



RESOLUTION

**APPROVING A FIRST AMENDMENT TO EASEMENT IN GROSS WITH T-MOBILE
NORTHEAST, LLC (SUCCESSOR IN INTEREST TO OMNIPOINT
COMMUNICATIONS MB OPERATIONS, LLC) TO INCREASE EASEMENT FEES**

CITY OF NASHUA

In the Year Two Thousand and Fifteen

RESOLVED by the Board of Aldermen of the City of Nashua that the attached First Amendment to Easement in Gross between T-Mobile Northeast, LLC (successor in interest to Omnipoint Communications MB Operations, LLC) and the City of Nashua for the leased premises (cell tower and ground space) located at Whipple Street, Mine Falls Park, Nashua, New Hampshire is approved.

LEGISLATIVE YEAR 2015

RESOLUTION: R-15-186

PURPOSE: Approving a First Amendment to Easement in Gross with T-Mobile Northeast, LLC (successor in interest to Omnipoint Communications MB Operations, LLC) to increase easement fees

ENDORSERS: Mayor Donnalee Lozeau

**COMMITTEE
ASSIGNMENT:**

FISCAL NOTE: The city will receive past due payments in the amount of \$21,000 for the period of May 1, 2013 to April 30, 2014; \$21,720 for the period of May 1, 2014 to April 30, 2015; and, easement fees of \$2,700 per month beginning May 1, 2015 through April 30, 2016. For each remaining year of the easement in gross the easement fees shall increase by 3%.

ANALYSIS

This resolution approves the First Amendment to the easement in gross between T-Mobile Northeast, LLC, (successor in interest to Omnipoint Communications MB Operations, LLC) and the City of Nashua for the leased premises (cell tower and ground space) located at Whipple Street, Mine Falls Park, Nashua, New Hampshire. Provisions of the easement in gross, require the parties to have renegotiated the easement fees beginning May 1, 2013. This amendment requires T-Mobile to pay to the City of Nashua past due easement fees and establishes the easement fees going forward.

This resolution should be referred to the Board of Public Works.

Approved as to form:

Office of Corporation Counsel

By: 

Date: October 21, 2015

FIRST AMENDMENT TO EASEMENT IN GROSS

This First Amendment to Easement in Gross (“First Amendment”) is made by and between City of Nashua (“City”) and T-Mobile Northeast LLC, a Delaware limited liability company, as successor in interest to Omnipoint Communications MB Operations LLC (“T-Mobile”).

WHEREAS, City and T-Mobile, or its predecessor in interest, entered into that certain Easement in Gross dated August 28, 1998 as (“Agreement”), whereby City leased to T-Mobile certain portions of the Property located at Mine Falls Park, Nashua, NH (the “Property”); and,

WHEREAS, City and T-Mobile desire to amend the Agreement as follows;

WHEREAS, City and T-Mobile hereby affirm that, as of the date hereof: (i) no breach or default by City or T-Mobile occurred; and (ii) the Agreement, and all the terms, covenants, conditions, provisions and agreements thereof, except as expressly modified by this Amendment are in full force and effect, with no defenses or offsets thereto; and

NOW THEREFORE, in consideration of the mutual covenants contained in the Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and T-Mobile hereby agree as follows:

1. All capitalized terms shall have the meaning ascribed to them in the Agreement unless otherwise defined in this Amendment.
2. Pursuant to Section 7(b), the parties agree that the negotiated market rate Easement Fee for the First Term Extension shall be as follows:
 - a. First Term Extension Easement Fees:

<u>Term Period</u>	<u>Annual Easement Fee</u>	<u>Monthly Easement Fee</u>
5/1/2013-4/30/2014	\$24,000.00	\$2,000.00
5/1/2014-4/30/2015	\$24,720.00	\$2,060.00
5/1/2015-4/30/2016	\$32,400.00	\$2,700.00
5/1/2016-4/30/2017	\$33,372.00	\$2,781.00
5/1/2017-4/30/2018	\$34,373.00	\$2,864.43

Should T-Mobile exercise their right to extend the term for a second five year term pursuant to Section 5(b) of the Agreement, the monthly rental amount commencing upon the May 1, 2018, and annually thereafter, shall be adjusted to an amount equal to three percent (3%) of the Easement Fee in effect immediately prior to the adjustment date.

3. For the period of May 1, 2013 to April 30, 2014 of the first Term Extension, T-Mobile has paid to the City the amount of Three Thousand and no/100 Dollars (\$3,000.00) of the total fees of Twenty Four Thousand and no/100 Dollars (\$24,000.00). T-Mobile shall pay the remaining amount owed for said period totaling Twenty One Thousand and no/100 Dollars (\$21,000.00) within thirty (30) days of full execution of this Amendment.
4. For the period of May 1, 2014 to April 30, 2015 of the first Term Extension, T-Mobile has paid to the City the amount of Three Thousand and no/100 Dollars (\$3,000.00) of the total fees of Twenty Four Thousand Seven Hundred Twenty and no/100 Dollars (\$24,720.00). T-Mobile shall pay the remaining amount owed for said period totaling Twenty One Thousand Seven Hundred Twenty and no/100 Dollars (\$21,720.00) within thirty (30) days of full execution of this Amendment.
5. Commencing on May 1, 2015, the Easement Fee shall be payable on a monthly basis during the remaining first Term Extension and any Term Extension thereafter. All pro rata amounts due and payable from May 1, 2015 resulting from any Easement Fees not paid in full shall be paid within thirty (30) days of full execution of this Amendment.
6. The following sentences are hereby deleted from Section 7(b):

“At the seventeenth anniversary date of the Commencement Date, the Easement Fee shall increase by a percentage equal to the percentage increase in the Consumer Price Index occurring since the immediately prior Easement year. The Easement Fee will similarly increase on the first day of each succeeding Easement year by a percentage equal to the percentage increase in the Consumer Price Index occurring since the immediately prior Easement year. Consumer Price Index shall mean the Consumer Price Index published by the U.S. Department of Labor, Bureau of Labor Statistics for all Urban Consumers (CPI-U), U.S. City Average (100=1985-84). The term “Year” shall mean the twelve month period beginning on the next day following the expiration of the preceding year.”

Except as specifically amended herein, the remaining terms of the Agreement shall remain in full force and effect. To the extent any provision contained in this Amendment conflicts with the terms of the Agreement, the terms and provisions of this Amendment shall prevail.

IN WITNESS WHEREOF, the parties have executed this Amendment on the day and year last written below.

**CITY
CITY OF NASHUA**

**LICENSEE
T-MOBILE NORTHEAST LLC**

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

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