

Office of Facilities Design & Construction
Raul F. Perez, Chief Facilities Design & Construction Officer

SUBJECT: AUTHORIZATION FOR THE SUPERINTENDENT TO FINALIZE NEGOTIATIONS AND EXECUTE AN AMENDMENT TO THE LEASE AGREEMENT BETWEEN THE SCHOOL BOARD AND NEW CINGULAR WIRELESS PCS, LLC (“AT&T”) TO EXTEND THE LEASE TERM THROUGH DECEMBER 31, 2024 FOR CONTINUED USE BY AT&T OF A PORTION OF THE CAMPUS OF BENT TREE ELEMENTARY SCHOOL, LOCATED AT 4861 SW 140 AVENUE MIAMI, FLORIDA, TO PROVIDE COMMERCIAL CELLULAR TELECOMMUNICATIONS SERVICES

COMMITTEE: FACILITIES AND CONSTRUCTION

LINK TO STRATEGIC PLAN: EFFECTIVE & SUSTAINABLE OPERATIONAL PRACTICES

Background

Since July 1998, New Cingular Wireless PCS, LLC (“AT&T”) has leased a portion of the Bent Tree Elementary School (“School”) campus for the installation and operation of a cellular telecommunications tower. Under the terms of the lease agreement, AT&T currently pays rent to the District of \$29,859.84 per year for its use of the facilities, and is responsible for all utility and operating expenses. The current term of the lease agreement expires on December 10, 2023, and there are no renewal options remaining. It is the intent of the District to initiate a public solicitation process available to all cellular telecommunications providers, and enter into a new lease agreement for the installation and operation of cellular telecommunications equipment at the School. Given the extensive amount of time necessary to establish business and financial criteria to be included as part of an Invitation To Bid, and to determine the apparent responsive and responsible bidder for consideration by the Board, it is highly unlikely that a successor entity will be selected prior to the December 10, 2023 expiration date of the current lease agreement.

Proposed Board Action

As indicated above, the current term of the lease agreement with AT&T will expire on December 10, 2023, and there are no extension periods remaining. Given the significant amount of time necessary to finalize the public solicitation process and select a successor cellular telecommunications provider, staff is recommending that the Board authorize the Superintendent to enter into an amendment to the existing lease agreement for the specific and limited purpose of extending the term for the period ending December 31, 2024, upon its determination that such an agreement would be in the best interest of the Board. This will provide continuity and ongoing collection of rent under the existing lease

agreement for the specified period, with staff to be directed to complete a public solicitation process in sufficient time to secure Board authorization to enter into a successor lease agreement with a commercial cellular telecommunication provider prior to December 31, 2024. The proposed lease amendment will also include a number of provisions to comport with current Board policy and standard District contract provisions.

Proposed Lease Agreement

The Deputy Superintendent, Office of School Leadership & Performance and the Chief Facilities Design and Construction Officer, recommend entering into a lease amendment ("Lease Amendment") with AT&T for this purpose. Accordingly, it is recommended that the Board authorize entering into a Lease Amendment with AT&T, under, substantially, the following terms and conditions, and that staff be further directed to initiate a public solicitation process to select a commercial cellular telecommunications provider to utilize the site subsequent to December 31, 2024:

- the lease term shall be amended to reflect a termination date of December 31, 2024, with the Superintendent having the authority to further extend the term for a period not to exceed 90 days in the event the procurement process warrants it;
- the current rental rate of \$29,859.84 per year shall increase by 20% on December 11, 2023 to \$35,831.81 due and payable upon execution of the Lease Amendment, in one lump sum annual payment for the remainder of the term;
- for purposes of the Lease Amendment, the Superintendent of Schools or his/her designee shall be the party designated by the Board to grant or deny any and all approvals or waivers under the Lease Agreement relating to routine operational issues; and
- in addition to the above, the Superintendent of Schools shall be the party designated by the Board to execute amendments to the Lease Agreement within the authority granted to the Superintendent by the Board in the Lease Agreement, and to grant or deny any approvals or waivers required by the Lease Agreement, including placing AT&T in default, and canceling or terminating the Lease Agreement.

A companion agenda item is being brought to the Board at this meeting requesting a similar lease extension with AT&T at Christina M. Eve Elementary School, located at 16251 SW 99 Street, Miami, Florida.

The proposed Lease Amendment has been reviewed by the Office of the General Counsel and the Office of Risk and Benefits Management for legal sufficiency and risk management issues, respectively, and found to be in compliance. A copy of the Lease Amendment in its final form is attached hereto.

RECOMMENDED:

That The School Board of Miami-Dade County, Florida, upon its determination that entering into the agreement described herein is in the best interest of the Board, authorize the Superintendent to:

- 1) finalize negotiations and execute an Amendment to the Lease Agreement between the School Board and New Cingular Wireless PCS, LLC (“AT&T”) to extend the lease term through December 31, 2024 for continued use by AT&T of a portion of the campus of Bent Tree Elementary School (“School”), located at 4861 SW 140 Avenue, Miami, Florida, to provide commercial cellular telecommunications services, and substantially in conformance with the other terms and conditions set forth in the agenda item;
- 2) grant or deny all approvals or waivers required under the Lease Agreement, including, without limitation, extending the Lease Agreement for a period not to exceed 90 days as may be required to complete the procurement process, canceling or terminating the Lease Agreement, and placing AT&T in default, as may be applicable; and
- 3) direct the distribution of rental income such that 10% of the funds received under the Lease Agreements are to be retained by Bent Tree Elementary School to address critical School needs, 60% of the funds are to go to District-wide athletic programs and services, and the remaining 30% of the funds are to go to District-wide needs as determined by the Superintendent.

FIRST AMENDMENT TO LEASE AGREEMENT
(BENT TREE ELEMENTARY SCHOOL)

THIS FIRST AMENDMENT TO LEASE AGREEMENT (the "**First Amendment**") is made and entered into this ____ day of _____ 20____, by and between THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, a body corporate and politic existing under the laws of the State of Florida (hereinafter referred to as the "**LESSOR**"), and NEW CINGULAR WIRELESS PCS, LLC, a Delaware limited liability company, authorized to transact business in the State of Florida, (hereinafter referred to as the "**LESSEE**"). The LESSOR and LESSEE are sometimes referred to in this First Amendment individually as "**Party**" and collectively as the "**Parties**".

WITNESSETH

WHEREAS, the LESSOR owns and has under its jurisdiction certain real property, located at 4861 SW 140th Ave, Miami, FL 33175, more particularly described as folio #30-4922-002-0020, in Miami-Dade County, Florida (the "Site"), and operated by LESSOR as Bent Tree Elementary School ("School"); and

WHEREAS, as of July 1, 1998, LESSEE has operated a telecommunications tower and nearby equipment shelter on a portion of the Site (the "**DEMISED AREA**") to provide commercial cellular communications services ("Lease Agreement"); and

WHEREAS, the term of the Lease Agreement will expire on December 10, 2023, with no provision to extend the term, and LESSEE has requested that the term of the Lease Agreement be extended for the period ending December 10, 2024; and

WHEREAS, it is the intention of the LESSOR to initiate a public solicitation process to select a commercial cellular telecommunications provider to utilize the Site subsequent to December 10, 2023; and

WHEREAS, as a condition precedent to entering into this First Amendment, LESSEE acknowledges and agrees that the First Amendment shall be for the specific and limited purpose of extending the term of the Lease Agreement through December 10, 2024, with no ability to extend the term beyond that date, and further, that LESSOR shall initiate a public solicitation, to which LESSEE may be invited, to select a successor commercial cellular telecommunications provider at the Site; and

WHEREAS, the Parties are desirous of entering into this First Amendment, as more particularly described herein, under the terms and conditions set forth below; and

WHEREAS, the LESSEE has formulated a plan for operating its programs at the Site, which the LESSEE represents to be a plan in accordance with all local, County, State, School Board, Federal and/or Centers for Disease Control and Prevention ("**CDC**") guidelines and requirements related to the COVID-19 pandemic, as such CDC guidelines may be amended from time to time; and

WHEREAS, The School Board of Miami-Dade County, Florida, has delegated to the Superintendent of Schools ("Superintendent"), authority to enter into this First Amendment in accordance with Board Action _____, at its meeting of _____, ; and

WHEREAS, the Assistant Secretary of AT&T Mobility Corporation, the Manager of New Cingular Wireless PCS, LLC, a Delaware limited liability company, represents and warrants that John F. Haggy, Area Manager Network Engineering, is authorized to execute and deliver in the name of and on behalf of LESSEE this Lease Agreement, and a duly executed Resolution, properly executed by an authorized representative of LESSEE attesting to same, is attached hereto as **Exhibit "A"**.

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00), restrictions and covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the LESSOR and LESSEE agree as follows:

1. The Parties agree that the above recitals are true and correct and are incorporated herein by reference.
2. The Lease Agreement is hereby amended to reflect that the term of the Lease Agreement shall continue uninterrupted, and shall expire at 11:59 pm on December 10, 2024, unless terminated sooner as provided for in the Lease Agreement.
3. The Lease Agreement is hereby amended to reflect that the current rental rate of \$29,859.84 per year shall increase by 20% on December 10, 2023 to \$35,831.81, due and payable upon execution hereof, in one lump sum annual payment for the remainder of the term.
4. The Lease Agreement is hereby amended to reflect that the Superintendent of Schools or his/her designee shall be the party designated by the LESSOR to grant or deny any and all approvals or waivers under the Lease Agreement relating to routine operational issues. In addition, the Superintendent of Schools shall also be the party designated by the LESSOR to execute amendments to the Lease Agreement, and to grant or deny any approvals or waivers required by the Lease Agreement, including placing LESSEE in default, and canceling or terminating the Lease Agreement.
5. The Lease Agreement is hereby amended to reflect that all notices or communications under this Lease Agreement by either Party to the other ("Notice") shall be sufficiently given or delivered if dispatched by (1) certified U.S. mail, postage pre-paid, return receipt requested, (2) hand delivery, (3) Federal Express or other comparable overnight mail service, (4) telephone facsimile transmission with transmission receipt, or (5) electronic mail to the following addresses, or as the same may be changed in writing from time to time:

In the case of Notice or communication to LESSOR:

The School Board of Miami-Dade County, Florida
c/o Superintendent of Schools
School Board Administration Building
1450 N.E. Second Avenue, Room 912
Miami, Florida, 33132
Fax: 305-995-1488

With a copy to:

Miami-Dade County Public Schools
Office of School Facilities
Attn: Chief Facilities Design & Construction Officer
1450 N.E. Second Avenue, Room 300
Miami, Florida 33132
Fax: 305-995-1918
E-mail: RPerez6@dadeschools.net

With copies to:

The School Board of Miami-Dade County, Florida
Office of General Counsel
1450 NE 2nd Avenue, Room 400
Miami, FL 33132
Attn: General Counsel
Fax: 305-995-1412
E-mail: Walter.Harvey@dadeschools.net and ACraft@dadeschools.net

In the case of Notice or Communication to LESSEE:

New Cingular Wireless PCS, LLC
Attn: Tower Asset Group - Lease Administration
Re: _____
Fix Asset # _____
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: _____
Fix Asset # _____
208 S. Akard Street Dallas, TX 75202-4206
Emergency Number: 800.638.2822.

6. A new Article XLI is hereby included in the Lease Agreement, as follows:

**BACKGROUND SCREENING REQUIREMENTS AND
COMPLIANCE WITH SCHOOL CODE**

In accordance with the requirements of Sections, 1012.465, 1012.32, and 1012.467, Florida Statutes, School Board Policies 6320 and 8475, as amended from time to time, the LESSEE agrees that the LESSEE and all of its employees, agents, contractors, and subcontractors who provide or may provide services under this Lease Agreement, will complete criminal history checks, and all background screening requirements, including level 2 screening requirements as outlined in the above-referenced Statutes and School Board Policies prior to entering or providing services relating to the DEMISED AREA.

Additionally, the LESSEE agrees that each of its employees, representatives, agents, subcontractors or suppliers who are permitted access on the DEMISED AREA when students are present, who have direct contact with students or who have access to or control of School funds must meet level 2 screening requirements as described in the above-referenced Statutes and School Board Policies.

Pursuant to the 2007 amendments to the Jessica Lunsford Act enacted by the Florida Legislature, requirements for certain fingerprinting and criminal history checks shall be inapplicable to non-instructional contracted personnel who qualify for exemption from level 2 screening requirements as provided under § 1012.468, Fla. Stat. (2007). In addition, the provisions of § 1012.467, Fla. Stat. (2007) are incorporated herein by reference, and any provisions of this Lease Agreement that may be inconsistent with, contrary to, or determined to be in conflict with § 1012.467, will be superseded by said Statute.

A non-instructional contractor who is exempt from the screening requirements set forth in § 1012.465, § 1012.468 or § 1012.467, Florida Statutes, is subject to a search of his or her name or other identifying information against the registration information regarding sexual predators and sexual offenders maintained by the Department of Law Enforcement under § 943.043 and the national sex offender public registry maintained by the United States Department of Justice. The LESSEE will not be charged for this search. Further, upon obtaining clearance by the School Board, if School Board deems necessary, School Board will issue a photo identification badge which shall be worn by the individual at all times while on the DEMISED AREA when students are present.

The LESSEE agrees to bear any, and all costs associated with acquiring the required background screening - including any costs associated with fingerprinting and obtaining the required photo identification badge. The LESSEE agrees to require all its affected employees to sign a statement, as a condition of employment with the LESSEE in relation to performance under this Lease Agreement, agreeing that the employee will abide by the heretofore described background screening

requirements, and also agreeing that the employee will notify the LESSEE/Employer of any arrest(s) or conviction(s) of any offense enumerated in School Board Policies 6320 and 8475 within 48 hours of its occurrence. The LESSEE agrees to provide the School Board with a list of all of its employees who have completed background screening as required by the above-referenced statutes and who meet the statutory requirements contained therein. The LESSEE agrees that it has an ongoing duty to maintain and update these lists as new employees are hired and in the event that any previously screened employee fails to meet the statutory standards. The LESSEE further agrees to notify the School Board immediately upon becoming aware that one of its employees who was previously certified as completing the background check and meeting the statutory standards is subsequently arrested or convicted of any disqualifying offense. Failure by the LESSEE to notify the School Board of such arrest or conviction within 48 hours of being put on notice and within 5 business days of the occurrence of qualifying arrest or conviction, shall constitute grounds for the School Board, at its sole option, to place the LESSEE in default.

The Parties further agree that failure by the LESSEE to perform any of the duties described in this Article shall constitute a material breach of the Lease Agreement entitling the School Board, at its sole option, to place the LESSEE in default.

7. **Counterparts/ Electronic Copies:** This First Amendment may be executed in multiple counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same First Amendment. Scanned signatures delivered by electronic mail in a "Pdf" format data file shall be an acceptable form of delivery and acceptance of this First Amendment.
8. Article XXXVI (SPECIAL ASSESSMENTS OR TAXING DISTRICT) is deleted in its entirety, and the following language is hereby substituted:

"LESSEE shall be responsible for collection and payment of any taxes, fees or other assessments, including, but not limited to sales tax and ad valorem taxes, all licenses, permits, surcharges, or other taxes which may be imposed on the School, DEMISED PREMISES or LESSOR as a result of the leasing, use and occupancy of the DEMISED PREMISES by LESSEE.

In the event that a third party occupies space on the DEMISED PREMISES, the assessments and/or taxes shall be shared equally between the LESSEE and such third party.

If at any time during the term of this Lease Agreement, there is a requirement by any jurisdictional entity for infrastructure improvements to the DEMISED PREMISES or other regulatory compliance due to LESSEE'S lease, use or occupancy of the DEMISED PREMISES, LESSEE acknowledges and agrees that it shall be responsible for compliance with all such applicable requirements, at LESSEE'S sole cost and expense. Non-compliance shall be deemed a material breach of this Lease Agreement.

In addition, the LESSEE acknowledges and agrees that in the event the tax-exempt status of the School or DEMISED PREMISES is rescinded or is at risk of being rescinded by Miami-Dade County or other appropriate jurisdictional governmental entity as a result of the use, occupancy or lease of the DEMISED PREMISES by the LESSEE, such rescission or potential rescission (as may be evidenced by a Notice of Proposed Property Taxes or any other official notice of any tax imposed by County, State or any other jurisdictional entity) shall constitute a default under this Lease Agreement, and may result, at the LESSOR'S sole option, in the automatic termination of this Lease Agreement for cause, irrespective of any other provision of this Lease Agreement. Payment of any taxes so imposed shall be remitted to the LESSOR within ten (10) days of receipt of notice, without demand."

9. **Legal Fees and Court Costs:** In the event of any litigation between the Parties under this Lease Agreement, each Party shall be responsible for its own attorney's fees and court costs through trials and appellate levels. The provisions of this paragraph shall survive expiration, or early termination or cancellation of this Lease Agreement.
10. **Subordination:** This Lease Agreement is and shall be subject and subordinate to any conveyance and ground or underlying leases and the rights of the LESSOR under those leases and to all financing that may now or hereafter affect the leases, the School or the DEMISED PREMISES, and to all renewals, modifications, consolidations, replacements and extensions thereof. This provision shall be self-operative and no further instrument of subordination shall be necessary. However, in confirmation of this subordination, LESSEE shall execute, within thirty (30) calendar days of request, any certificate that LESSOR may request.
11. **FLORIDA PUBLIC RECORDS LAW; AUDITS AND INSPECTIONS & ACCESS TO RECORDS:** This Lease Agreement shall be subject to Florida's Public Records Laws, Chapter 119, Florida Statutes. The LESSEE understands the broad nature of these laws and agrees to comply with Florida's Public Records Laws and laws relating to records retention. The LESSEE shall keep records to show its compliance with this Lease Agreement. The LESSEE'S make available, upon request of the LESSOR, a Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives, any books, documents, papers, and records of the LESSEE or its assigns, contractors or subcontractors which are directly pertinent to this specific Lease Agreement for the purpose of making audit, examination, excerpts, and transcriptions. Upon written request from the LESSOR'S custodian of public records, the LESSEE shall provide the LESSOR with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law. The LESSEE shall use commercially reasonable efforts to ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the term of this Lease Agreement and following the expiration or early termination or

cancellation of this Lease Agreement if the LESSEE does not transfer the records to the LESSOR. The LESSEE, its assigns shall retain all records for five (5) years after final payment is made or received and all pending matters are completed pursuant to Title 34, Sections 80.36(b)(1). If requested by LESSOR, the LESSEE, upon completion of the Lease Agreement, shall transfer, at no cost to the LESSOR, all public records in possession of the LESSEE or keep and maintain public records required by the LESSOR to perform the service. If the LESSEE transfers all public records to the LESSOR upon completion of the Lease Agreement, the LESSEE shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the LESSEE keeps and maintains public records upon completion of the Lease Agreement, the LESSEE shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the LESSOR, upon request from the LESSOR'S custodian of public records, in a format that is compatible with the information technology systems of the LESSOR.

The LESSEE shall incorporate this provision into every contract that it enters into relating to the DEMISED PREMISES.

IF THE LESSEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PROVIDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS LEASE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-995-1128, pr@dadeschools.net, and 1450 NE 2 Avenue, Miami, Florida 33132.

12. **Lessee's Representations:** The LESSEE is duly organized, validly existing, and in good standing under the laws of the State of Florida and is duly qualified to transact business in the State of Florida. LESSEE'S corporate status shall remain active and in good standing throughout the term of this Lease Agreement. LESSEE has full power to execute, deliver, and perform its obligations under this Lease Agreement. The execution and delivery of this First Amendment, and the performance by LESSEE of its obligations under this Lease Agreement, have been duly authorized by all necessary action of LESSEE, and do not contravene or conflict with any provisions of LESSEE'S Articles of Incorporation and By-Laws, or any other agreement binding on LESSEE. The individual(s) executing this First Amendment on behalf of LESSEE has/have full authority to do so.
13. **WAIVER OF TRIAL BY JURY:** THE PARTIES WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER WITH RESPECT TO ANY MATTER ARISING UNDER THIS LEASE AGREEMENT OR LESSEE'S USE OR OCCUPATION OF THE DEMISED PREMISES.
14. **Duty to Defend:** As it relates to Article XIX of this Lease Agreement ("**Indemnification**"), LESSEE shall have a duty, at LESSEE'S own expense, and upon written request by the LESSOR, to defend any suit, action or demand, of

whatever nature whatsoever, brought against LESSOR on any claim or demand arising out of, or resulting from LESSEE'S performance under this Lease Agreement, and for any and all claims against LESSOR by third parties arising from this Lease Agreement, except to the extent arising from the negligence or intentional misconduct of LESSOR. This provision shall survive the expiration, cancellation, or early termination of this Lease Agreement.

15. Except as amended by this First Amendment, all other terms and conditions of the Lease Agreement shall remain unchanged.

[INDIVIDUAL SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the LESSOR and LESSEE have caused this First Amendment to be executed by their respective and duly authorized officers the day and year first hereinabove written.

WITNESSES AS TO LESSOR:

Witness: _____
Print Name: _____

Witness: _____
Print Name: _____

LESSOR:
THE SCHOOL BOARD OF MIAMI-DADE
COUNTY, FLORIDA

By: _____
Dr. Jose Dotres
Superintendent of Schools
Date: _____

RECOMMENDED:

Raul F. Perez
Chief Facilities Design & Construction Officer
Date: _____

**TO THE LESSOR: APPROVED AS TO
RISK MANAGEMENT ISSUES:**

Office of Risk and Benefits Management
Date: _____

**TO THE LESSOR: APPROVED AS TO
FORM AND LEGAL SUFFICIENCY:**

Office of the General Counsel
Date: _____

**TO THE LESSOR: APPROVED AS TO
TREASURY MANAGEMENT ISSUES:**

Office of Treasury Management
Date: _____

WITNESSES AS TO LESSEE:

Witness: _____

Print Name: _____

Witness: _____

Print Name: _____

LESSEE:

NEW CINGULAR WIRELESS PCS, LLC, A

By: _____

John F. Heggy
Area Manager Network Engineering

Date: _____