

## AGREEMENT TO RELOCATE FACILITIES

**THIS AGREEMENT TO RELOCATE FACILITIES** ("Agreement") is entered into this 12<sup>th</sup> day of May, 2003 between the City of Mercer Island (the "City"), and AT&T Wireless Services of Washington, LLC, an Oregon limited liability company d/b/a AT&T Wireless, by AT&T Wireless Services, Inc., a Delaware corporation, its member ("AT&T") (individually the "Party", collectively the "Parties").

**WHEREAS**, AT&T has received permission from the City for the placement of a wireless communications facility (the "Facilities") on the property located on the 1-90 Right of Way in King County, specifically on Mercer Island, (the "Property") more particularly described in Exhibit A attached hereto; and

**WHEREAS**, the City has identified that a water main is currently running across the Property, near or under the Facilities placement, and the placement of the Facilities may impede the repair or replacement of the water main; and

**WHEREAS**, as part consideration of the granting of the placement of the Facilities on the Property, the City requires AT&T develop a mitigation plan so that placement of the Facilities does not increase the costs to the City for the repair or replacement of the water main;

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**1. Grant.**

- (a) Construction.** The City shall, subject to AT&T obtaining all required permits and approvals, grant AT&T the right to construct the Facilities on the Property as set forth in Exhibit B (the "Construction"). The Construction shall be at AT&T's sole cost and expense and subject to City inspections. The City shall have the right, but not the obligation, to have an observer on site to monitor the Construction.
- (b) Removal.** AT&T understands and agrees to the following: (i) in the event of a water main failure, AT&T shall remove the Facilities within five (5) calendar days of written notice from the City, or within a shorter time frame if commercially reasonable; (ii) in the event of scheduled replacement of the water main or other non-emergency repair, AT&T shall remove the Facilities within sixty (60) calendar days of written notice from the City, (iii) in either event if AT&T fails to remove the Facilities within the prescribed time frame, the City may remove the Facilities at AT&T's sole cost and expense.
- (c) Move.** In the event the City requires AT&T to permanently move the location of the Facilities, the City shall reasonably cooperate to re-locate the Facilities at a different location on the Property. The City shall also cooperate, as where practicable and subject to applicable zoning, to allow AT&T to locate a temporary facility in the immediate vicinity until a new permanent facility is operational.

(d) **Permit.** AT&T understands and agrees that in order to place the Facilities on the Property, AT&T must complete the City's Design Review process (Mercer Island City Code 19.06.040) and obtain a Right-of-way Use Permit and all other required permits (the "Permit") from the City, and that the execution of this document imposes no obligation on the City to issue any permit. Additionally, temporary relocation of said Facilities described in paragraph 1(c) above shall require similar approvals.

2. **Term.** The term of this Agreement shall be concurrent with term of the Wireless Communications Site Lease between AT&T and the Washington State Department of Transportation (WSDOT inventory control # IC1-17-06028) for the site known as DOT/I-90 Sound Wall, with an effective date of March 6, 2003.

### 3. Insurance.

(a) AT&T shall maintain at its own cost and expense, the following insurance coverage in full force during the duration of this Agreement: (i) a commercial general liability policy covering liability, including, but not limited to: Public Liability, Contractual Liability, Personal Injury, Bodily Injury, and Property Damage, in an amount not less than one million dollars (\$1,000,000.00) per occurrence and in aggregate (and shall include loss of use due to property damage); (ii) an excess/umbrella liability coverage of not less than two million dollars (\$2,000,000.00) per occurrence and in aggregate; (iii) automobile liability insurance in an amount not less than one million dollars (\$1,000,000.00). AT&T shall provide workers compensation with minimum state limits and employer's liability not less than one million dollars (\$1,000,000.00).

(b) AT&T shall provide for the City to be an additional insured on the commercial general liability and excess/umbrella liability policies referenced above, and shall provide thirty (30) days prior written notice of any cancellation or non-renewal of, the insurance policies listed in this Agreement. In the event of cancellation or renewal of the referenced policy, AT&T agrees to obtain a new policy naming the City as an additional insured in the same policy limits, or the City may terminate this Agreement.

(c) All insurance shall be placed with insurance companies licensed to do business in the state of Washington and with a Best's Insurance guide rating of A:VII or better.

4. **Hold Harmless.** AT&T agrees to defend, hold harmless and indemnify the City from claims arising from any of AT&T's activities on the Property, including, without limitation, the construction, removal, relocation, and appurtenant activities including any damage the Facilities may cause to the water main, related support structures, street or subgrade construction, except to the extent that such injury or damage is caused by the negligent acts of the City or any of its employees, agents or contractors. In no event shall either party be held liable for any claim for consequential, incidental, punitive, or economic damages or lost profits as to the other party. Additionally, AT&T shall be liable for all damages to streets, utilities, Interstate 90 facilities, private property, and any other improvements if the existence of the Facilities adversely impacts the City's ability to repair a water main failure.

5. **No Joint Venture.** Nothing in this Agreement shall be construed as creating a joint venture between the Parties.
6. **Notices.** All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if (i) personally delivered, (ii) by nationally recognized overnight courier, or (iii) mailed, certified mail, return receipt requested, to the following addresses:

**AT&T:**

AT&T Wireless

Attn: Lease Administration

RE: AWS Cell Site #: SD42; Cell Site Name: West Mercer

2729 Prospect Park Drive, Suite 100

Rancho Cordova, CA 95670

With a copy to:

AT&T Wireless

Attn: Legal Department

RE: AWS Cell Site #: SD42; Cell Site Name: West Mercer

2729 Prospect Park Drive, Suite 200

Rancho Cordova, CA 95670

**City:**

City of Mercer Island

9611 SE 36<sup>th</sup> Street

Mercer Island, WA 98040

Attention: City Engineer

7. **Governing Law.** This Agreement and the performance thereof shall be governed, interpreted, and construed and regulated by the laws of the state of Washington, and the venue for any dispute related to this Agreement shall be King County, Washington.
8. **Entire Agreement.** The Agreement constitutes the entire agreement and understanding of the parties, and supercedes all offers, negotiations, and other agreements with respect to the subject matter contained herein. Any modification hereto shall be made in writing and executed by both parties.
9. **Severability.** If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.
10. **Assignment.** AT&T may assign, upon written notice and acceptance by the City, to any entity which is a parent, affiliate, subsidiary, or purchaser of all or substantially all of AT&T's assets.

**11. Administration Fee.** Within thirty (30) days after the execution of this Agreement, AT&T shall reimburse the City for all of its costs and expenses to negotiate and execute this Agreement, including attorney's and consultants' fees and the time expended by the City staff and City Attorney's Office. The parties stipulate that Two Thousand Five Hundred Dollars and no/100 (\$2,500.00) shall be paid by AT&T to the City in full compensation for its costs and expenses incurred in negotiating this Agreement and AT&T agrees that no further documentation shall be required from the City to substantiate such costs and expenses.

**12. General Provisions.** This Agreement shall be binding upon and inure to the benefit of the Parties' successors in interest and assigns. In the event either of the Parties defaults on the performance of any terms of this Agreement or either Party places the enforcement of this Agreement in the hands of an attorney, or files a lawsuit, each Party shall pay all its own attorney fees, costs and expenses. Failure of the City to declare any breach or default immediately upon the occurrence thereof, or delay in taking any action in connection with, shall not waive such breach or default. Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their respective duly authorized representatives as of the day and year first above written.

CITY OF MERCER ISLAND  
a Washington municipal corporation.

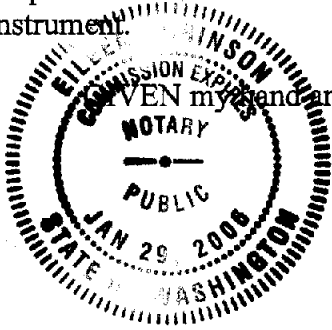
By: Richard M. Conrad  
Richard M. Conrad  
City Manager

APPROVED AS TO FORM

By: Londi K. Lindell  
Londi K. Lindell  
City Attorney

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this day personally appeared before me Richard M. Conrad, to me known to be the City Manager of the City of Mercer Island, a Washington municipal corporation, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.



GIVEN my hand and official seal this 12<sup>th</sup> day of May, 2003.

Eileen Robinson  
Notary Name: Eileen Robinson  
NOTARY PUBLIC in and for the State of Washington.  
My commission expires: 1-29-06

AT&T Wireless Services of Washington, LLC,  
an Oregon limited liability company d/b/a AT&T Wireless,

By: AT&T Wireless Services, Inc.,  
a Delaware corporation, its member

By: [Signature]  
Name: LOUIS R. LEVY  
Its: Implementation Manager  
Western Region

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this day personally appeared before me ~~LOUIS R. LEVY~~ to me known to be the ~~Implementation Manager~~ of AT&T Wireless Services of Washington, LLC, an Oregon limited liability company d/b/a AT&T Wireless, by AT&T Wireless Services, Inc., a Delaware corporation, its member, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

GIVEN my hand and official seal this 14 day of April, 2003

[Signature]  
Notary Name: LOUISA LEWIS  
NOTARY PUBLIC in and for the State of Washington.  
My commission expires: 9-20-06

**Exhibit 'A'**  
**Property Description**

**BTS Lease Area Legal Description**

That Portion Of The Northeast Quarter Of The Northeast Quarter Of Section 11, Township 24 North, Range 4 East, W.M. And The Southeast Quarter Of The Southeast Quarter Of Section 2, Township 24 North, Range 4 East, W.M.;

Commencing At A Tack In 2 Inch Diameter Concrete Monument In Case Located At The Centerline Intersection Of 60th Avenue Southeast And Southeast 24th Street;

Thence North  $00^{\circ} 07' 00''$  East 113.05 Feet, More Or Less, Along The Centerline Of Said 60<sup>th</sup> Ave Southeast To The North Line Of Said Section 11;

Thence North  $90^{\circ} 00' 00''$  East 23.02 Feet, More Or Less, Along Said Section Line, To The Face Of An Existing Vertical Curb;

Thence North  $00^{\circ} 47' 47''$  West 5.00 Feet, To The True Point Of Beginning;

Thence North  $90^{\circ} 00' 00''$  East 13.94', More Or Less, To The Face Of An Existing Concrete Retaining Wall;

Thence Southerly 27.92 feet, More Or Less, Along The Face Of Said Wall To The Southwest Corner Of Said Wall;

Thence South  $89^{\circ} 12' 13''$  West 12.22 feet More or Less, To The Face Of Said Curb; Thence North  $00^{\circ} 47' 47''$  West 23.06 Feet, More Or Less, Along The Face Of Said Curb, To The True Point Of Beginning And The Terminus Of This Legal Description.

Situate In The County Of King State Of Washington.

**Exhibit 'B'**  
**Proposed Facilities**

A wireless communications facility consisting of electrical cabinets constructed over a concrete slab and pilings, approved under City Building Permit Number 0302-131.