

**City of Blaine**  
**Request for Council Action**  
**Meeting Date:** August 26, 2019

**Subject:** Approval of extension of lease for a cell tower site located on city property at 5690 Semiahmoo Parkway

**Department:** Legal/Finance

**Prepared By:** Jon Sitkin/Jeff Lazenby

**Agenda Location:**  Consent Agenda     Council Action     Unfinished Business

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**Attachments:**

1. Second Addendum to Site Lease Agreement
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**Background/Summary:** The lease is for a cell tower site located on city property at 5690 Semiahmoo Parkway. The City has had a long-term lease with a cellular site company, originally Bellingham Cellular Partnership, since 1994 for this specific site. The second addendum calls for an increase in rent in the amount of \$15,300 per two (2) year period with a rent escalation factor of 6% every two (2) years. The lease revenue goes to the Water Fund as the cell tower is located on a Water Fund asset. The term of the lease is the tenant can exercise an option to renew the lease for an additional five (5) year terms beyond the current term. There is a \$3,000.00 signing bonus that is to be paid upon execution of this agreement by the City.

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**Budget Implications:**     Current Budget     New Budget Request     Non-Budgetary

There is no cost to the city other than staff time to administer the lease.

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**Recommendation:**

Staff recommends that the City Council authorize the City Manager to sign the second addendum.

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**Reviewed By:**

City Manager \_\_\_\_\_ Finance Director \_\_\_\_\_ City Clerk \_\_\_\_\_  
(Digital Signature) (Digital Signature) (Digital Signature)

**SECOND ADDENDUM TO  
SITE LEASE AGREEMENT**

THIS SECOND ADDENDUM TO SITE LEASE AGREEMENT (this “Second Addendum”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between THE CITY OF BLAINE (“Landlord”), with a mailing address of 435 Martin Street, Suite 3000, Blaine, Washington, 98230 and NCWPCS MPL 24 - YEAR SITES TOWER HOLDINGS LLC, a Delaware limited liability company, by and through its attorney in fact, CCATT LLC, a Delaware limited liability company (“Tenant”), with a mailing address of 2000 Corporate Drive, Canonsburg, Pennsylvania 15317. Landlord and Tenant may be referred to collectively herein as the “Parties.”

**RECITALS**

WHEREAS, Landlord and Bellingham Cellular Partnership, a Washington general partnership (“Original Tenant”) entered into a Site Lease Agreement dated May 9, 1994 (the “Original Lease”) whereby Original Tenant leased certain real property, together with access and utility easements, located in Whatcom County, Washington from Landlord (the “Premises”), all located within certain real property owned by Landlord (the “Property”); and

WHEREAS, the Original Lease was amended by that certain undated First Addendum to Lease (hereinafter the Original Lease and all subsequent addendums are collectively referred to as the “Lease”); and

WHEREAS, NCWPCS MPL 24 - YEAR SITES TOWER HOLDINGS LLC represents and warrants to the Landlord that it is the successor in interest to the Original Tenant and possesses all rights and undertakes all obligations as the Tenant under the Original Lease, as amended; and

WHEREAS, NCWPCS MPL 24 - Year Sites Tower Holdings LLC is currently the Tenant under the Lease as ultimate successor in interest to the Original Tenant; and

WHEREAS, the Premises under the Original Lease was limited to use for radio communications, and the Tenant’s business and industry has evolved to include wireless communications and related facilities that may be used for the purpose of constructing,

maintaining and operating a communications facility, including tower structures, equipment shelters, cabinets, meter boards, utilities, antennas, equipment, any related improvements and structures and uses incidental thereto, and the Parties desire to modify the Original Lease to allow such uses; and

WHEREAS, the Lease had an initial term that commenced on May 17, 1994 and expired on May 31, 1999. The Lease provides for five (5) extensions of five (5) years each. According to the Lease, the final extension expires on May 31, 2024; and

WHEREAS, Landlord and Tenant desire to amend the Lease on the terms and conditions contained herein.

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

1. Recitals; Defined Terms. The Parties acknowledge the accuracy of the foregoing recitals, and Landlord's reliance on Tenant's representation and warranties therein. Any capitalized terms and/or paragraph headings not defined herein shall have the meanings ascribed to them in the Lease.

2. Section 3. Permitted Use of the Original Lease shall be modified to read as follows:

The Premises may be used by Tenant only for the following permitted uses:

- a. the transmission and reception of radio communications signals,
- b. The operation of a communications facility, including the transmission and reception or wireless signals, and
- c. The construction, maintenance, repair and/or replacement of towers, antennas, equipment or buildings and related facilities, including equipment shelters, cabinets, meter boards, utilities, antennas, equipment, and any related improvements and structures and uses incidental thereto.

3. Section 5 Rent (a) of the Original Lease shall be modified in its entirety to read as follows (no revisions to Section 5(b) of the Original Lease are made in this Second Addendum):

Effective May 17, 2020, the Rent shall increase to Fifteen Thousand Three Hundred and 00/100 Dollars (\$15,300.00) per two (2) year period. This Rent escalation shall replace and be in lieu of any other Rent escalations scheduled to occur in 2019. Following such increase, the annual Rent shall continue to adjust pursuant to the terms of a new Section 5 (c) below.

4. Section 5. Rent is amended to add a new Section 5.c Rent Escalation as follows:

(c) Commencing on May 17, 2022, and on the first day of the month of every second anniversary of that date thereafter (i.e. May 1, 2024, May 1, 2026, and so on), the Rent shall increase by an amount equal to six percent (6%) of the immediately preceding Rent payment (“Rent Escalation”). Such Rent escalations shall replace and be in lieu of any other Rent escalations scheduled to occur pursuant to the Lease in or after 2022, provided that the Rent Escalation shall occur every two years on May 1 of even years until the lease expires or is terminated.

5. Section 6 Renewal of the Original Lease is amended as follows: The first sentence of Section 6 of the Original Lease, and only that sentence, is hereby amended to read as follows:

Tenant shall have the right to extend this Lease for ten (10) five (5) year terms (“Renewal Term”).

Landlord and Tenant hereby acknowledge that, as of the date of this Second Addendum, Tenant has exercised the first five (5) Renewal Terms, leaving a balance of five (5) Renewal Terms, with the final Renewal Term expiring on May 31, 2049.

6. Eminent Domain. The following is hereby added to the end of Section 9(f) of the Original Lease:

If Landlord receives notice of a proposed taking by eminent domain of any part of the land upon which the Premises or the easements are situated, Landlord will notify Tenant of the proposed taking within fifteen (15) business days of receiving said notice, provided that if it is Landlord that is commencing a condemnation action, then this notice provision shall not apply.

7. Insurance and Subrogation. Section 11(a) of the Original Lease is amended to increase the required Commercial General Liability Insurance to an aggregate amount of Two Million Dollars (\$2,000,000.00). All other terms and conditions of Section 11 shall remain unchanged.

8. Hold Harmless. Section 12 of the Original Lease is amended to read as follows:

Tenant agrees to hold Landlord harmless from any and all claims arising from the installation, use, maintenance, repair, lack of maintenance and/or repair, or removal of the Antenna Facilities, except for claims arising from the negligence or intentional actions of the Landlord, its employees, agents or independent contractors.

9. Notices. Tenant's notice addresses as stated in Section 13 of the Original Lease are amended as follows:

TENANT'S PRIMARY CONTACT

NCWPCS MPL 24 - Year Sites  
Tower Holdings LLC  
Legal Department  
Attn: Network Legal  
208 S. Akard Street  
Dallas, TX 75202-4206

With a copy to:

CCATT LLC  
Attn: Legal - Real Estate  
  
2000 Corporate Drive  
Canonsburg, PA 15317

Department

10. Venue. A new Section 19(h) is added to the Original Lease as follows:

(h) the venue for any dispute arising under the Original Lease, as amended, shall be Whatcom County Superior Court, State of Washington located in Bellingham, Washington.

11. Leasehold Excise Tax. In addition to the Rent, Tenant shall also pay to Landlord the Washington leasehold excise tax imposed pursuant to Chapter 82.29A RCW, which is currently assessed at the rate of twelve and 84/100 percent (12.84%) of Rent; provided, however, if Tenant establishes that its leasehold interest in the Premises is exempt from the leasehold excise tax and the Washington State Auditor concurs in writing, such payments shall

not be required. Leasehold excise tax shall be paid to Landlord at the same time as the payment of Rent.

12. Conditional Signing Bonus. Tenant will pay to Landlord a one-time amount of Three Thousand and 00/100 Dollars (\$3,000.00) for the full execution of this Second Addendum (“Conditional Signing Bonus”). Tenant will pay to Landlord the Conditional Signing Bonus at the time of the City’s execution of this Second Addendum. In the event that this Second Addendum (and any applicable memorandum of addendum) is not fully executed by both Landlord and Tenant for any reason, Tenant shall have no obligation to pay the Conditional Signing Bonus to Landlord.

13. Expansion Option. During the term of the Lease, Tenant shall have the irrevocable option (“Expansion Option”) to lease up to a maximum of three hundred (300) square feet of real property adjacent to the existing Premises at a location to be determined by the Tenant and subject to the Landlord’s City Council’s approval at an open public meeting in its sole discretion (“Additional Premises”) on the same terms and conditions set forth in the Lease. Tenant may conduct any reasonable due diligence activities at its own and sole expense on the Additional Premises at any time after full execution of this Second Addendum, provided that no invasive investigations may occur without Landlord’s prior written approval which shall not be unreasonably withheld or delayed. If Tenant elects to exercise the Expansion Option, after full execution of an amendment adding the Additional Premises to the Lease, as amended, Tenant shall pay the same rent per square foot for the Additional Premises as the Rent paid per square foot by Tenant for the existing Premises at the time of full execution of the Additional Premises Documents. The rent for the Additional Premises shall increase in the same manner as the Rent increases for the existing Premises pursuant to Section 4 above. Tenant may exercise the Expansion Option by providing written notice to Landlord at any time; provided, however, that following Tenant’s delivery of notice to Landlord, Tenant may at any time prior to full execution of the Additional Premises Documents, but not after, withdraw its election to exercise the Expansion Option if Tenant discovers or obtains any information of any nature regarding the Additional Premises which Tenant determines to be unfavorable in its sole discretion. After Tenant’s exercise of the Expansion Option, upon Tenant’s written request, Landlord agrees to execute and deliver an addendum to the Lease adding the Additional Premises to the definition

of Premises under the Lease, and adjusting the Rent and Rent Escalation as provided for herein, and a memorandum of lease, and any other documents necessary to grant and record Tenant's interest in the Additional Premises ("Additional Premises Documents"). In addition, within thirty (30) days of receipt of the Tenant's written request after Tenant's exercise of the Expansion Option, Landlord shall obtain and deliver any documentation necessary to remove, subordinate or satisfy any mortgages, deeds of trust, liens or other financial encumbrances affecting the Additional Premises to Tenant's satisfaction, which shall not be unreasonably withheld.

14. Landlord's Cooperation. If requested by Tenant, Landlord will execute, at Tenant's sole cost and expense, all application documents required by any governmental authority in connection with any development of, or construction on, the Premises, including documents necessary to petition the appropriate public bodies for certificates, permits, licenses and other approvals reasonably necessary for Tenant to utilize the Premises for the purposes contemplated by this Lease. Landlord agrees to be named applicant if requested by Tenant and if required in writing by the applicable government authority. In furtherance of the foregoing, Landlord hereby agrees to execute any land use applications, permits, licenses and other approvals where the applicable regulation requires the underlying property owner to execute such application. Landlord shall be entitled to no further consideration with respect to any of the foregoing matters. Landlord as a regulatory agency entity is not obligated hereby to issue any permits or other regulatory approvals of any kind or nature.

15. Survey. Tenant reserves the right, at its discretion and at its sole cost, to obtain a survey ("Survey") specifically describing the Premises and any access and utility easements associated therewith, provided that such survey shall remain in draft and shall not be recorded unless approved in advance and in writing by Landlord, such approval not to be unreasonably withheld, conditioned or delayed. Upon approval and acceptance of the Survey in writing by Landlord, Tenant shall be permitted to attach the Survey as an exhibit to this Second Addendum and any related memorandum for recording, which shall update and replace the existing description, at any time prior to or after closing of this Second Addendum.

16. Ratification.

a) In reliance upon the representations set forth herein by Tenant, Landlord and Tenant agree that Tenant is the current Tenant under the Lease, as amended herein, and that the Lease is in full force and effect and contains the entire agreement between Landlord and Tenant with respect to the Premises.

b) Landlord represents and warrants that Landlord is duly authorized and has the full power, right and authority to enter into this Second Addendum and to perform all of its obligations under the Lease as amended.

c) In reliance upon the representations set forth herein by Tenant, and without any investigation, Landlord represents and warrants that to Landlord's knowledge Tenant is not currently in default under the Lease, and to Landlord's knowledge, no event or condition has occurred or presently exists which, with notice or the passage of time or both, would constitute a default by Tenant under the Lease.

d) Tenant represents and warrants that Landlord is not currently in default under the Lease, and to Tenant's knowledge, no event or condition has occurred or presently exists which, with notice or the passage of time or both, would constitute a default by Landlord under the Lease.

17. IRS Form W-9. Landlord agrees to provide Tenant with a completed IRS Form W-9, or its equivalent, upon execution of this Second Addendum and at such other times as may be reasonably requested by Tenant. In the event the Premises is transferred, the succeeding landlord shall have a duty at the time of such transfer to provide Tenant with a completed IRS Form W-9, or its equivalent, and other related paperwork to effect a transfer in the Rent to the new landlord. Landlord's failure to provide the IRS Form W-9 within thirty (30) days after Tenant's request shall be considered a default and Tenant may take any reasonable action necessary to comply with IRS regulations, including, but not limited to, withholding applicable taxes from Rent payments.



18. Remainder of Lease Unaffected. The Parties hereto acknowledge that except as expressly modified hereby, the Lease remains unmodified and in full force and effect. In the event of any conflict or inconsistency between the terms of this Second Addendum and the Lease, the terms of this Second Addendum shall control. The terms, covenants and provisions of this Second Addendum shall extend to and be binding upon the respective executors, administrators, heirs, successors and assigns of Landlord and Tenant. This Second Addendum may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

19. Letter Agreement. The Parties agree that the Letter Agreement by and between Landlord and Tenant dated September 18, 2018 is not and never was effective as it had not been approved by the City Council for the City of Blaine, the Landlord. Even so, in case of any conflict or inconsistency between the terms and conditions contained in the Letter Agreement and the terms and conditions contained in this Second Addendum, the terms and conditions in this Second Addendum shall control.

*[Execution Pages Follow]*

This Second Addendum is executed by Landlord as of the date first written above.

**LANDLORD:**  
**THE CITY OF BLAINE**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

State of Washington

County of Whatcom

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ (type of authority, e.g., officer, trustee, etc.) of **THE CITY OF BLAINE** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: Notary Public

(Seal or stamp)

My appointment expires: \_\_\_\_\_

*[Tenant Execution Page Follows]*

This Second Addendum is executed by Tenant as of the date first written above.

**TENANT:**  
NCWPCS MPL 24 - YEAR SITES TOWER  
HOLDINGS LLC,  
a Delaware limited liability company

By: CCATT LLC,  
a Delaware limited liability company  
Its: Attorney in Fact

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**State of Texas**

**County of** \_\_\_\_\_

Before me, \_\_\_\_\_, a Notary Public, on this day personally appeared \_\_\_\_\_, \_\_\_\_\_ of **CCATT LLC**, a Delaware limited liability company, as Attorney in Fact for **NCWPCS MPL 24 - YEAR SITES TOWER HOLDINGS LLC**, a Delaware limited liability company, known to me (or proved to me on the oath of \_\_\_\_\_ or through driver's license, state ID card, resident ID card, military ID card, or passport) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she/he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Personalized Seal)

\_\_\_\_\_  
Notary Public's Signature