RESOLUTION

APPROVING A SECOND AMENDMENT TO THE SITE LEASE AGREEMENT WITH NEW CINGULAR WIRELESS (AT&T / FORMERLY TELECORP) RELATIVE TO ITS ANTENNA FACILITY LOCATED ON THE MINE FALLS PARK CELL TOWER

CITY OF NASHUA

In the Year Two Thousand and Twelve

RESOLVED by the Board of Aldermen of the City of Nashua that the attached Second Amendment to Site Lease Agreement with New Cingular Wireless PCS (AT&T / formerly Telecorp) for real property leased at Mine Falls Park for an antenna facility located on the city’s cell tower, is hereby approved.
LEGISLATIVE YEAR 2012

RESOLUTION: R-12-40

PURPOSE: Approving a second amendment to the site lease agreement with New Cingular Wireless (AT&T / formerly Telecorp) relative to its antenna facility located on the Mine Falls Park cell tower

SPONSOR(S): Mayor Donnalee Lozeau

COMMITTEE ASSIGNMENT:

FISCAL NOTE: Additional $750 in monthly revenue to the city, which will be subject to the 3% annual increase.

ANALYSIS
This resolution approves a second amendment to the Site Lease Agreement between New Cingular Wireless (AT&T / formerly Telecorp) and the City of Nashua. The Site Lease Agreement is for real property leased at Mine Falls Park for an antenna facility located on the city's cell tower. Amendments to the existing agreement include the swapping of three of the existing nine antennas AT&T currently has installed on the tower, adding six remote radio heads and one surge arrestor band, installing two new equipment cabinets on a larger pad, and increasing the monthly rent payments by $750. This resolution should be referred to the Board of Public Works.

Approved as to form: Office of Corporation Counsel

By: [Signature]

Date: May 4, 2012
SECOND AMENDMENT TO SITE LEASE AGREEMENT

THIS SECOND AMENDMENT TO SITE LEASE AGREEMENT ("Second Amendment"), dated as of the latter of the signature dates below, is by and between the City of Nashua, a municipality incorporated in the State of New Hampshire, having a mailing address of 229 Main Street, Nashua, New Hampshire 03061 (hereinafter referred to as "Landlord") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 12555 Cingular Way, Suite 1300, Alpharetta, GA 30004 (hereinafter referred to as "Tenant").

WHEREAS, Landlord and Tenant entered into a Site Lease Agreement dated October 5, 1998, whereby Landlord leased to Tenant certain Leased Premises, therein described, that are a portion of the Property located off Whipple Street at Mines Fall Park, Nashua, NH ("Agreement"); and

WHEREAS, Landlord and Tenant entered into a First Amendment to Site Lease Agreement ("First Amendment"), dated July 12, 2002; and

WHEREAS, Landlord and Tenant desire to amend the Agreement to modify the notice section thereof; and

WHEREAS, Landlord and Tenant desire to amend the Agreement to modify the Leased Premises; and

WHEREAS, Landlord and Tenant desire to amend the Agreement to modify the Use and Equipment; and

WHEREAS, Landlord and Tenant desire to amend the Agreement to increase the amount of Rent; and

WHEREAS, Landlord and Tenant, in their mutual interest, wish to amend the Agreement as set forth below accordingly.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. Exhibit A of the Agreement and Exhibit A of the First Amendment are deleted in their entirety and replaced with the document that is attached to this Second Amendment as Exhibit A. The Leased Premises are increased by adding a 4’ x 11’ concrete pad as shown on Exhibit A.

2. Exhibit B of the Agreement is deleted in its entirety and replaced with the document that is attached to this Second Amendment to Site Lease Agreement as Exhibit B.
3. Rent. Commencing on the first day of the month following the date that Tenant commences construction or installation of its new equipment, Rent shall be increased by Seven Hundred Fifty dollars ($750.00) per month.

4. NOTICES. All notices, requests, demands and communications 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 as follows.

If to Tenant:  New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #: NH2009; Cell Site Name: NASHUA LINCOLN PARK
FA No: 10073186
12555 Cingular Way, Suite 1300
Alpharetta, GA 30004

With a copy to: New Cingular Wireless PCS, LLC
Attn: Legal Department
Re: Cell Site #: NH2009; Cell Site Name: NASHUA LINCOLN PARK
FA No: 10073186
340 Mt. Kemble Ave.
Morristown, NJ 07960-6656

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

If to Landlord:  City of Nashua, NH
Wireless Communications Division
PO Box 785
Nashua, NH 03061-0785

With a copy to:  City of Nashua, NH
Legal Department
CS 2019, 229 Main Street
Nashua, NH 03061-2019

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

5. Memorandum of Lease. Either party will, at any time upon fifteen (15) days prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum of Lease substantially in the form of Attachment 1 hereto. Either party may record this memorandum at any time, in its absolute discretion.

6. Other Terms and Conditions Remain. In the event of any inconsistencies between the Agreement and this Second Amendment, the terms of this Second Amendment shall control. Except as expressly set forth in this Second Amendment, the Agreement otherwise is unmodified and remains in full force and effect. Each reference in the Agreement to itself shall be deemed also to refer to this Second Amendment.
7. **Capitalized Terms.** All capitalized terms used but not defined herein shall have the same meanings as defined in the Agreement.

8. **Governmental Mandates.** In the future, without the payment of additional rent and at a location mutually acceptable to Landlord and Tenant, Landlord agrees that Tenant may 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.

IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute and seal this Second Amendment on the dates set forth below.

"**LANDLORD**"
City of Nashua, New Hampshire
By: __________________________
Name: Donalee Lozeau
Title: Mayor
Date: _________________________

"**TENANT**"
New Cingular Wireless PCS, LLC
By: AT&T Mobility Corporation
Its: Manager

By: __________________________
Name: _________________________
Title: __________________________
TENANT ACKNOWLEDGEMENT

STATE OF ___________________________) ss:
COUNTY OF ___________________________

On the ___ day of ____, 2012 before me personally appeared ________________________, and acknowledged under oath that he is the ______________ of ______________, the ____________________ named in the attached instrument, and as such was authorized to execute this instrument on behalf of the ____________________.

Notary Public: ________________________
My Commission Expires: ________________

LANDLORD ACKNOWLEDGEMENT

The foregoing instrument was acknowledged before me this _______ (date) by Mayor Donnalee Lozeau of the City of Nashua, New Hampshire, a New Hampshire municipality, on behalf of the municipality.

______________________________
Notary Public

Print Name: ________________________
My commission expires: __________
EXHIBIT A

See attached exhibits comprised of 1-3 pages, last revision date 2-15-12, prepared by Hudson Design Group.

Notes:

1. This Exhibit may be replaced by a land survey and/or construction drawings of the Premises once it is received by Tenant.
2. Any setback of the Premises from the Property's boundaries shall be the distance required by the applicable governmental authorities.
3. Width of access road shall be the width required by the applicable governmental authorities, including police and fire departments.
4. The type, number and mounting positions and locations of antennas and transmission lines are illustrative only. Actual types, numbers and mounting positions may vary from what is shown above.
PROPOSED LTE ANTENNA LAYOUT

EXISTING SOUTH ELEVATION

PROPOSED SOUTH ELEVATION
PROPOSED EQUIPMENT MOUNTING DETAIL

CONCRETE PAD DETAIL

CONCRETE PAD - SECTION A

FOUNDATION NOTES & CONCRETE SPECIFICATIONS

1. Foundation notes are subject to change based on the manufacturer's specifications.
2. Concrete pad details are provided for reference and may vary.
3. Anchored equipment is shown for reference and may differ from the actual installation.
4. Footing and soil conditions are subject to change based on site-specific requirements.

SITE NUMBER: NH2009
SITE NAME: MINE FALLS PARK
HILLSBOROUGH COUNTY

AT&T

CONCRETE PAD - SECTION A

COAX ICE BRIDGE DETAIL
Site Name: Mine Falls
Address: Nashua, NH 03079

Site Number: BH20M

1. Contractor to control all parts.
2. Install all equipment to manufacturer's recommendations.

Ground Wire to Ground Bar Connection Detail

Typical Ground Bar Connection Detail

Grounding Riser Diagram

Plumbing Diagram

Hudson
22 Keeney Ave
Salem, NH 03079

SITE NUMBER/PHONE
BH20M 301-222-6200

Site Name: Mine Falls
Address: Nashua, NH 03079

Hillsborough County

PLUMBING DIAGRAM

GROUNDS TO GROUND

CONNECTOR SUPPLEMENTAL & JS MOUNTING BAR (TIP.)

1. CONTRACTOR TO CONTROL ALL PARTS.
2. INSTALL ALL EQUIPMENT TO MANUFACTURER'S RECOMMENDATIONS.

GROUND WIRE TO GROUND BAR CONNECTION DETAIL

TYPICAL GROUND BAR CONNECTION DETAIL

GROUNDING RISER DIAGRAM

PLUMBING DIAGRAM

1. CONTRACTOR TO CONTROL ALL PARTS.
2. INSTALL ALL EQUIPMENT TO MANUFACTURER'S RECOMMENDATIONS.

Hudson
22 Keeney Ave
Salem, NH 03079

SITE NUMBER/PHONE
BH20M 301-222-6200

Site Name: Mine Falls
Address: Nashua, NH 03079

Hillsborough County
Exhibit B

Nine (9) panel antennas measuring approximately 72" x 7" x 3" mounted at 164' on the tower.

Twelve (12) cables measuring 1 5/8"

Six Remote Radio Heads mounted at approximately 160' on the tower.

1 Surge Arrestor mounted at approximately 160' on the tower.

One (1) three inch (3") flex conduit

Cabinets and other ancillary equipment in the Leased Premises.
MEMORANDUM OF LEASE

Prepared by:
Frank Kelley
SAI
22 Kewagadin Drive
Salem, NH 03072

Return to:
New Cingular Wireless PCS, LLC
12555 Cingular Way, Suite 1300
Alpharetta, GA 30004
Attn: Network Real Estate Administration

Re: Cell Site #NH2009; Cell Site Name: NASHUA LINCOLN PARK
Fixed Asset Number: 10073186
State: New Hampshire
County: Hillsborough

MEMORANDUM OF LEASE

This Memorandum of Lease is entered into on this ___ day of __________, 2012, by and between the City of Nashua, a municipality of the State of New Hampshire, having a mailing address of 229 Main Street, Nashua, New Hampshire 03061 (hereinafter referred to as "Landlord") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 12555 Cingular Way, Suite 1300, Alpharetta, GA 30004 (hereinafter referred to as "Tenant").

1. Landlord and Tenant entered into a certain Site Lease Agreement ("Agreement") on the 5th day of October, 1998, as amended by the First Amendment to Site Lease Agreement dated the 12th day of July, 2002, and the Second Amendment to Site Lease Agreement dated the ___ day of ___, 2012. Exhibits A and B in the Second Amendment to Site Lease Agreement replace Exhibits A and B, respectively, in the Site Lease Agreement and Exhibit A in the First Amendment to Site Lease Agreement.

2. 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 executed this Memorandum of Lease as of the day and year first above written.

WITNESSES:

Print Name: ____________________________

Print Name: ____________________________

"LANDLORD"

City of Nashua, New Hampshire

By: ____________________________
Print Name: Donnalee Lozeau
Its: Mayor
Date: ____________________________

"TENANT"

New Cingular Wireless PCS, LLC,
By: AT&T Mobility Corporation
Its: Manager

By: ____________________________
Print Name: ____________________________
Its: ____________________________
Date: ____________________________
TENANT ACKNOWLEDGEMENT

STATE OF ____________________________ )
COUNTY OF ____________________________ ) ss:

On the _____ day of ________, 2012, before me personally appeared ___________________, and acknowledged under oath that he is the ___________________ of ___________________, the ___________________ named in the attached instrument, and as such was authorized to execute this instrument on behalf of the ___________________.

Notary Public: ____________________________
My Commission Expires: __________________

LANDLORD ACKNOWLEDGEMENT

The foregoing instrument was acknowledged before me this ________ (date) by Mayor Donnalee Lozeau of the City of Nashua, New Hampshire, a New Hampshire municipality, on behalf of the municipality.

Notary Public

Print Name: ____________________________
My commission expires: _______________
RESOLUTION R-12-040
Approving a second amendment to the site lease agreement with New Cingular Wireless (AT&T / formerly Telecorp) relative to its antenna facility located on the Mine Falls Park cell tower

IN THE BOARD OF ALDERMEN

1st Reading MAY 8, 2012

Referred to:
FINANCE COMMITTEE and BOARD OF PUBLIC WORKS

2nd Reading MAY 22, 2012

3rd Reading

4th Reading

Other Action

Passed MAY 22, 2012

indefinitely Postponed

Defeated

Attest: City Clerk

Approved Mayor's Signature

MAYOR
PRESSLY
DONID
TABACSKO
CARON

Vetoed:

Veto Sustained:

Veto Overridden:

Attest: City Clerk

President

MAY 24, 2012