

## MEMORANDUM

**TO:** MAYOR AND CITY COMMISSION

**FROM:** CITY ATTORNEY'S OFFICE

**DATE:** December 19, 2022

**RE:** **Fourth Amendment to Site Agreement with  
T-Mobile South, LLC**

Attached hereto for your consideration is a proposed Fourth Amendment to the cell tower site Agreement between the City and T-Mobile South, LLC (T-Mobile) for T-Mobile to lease space for its equipment on the rooftop of the Lakeland Electric Administration Building located at 501 E. Lemon Street.

The original Agreement, approved by the City Commission on June 2, 1997, was for an initial term of five (5) years and included four (4) additional five (5) year renewal options. The Agreement was subsequently amended to accommodate equipment modifications and upgrades on February 2, 2009, July 2, 2012 and on November 25, 2014.

The current Agreement, in its last renewal period, will expire on December 31, 2022. This Fourth Amendment seeks to extend the Agreement term for one (1) additional five (5) year period, effective January 1, 2023, subject to City Commission approval. It also provides T-Mobile with one (1) additional five (5) year renewal option.

Pursuant to this Fourth Amendment, the rent paid to the City by T-Mobile will be \$8,238.98 per quarter, which represents a 15% increase from the current rental rate for the first (5) year term. Thereafter, rent will be subject to an increase of 15% for the remaining five (5) year renewal option. The total revenue generated for the City during the initial five (5) year term is estimated at \$164,779.60. Except as provided in this Fourth Amendment, all terms and conditions of the original Agreement remain in full force and effect, including the option for the City to terminate the Agreement in the event the building is sold or redeveloped.

It is recommended that the City Commission approve this Fourth Amendment with T-Mobile and authorize the appropriate City officials to execute all corresponding documents on behalf of the City.

Attachment

#### **FOURTH AMENDMENT TO SITE AGREEMENT FOR BUILDING**

This Fourth Amendment to Site Agreement for Building (the "**Fourth Amendment**") is entered into this 19<sup>th</sup> day of December 2022 by and between City of Lakeland, a Florida municipal corporation ("**Owner**"), and T-Mobile South LLC, a Delaware limited liability company, previously referred to as "APT" ("**Tenant**") (each a "**Party**", or collectively, the "**Parties**").

Owner and Tenant entered into that certain Site Agreement for Building dated June 2, 1997, including that certain First Amendment to Site Agreement for Building dated February 2, 2009, the Second Amendment to Site Agreement for Building dated July 2, 2012 and the Third Amendment to Site Agreement for Building dated November 25, 2014 (including all amendments, collectively, the "**Agreement**") regarding the leased premises ("**Premises**") located at 501 East Lemon Street, Lakeland, FL 33801 (the "**Owner's Property**").

For good and valuable consideration, Owner and Tenant agree as follows:

1. At the expiration of the Agreement on December 31, 2022, the Agreement will be extended for one (1) additional five (5) year Renewal Term. In addition, Tenant may extend the term of the Agreement for one (1) additional five (5) year Renewal Term upon Tenant's written notice to Owner at least one (1) year prior to the such Renewal Term, and Owner will provide written consent or denial within thirty (30) days of such notice. This Fourth Amendment shall be effective as of the last signature date below (the "Effective Date").
2. At the commencement of the first Renewal Term provided for in this Fourth Amendment, Tenant shall pay Owner Eight Thousand Two Hundred Thirty-Eight and 98/100 Dollars (\$8,238.98) per quarter as Rent, partial quarters to be prorated in advance.

Thereafter, notwithstanding anything to the contrary in the Agreement, the Rent will escalate by fifteen percent (15%) of the Rent in effect for the prior Renewal Term on the first day of each Renewal Term. Where duplicate Rent would occur, a credit shall be taken by Tenant for any prepayment of duplicate Rent by Tenant.

3. All notices, requests, demands and other communications shall be in writing and shall be deemed to have been delivered upon receipt or refusal to accept delivery, and are effective only when deposited into the U.S. certified mail, return receipt requested, or when sent via a nationally recognized courier to the addresses set forth below. Owner or Tenant may from time to time designate any other address for this purpose by providing written notice to the other Party.

If to Tenant:

T-Mobile USA, Inc.  
12920 SE 38th Street  
Bellevue, WA 98006  
Attn: Lease Compliance/ A2B0088A

If to Owner:

City of Lakeland  
Attn: Contract Services/LE-Contracts  
501 E. Lemon Street  
Lakeland, FL 33801

4. Tenant and Owner will reasonably cooperate with each other's requests to approve permit applications and other documents related to the Owner's Property without additional payment or consideration.
5. Any charges payable under the Agreement other than Rent shall be billed by Owner to Tenant within twelve (12) months from the date in which the charges were incurred or due.
6. Except as expressly set forth in this Fourth Amendment, the Agreement otherwise is unmodified. To the extent any provision contained in this Fourth Amendment conflicts with the terms of the Agreement, the terms and provisions of this Fourth Amendment shall control. Each reference in the Agreement to itself shall be deemed also to refer to this Fourth Amendment.
7. This Fourth Amendment may be executed in duplicate counterparts, each of which will be deemed an original. Signed electronic, scanned, or facsimile copies of this Fourth Amendment will legally bind the Parties to the same extent as originals.
8. Each of the Parties represents and warrants that it has the right, power, legal capacity and authority to enter into and perform its respective obligations under this Fourth Amendment. Owner represents and warrants to Tenant that the consent or approval of a third party has either been obtained or is not required with respect to the execution of this Fourth Amendment. If Owner is represented by any property manager, broker or any other leasing agent ("Agent"), then (a) Owner is solely responsible for all commission, fees or other payment to Agent and (b) Owner shall not impose any fees on Tenant to compensate or reimburse Owner for the use of Agent, including any such commissions, fees or other payments arising from negotiating or entering into this Fourth Amendment or any future amendment.
9. This Fourth Amendment will be binding on and inure to the benefit of the Parties herein, their heirs, executors, administrators, successors-in-interest and assigns.

**SIGNATURES ON FOLLOWING PAGE**

IN WITNESS, the Parties execute this Fourth Amendment as of the Effective Date.

**OWNER:**

**City of Lakeland,  
a Florida municipal corporation**

By: \_\_\_\_\_

Print Name: H. William Mutz

Title: Mayor

Date: \_\_\_\_\_

**Attest:**

By: \_\_\_\_\_

Kelly S. Koos, City Clerk


Approved as to form and correctness:

By: \_\_\_\_\_

Palmer C. Davis, City Attorney

**TENANT:**

**T-Mobile South LLC,  
a Delaware limited liability company**

By:  \_\_\_\_\_  
935ED204DFAB4B0...

Print Name: Lisa Boyer

Title: Sr. Manager, Technology Sourcing

Date: 12/7/2022



TMO Signatory Level: L07, SL07