to permit Tenant to place temporary transmission and reception facilities on the Communications Site, if there is adequate space on the Communications Site, as reasonably determined by Landlord, but only until such time as Tenant is able to activate a replacement transmission facility at another location; notwithstanding the termination of this Agreement, such temporary facilities will be governed by all of the terms and conditions of this Agreement, including Rent.

20. WAIVER OF LANDLORD'S LIENS. Landlord waives any and all lien rights it may have, statutory or otherwise, concerning the Communication Facility or any portion thereof. The Communication Facility shall be deemed personal property for purposes of this Agreement, regardless of whether any portion is deemed real or personal property under applicable law; Landlord consents to Tenant's right to remove all or any portion of the Communication Facility from time to time in Tenant's sole discretion and without Landlord's consent.

21. TAXES. Landlord shall be responsible for all taxes and assessments levied upon the lands, improvements and other property of Landlord.

22. SALE OF PROPERTY.

(a) Landlord may sell the Property or a portion thereof to a third party, provided: (i) the sale is made subject to the terms of this Agreement; and (ii) if the sale does not include the assignment of Landlord's full interest in this Agreement, the purchaser must agree to perform, without requiring compensation from Tenant or any subtenant, any obligation of Landlord under this Agreement, including Landlord's obligation to cooperate with Tenant as provided hereunder.

(b) In the event of a change in ownership, transfer or sale of the Property, within thirty (30) days of such transfer, Landlord or its successor shall notify Tenant in writing. Any payment made by Tenant during the transfer will be prorated between Landlord and its successor based on the closing date of the change in ownership.

23. Right of First Refusal. Notwithstanding the provisions contained in Section 23, if at any time after the Effective Date, Landlord receives a bona fide written offer from a third party seeking any sale, conveyance, assignment or transfer of the Rent payments associated with this Agreement or an offer to purchase an easement

with respect to the Premises (“Offer”), Landlord shall immediately furnish Tenant with a copy of the Offer. Tenant shall have the right within ninety (90) days after it receives such copy to match the financial terms of the Offer and agree in writing to match such terms of the Offer. If Tenant chooses not to exercise this right or fails to provide written notice to Landlord within the ninety (90) day period, Landlord may sell, convey, assign or transfer such property interest in or related to the Premises pursuant to the Offer, subject to the terms of this Agreement.

24. MISCELLANEOUS.

(a) **Amendment/Waiver.** This Agreement cannot be amended, modified or revised unless done in writing and signed by Landlord and Tenant. No provision may be waived except in a writing signed by both parties. The failure by a party to enforce any provision of this Agreement or to require performance by the other party will not be construed to be a waiver, or in any way affect the right of either party to enforce such provision thereafter.

(b) **Memorandum/Short Form Lease.** Contemporaneously with the execution of this Agreement, the parties will execute a recordable Memorandum of Lease substantially in the form attached as **Exhibit 24(b)**. Either party may record this Memorandum of Lease at any time during the Term, in its absolute discretion. Thereafter during the Term, either party will, at any time upon fifteen (15) business days’ prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum of Lease.

(c) **Limitation of Liability.** Except for the indemnity obligations set forth in this Agreement, and otherwise notwithstanding anything to the contrary in this Agreement, Tenant and Landlord each waives any claims that each may have against the other with respect to consequential, incidental or special damages, however caused, based on any theory of liability.

(d) **Compliance with Law.** Tenant agrees to comply with all federal, state and local laws, orders, rules and regulations (“Laws”) applicable to Tenant’s use of the Communication Facility on the Property. Landlord agrees to comply with all Laws relating to Landlord’s ownership and use of the Property and any improvements on the Property.

(e) **Bind and Benefit.** The terms and conditions contained in this Agreement will run with the Property and bind and inure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns.

(f) **Entire Agreement.** This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement. Exhibits are numbered to correspond to the Section wherein they are first referenced. Except as otherwise stated in this Agreement, each party shall bear its own fees and expenses (including the fees and expenses of its agents, brokers, representatives, attorneys, and accountants) incurred in connection with the negotiation, drafting, execution and performance of this Agreement and the transactions it contemplates.

(g) **Governing Law.** This Agreement will be governed by the laws of the state in which the Premises are located, without regard to conflicts of law.

(h) **Interpretation.** Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term “including” will be interpreted to mean “including but not limited to”; (iii) whenever a party’s consent is required under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of this Agreement and are incorporated by reference into this Agreement; (v) use of the terms “termination” or “expiration” are interchangeable; (vi) reference to a default will take into consideration any applicable notice, grace and cure periods; (vii) to the extent there is any issue with respect to any alleged, perceived or actual ambiguity in this Agreement, the ambiguity shall not be resolved on the basis of who drafted the Agreement; (viii) the singular use of words includes the plural where appropriate; and (ix) if any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force if the overall purpose of the Agreement is not rendered impossible and the original purpose, intent or consideration is not materially impaired.

(i) **Affiliates.** All references to “Tenant” shall be deemed to include any Affiliate of New Cingular Wireless PCS, LLC using the Premises for any Permitted Use or otherwise exercising the rights of Tenant pursuant to this Agreement. “Affiliate” means with respect to a party to this Agreement, any person or entity that (directly or indirectly) controls, is controlled by, or under common control with, that party. “Control” of a person or entity means the power (directly or indirectly) to direct the management or policies of that person or entity, whether through the ownership of voting securities, by contract, by agency or otherwise.

(j) **Survival.** Any provisions of this Agreement relating to indemnification shall survive the termination or expiration hereof. In addition, any terms and conditions contained in this Agreement that by their sense and context are intended to survive the termination or expiration of this Agreement shall so survive.

(k) **W-9.** As a condition precedent to payment, Landlord agrees to provide Tenant with a completed IRS Form W-9, or its equivalent, upon execution of this Agreement and at such other times as may be reasonably requested by Tenant, including any change in Landlord’s name or address.

(l) **Execution/No Option.** The submission of this Agreement to any party for examination or consideration does not constitute an offer, reservation of or option for the Premises based on the terms set forth herein. This Agreement will become effective as a binding Agreement only upon the handwritten legal execution, acknowledgment and delivery hereof by Landlord and Tenant. This Agreement may be executed in two (2) or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties. All parties need not sign the same counterpart.

(m) **Attorneys’ Fees.** In the event that any dispute between the parties related to this Agreement should result in litigation, the prevailing party in such litigation shall be entitled to recover from the other party all reasonable fees and expenses of enforcing any right of the prevailing party, including reasonable attorneys’ fees and expenses. Prevailing party means the party determined by the court to have most nearly prevailed even if such party did not prevail in all matters. This provision will not be construed to entitle any party other than Landlord, Tenant and their respective Affiliates to recover their fees and expenses.

(n) **WAIVER OF JURY TRIAL.** EACH PARTY, TO THE EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING UNDER ANY THEORY OF LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE TRANSACTIONS IT CONTEMPLATES.

(o) **Incidental Fees.** Unless specified in this Agreement, no unilateral fees or additional costs or expenses are to be applied by either party to the other party, including review of plans, structural analyses, consents, provision of documents or other communications between the parties.

(p) **Further Acts.** Upon request, Landlord will cause to be promptly and duly taken, executed, acknowledged and delivered all such further acts, documents, and assurances as Tenant may request from time to time in order to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement and all transactions and Permitted Use contemplated by this Agreement.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be effective as of the Effective Date.

“LANDLORD”

City of Ketchikan, Alaska, a municipal corporation

By: _____

Print Name: Karl Amylon

Its: City Manager

Date:

“TENANT”

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

By: AT&T Mobility Corporation

Its: Manager

By: _____

Print Name:

Its:

Date:

[ACKNOWLEDGMENTS APPEAR ON NEXT PAGE]

TENANT ACKNOWLEDGMENT

STATE OF _____)
) ss:
COUNTY OF _____)

On the ____ day of _____, 20__, before me personally appeared _____, and acknowledged under oath that he/she is the _____ of AT&T Mobility Corporation, the Manager of New Cingular Wireless PCS, LLC, the Tenant named in the attached instrument, and as such was authorized to execute this instrument on behalf of the Tenant.

Notary Public: _____
My Commission Expires: _____

CORPORATE ACKNOWLEDGMENT

STATE OF _____)
) ss:
BUROUGH OF _____)

I CERTIFY that on _____, 20__, _____ [name of representative] personally came before me and acknowledged under oath that he or she:

- (a) is the _____ [title] of _____ [name of corporation], the corporation named in the attached instrument,
- (b) was authorized to execute this instrument on behalf of the corporation and
- (c) executed the instrument as the act of the corporation.

Notary Public: _____
My Commission Expires: _____

EXHIBIT 1

DESCRIPTION OF PROPERTY AND PREMISES

Page 1 of 4

to the Tower Structure Lease Agreement dated _____, 20__ by and between, a City of Ketchikan, Alaska, a municipal corporation, as Landlord, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Tenant.

The Property is legally described as follows:

Lot 15A, A.S.L.S. 92-117, according to Plat 96-49, Ketchikan Recording District, First Judicial District, State of Alaska

EXHIBIT 1

DESCRIPTION OF PROPERTY AND PREMISES

Page 2 of 4

The Premises are described and/or depicted as follows:

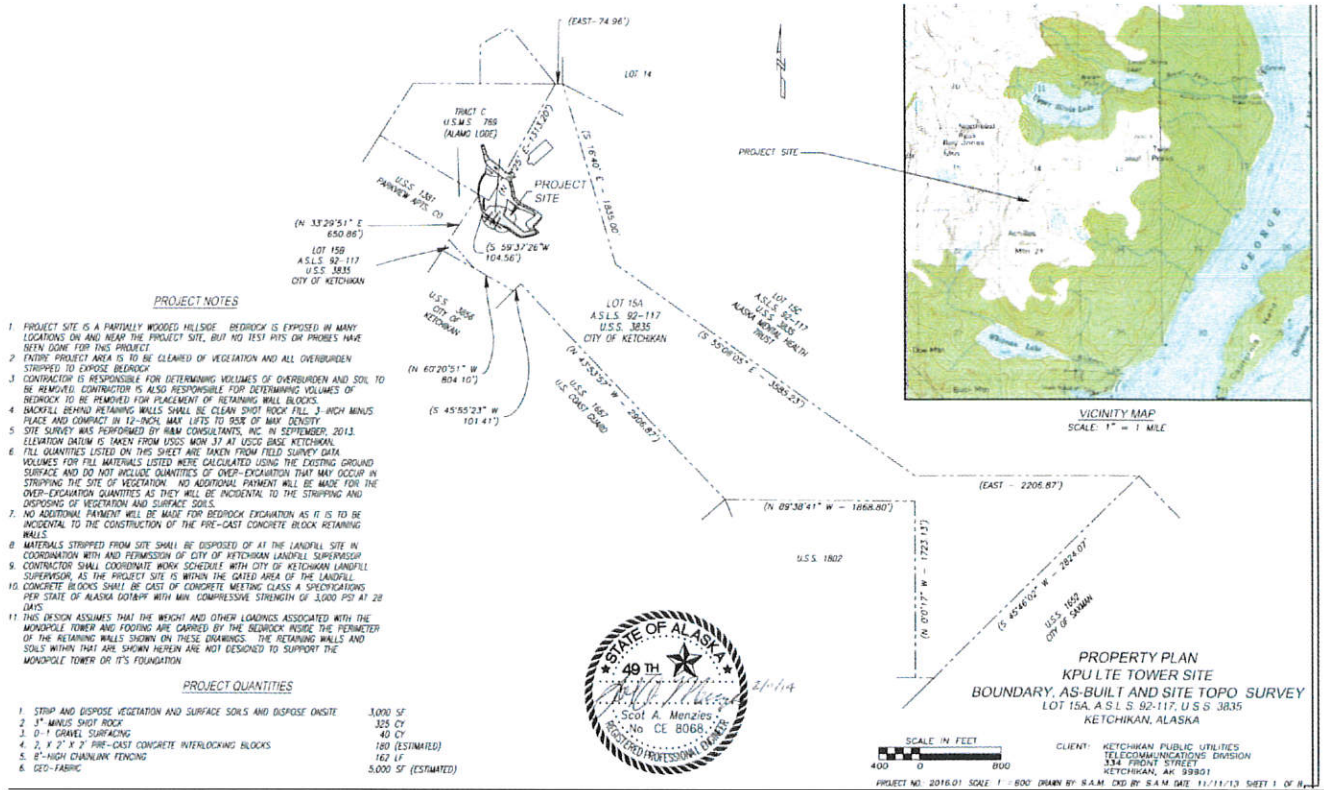
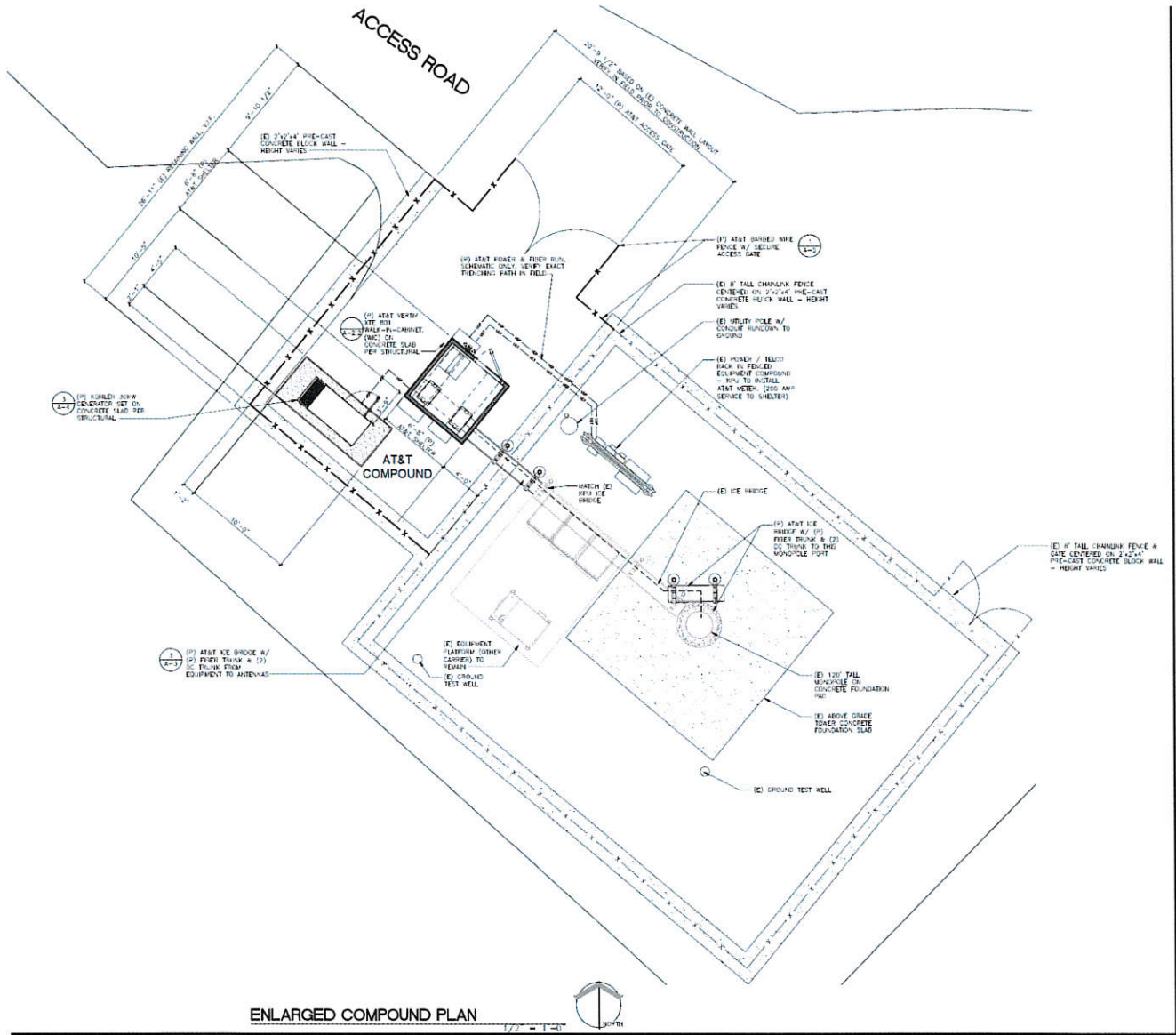


EXHIBIT 1

DESCRIPTION OF PROPERTY AND PREMISES

Page 3 of 4



ENLARGED COMPOUND PLAN



EXHIBIT 1

DESCRIPTION OF PROPERTY AND PREMISES

Page 4 of 4

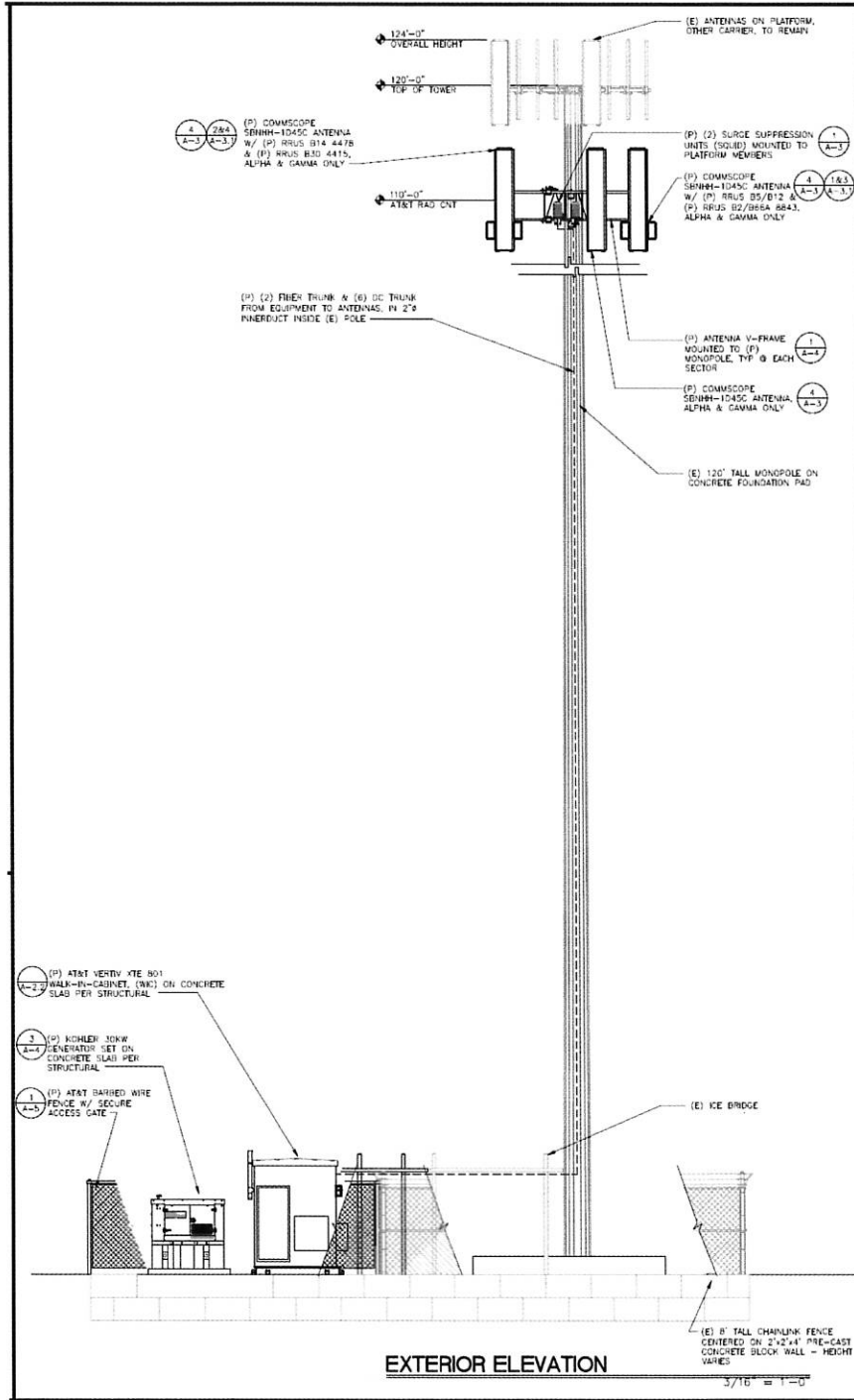


Exhibit 2



2970 Tongass Ave
Ketchikan, AK 99901

Ph: 907.225-1000
Fx: 907.225.1788
dani@city.ketchikan.ak.us

Pricing and Quote for:
New Cingular/AT&T – JN3060
Stedman FA#14738341

Date:
12/10/2019

Location:
Ketchikan City Landfill

Tower & Ground Space Pricing	Amount	Unit	Quantity Requested	Monthly Rate
Tower: 1 Antenna + 1 Radio	\$550.00	Each	7	\$ 3,850.00
Tower: 1 Radio	\$100.00	Each	5	\$ 500.00
Tower: Surge Suppression Unit (Squid) + (2) Fiber Trunk + (6) DC cables			2	\$ 0.00
Ground Equipment Space	\$0.3968	Per Sq. Ft.	567 Sq. Ft	\$ 225.00
			Monthly	\$ 4,575.00
			Discount	(10%)
			Total discount	<u>\$ (457.50)</u>
PRICING NOTES:			MONTHLY TOTAL	<u>\$ 4,117.50</u>

○ **Hide**

Additional non-recurring costs:

KPU escorts are billed to Contractor at KPU Journeyman published Loaded Labor Rate - presently \$125.00 per hour for straight time and \$187.50 per hour for over time.

KPU tower work is billed to Contractor at above labor rates. Two certified climbers are required.

Other Notes:

AT&T will provide climbing certificates for all personnel climbing tower.

EXHIBIT 24(b)

MEMORANDUM OF LEASE

[FOLLOWS ON NEXT PAGE]

Prepared by and Return to:

New Cingular Wireless PCS, LLC
1025 Lenox Park Blvd. NE
3rd Floor
Atlanta, GA 30139

Re: Cell Site No.: JN3060
Cell Site Name: Stedman
Fixed Asset Number: 14738341
State: AK
Ketchikan Recording District

**MEMORANDUM
OF
LEASE**

This Memorandum of Lease is entered into on this ____ day of _____, 2019, by City of Ketchikan, Alaska, a municipal corporation, having a mailing address of 334 Front Street, Ketchikan, Alaska 99901 (“**Landlord**”) and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd. NE, 3rd Floor, Atlanta, GA 30319 (“**Tenant**”).

1. Landlord and Tenant entered into a certain Land Lease Agreement (“**Agreement**”) on the ____ day of _____, 2019, for the purpose of installing, operating and maintaining a communication facility and other improvements. All of the foregoing is set forth in the Agreement.
2. The initial lease term will be five (5) years commencing on the Effective Date, with Five (5) successive automatic five (5) year options to renew.
3. The portion of the land being leased to Tenant and associated easements are described in **Exhibit 1** annexed hereto.
4. This Memorandum of Lease is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Agreement, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum of Lease and the provisions of the Agreement, the provisions of the Agreement shall control. The Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be effective as of the Effective Date.

“LANDLORD”

City of Ketchikan, Alaska, a municipal corporation

By: _____
Print Name:
Its:
Date:

“TENANT”

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

By: AT&T Mobility Corporation
Its: Manager

By: _____
Print Name:
Its:
Date:

[ACKNOWLEDGMENTS APPEAR ON NEXT PAGE]

**EXHIBIT 1 TO MEMORANDUM OF LEASE
DESCRIPTION OF PROPERTY AND PREMISES**

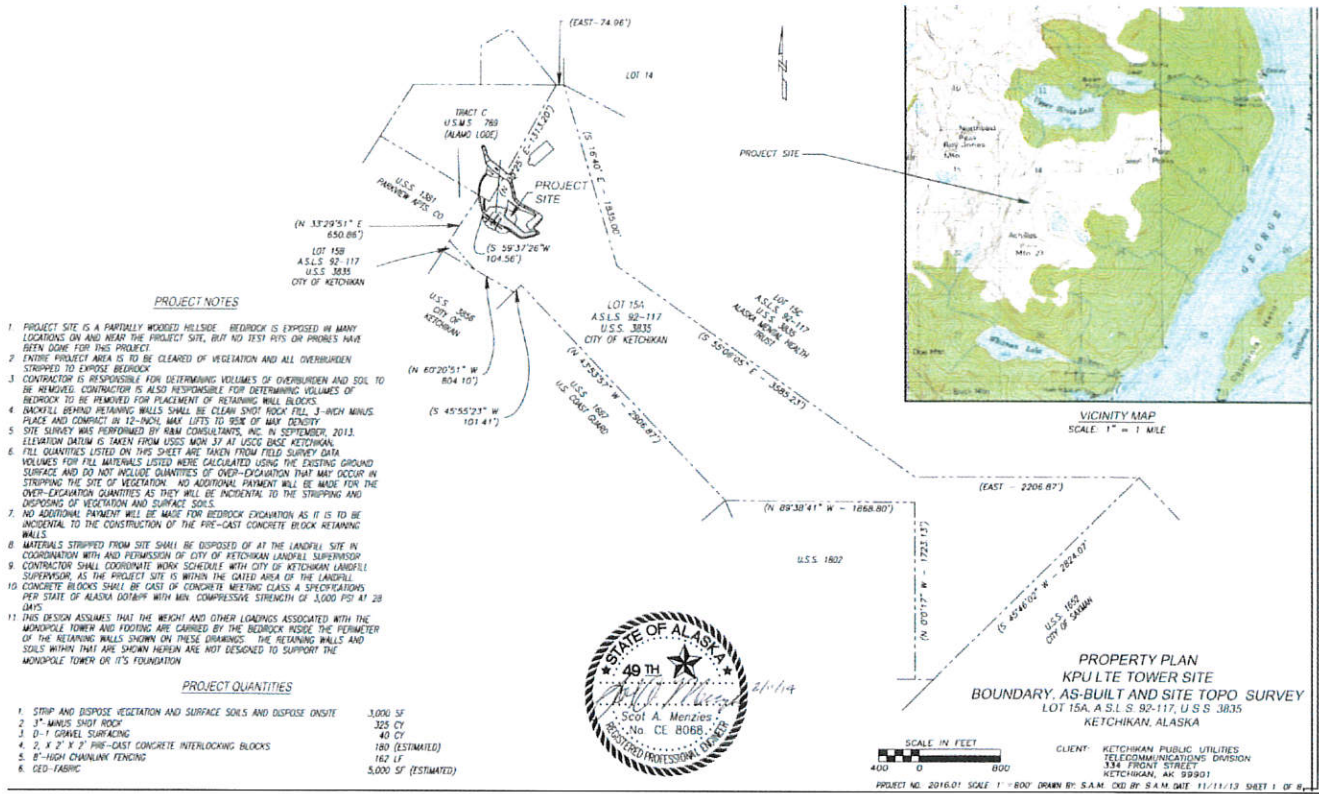
Page 1 of 1

to the Memorandum of Lease dated _____, 2019, by and between, a City of Ketchikan, Alaska, a municipal corporation, as Landlord, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Tenant.

The Property is legally described as follows:

Lot 15A, A.S.L.S. 92-117, according to Plat 96-49, Ketchikan Recording District, First Judicial District, State of Alaska

The Premises are described and/or depicted as follows:



"UNAPPROVED" June 18, 2020

Ketchikan Municipal Code; authorize the general manager to enter into an agreement for such annual long distance termination services with ThinQ at a cost not to exceed \$19,200; and approve funding from the Telecommunications Division's 2020 Rents and Leases - Infrastructure Account No. 645-04.

Motion passed with Coose, Kiffer, Gage, Zenge, Chapel, Flora and Bergeron voting yea.

Exempting the Procurement of Advanced Metering Infrastructure (AMI) Equipment for the Electric Division from the Competitive Bidding/Written Quotation Requirements of the Ketchikan Municipal Code – Cannon Technologies, Inc.

Moved by Zenge, seconded by Gage pursuant to subparagraph 6 of Section 3.12.050(a) of the Ketchikan Municipal Code, the City Council exempt the procurement of Advanced Metering Infrastructure (AMI) equipment for the Electric Division from the competitive bidding/written quotation requirements of the Ketchikan Municipal Code; authorize the general manager to purchase such hardware and software from Cannon Technologies, Inc. at a cost not to exceed \$97,301; and approve funding from the Electric Division's 2020 AMI Meters and Meter Replacement Parts Capital Account.

Motion passed with Zenge, Flora, Chapel, Bergeron, Coose, Kiffer and Gage voting yea.

Amendment No. 2 to Contract No. 18-26 – FERC Relicensing Services for the Beaver Falls Hydroelectric Project – Kleinschmidt Associates

Moved by Zenge, seconded by Gage the City Council approve Amendment No. 2 to Contract No. 18-26, FERC Relicensing Services for the Beaver Falls Hydroelectric Project, between the City of Ketchikan d/b/a Ketchikan Public Utilities and Kleinschmidt Associates, in an amount not to exceed \$220,000; authorize funding from the Electric Division's Beaver Falls Project Relicensing Capital Account; and direct the general manager to execute the amendment on behalf of the City Council.

Motion passed with Gage, Zenge, Flora, Chapel, Coose, Bergeron and Kiffer voting yea.

Ordinance No. 20-1914 – Approving a New Cingular Wireless PCS, LLC Tower Structure Lease Agreement; Providing for the Filing of Referendum Petitions – First Reading

Moved by Zenge, seconded by Gage the City Council approve in first reading Ordinance No. 20-1914 approving a New Cingular Wireless PCS, LLC tower structure lease agreement; providing for the filing of referendum petitions; and establishing an effective date.

Motion passed with Gage, Zenge, Flora, Chapel, Coose, Bergeron and Kiffer voting yea.

Ordinance No. 20-1906 – Amending Chapter 11.12, Telecommunications Service and Rates, of the Ketchikan Municipal Code – First Reading

Moved by Zenge, seconded by Gage the City Council approve in first reading Ordinance No. 20-1906 amending Chapter 11.12, Telecommunications Service and Rates, of the Ketchikan Municipal Code; providing for a public hearing; and establishing an effective date.

Motion passed with Gage, Zenge, Flora, Chapel, Coose, Bergeron and Kiffer voting yea.