

AMENDMENT TO WIRELESS USE AGREEMENT

This Amendment to Wireless Use Agreement ("this Amendment") is executed to be effective the 7th day of August, 2007 (the "Effective Date"), by and between the County of Clark, a political subdivision of the State of Nevada (the "County"), and Cheetah Wireless Technologies, Inc. ("CWTI"), a Nevada corporation.

Recitals

WHEREAS, the County and CWTI entered into a Wireless Use Agreement dated January 17, 2006 (the "Agreement"), by which the County granted CWTI the right to use the County's Streetlight Poles and the County's Rights-of-Way (as defined in Sections 1.14 and 1.15 of the Agreement) for purposes of providing Telecommunications Service (as defined in Section 1.16 of the Agreement); and

WHEREAS, the County and CWTI wish to modify certain provisions of the Agreement to allow CWTI to use the existing power sources that service the County's pole facilities, to require CWTI to reimburse the County for increased costs resulting from such power sharing, and to increase the allowable number of poles in the Rights-of-Way that CWTI may use.

Agreement

NOW, THEREFORE, the County and CWTI hereby agree as follows:

SECTION 1. MODIFICATION OF SECTION 1 OF THE AGREEMENT

Section 1 of the Agreement is hereby modified to add Subsection 1.9(A), to read as follows:

1.9(A) Information Service. "Information Service" has the same meaning as that term is defined in the United States Code, 47 U.S.C. 153(20).

SECTION 2. MODIFICATION OF SUBSECTION 4.1.2 OF THE AGREEMENT

Subsection 4.1.2 of the Agreement is hereby modified to read as follows:

4.1.2 CWTI shall not attach its Equipment to more than a total of 25 streetlight poles in the ROW within one square mile, regardless of whether such streetlight poles are owned by the County, CWTI or third parties.

SECTION 3. MODIFICATION OF SUBSECTION 4.1.4 OF THE AGREEMENT

4.1.4 To reduce the disruption to Municipal Facilities, CWTI may power its Equipment by using the power sources that service the existing



Streetlight Pole structure and its components. The power used by CWTI's Equipment shall be determined by the plate rating for the Equipment installed pursuant to this Agreement. All electrical work and installations related to the power-sharing authorized by this Subsection 4.1.4 shall be performed by a licensed contractor that is approved by the County and in a manner that is approved by the County. CWTI shall make all requests for power-sharing arrangements pursuant to this Subsection 4.1.4 in advance and in writing. CWTI shall reimburse the County, as provided in Subsection 5.1(A), for the increased power costs that the County incurs as a result of any power-sharing authorized by this Subsection 4.1.4.

SECTION 4. MODIFICATION OF SUBSECTION 4.7 OF THE AGREEMENT

Subsection 4.7 of the Agreement is hereby modified to read as follows:

4.7 No Authorization to Provide Other Services. CWTI represents, warrants and covenants that its Equipment installed pursuant to this Agreement will be utilized solely for providing the Telecommunications Services identified herein and any Information Service that may be provided over the Network, and CWTI is not authorized to and shall not use its Equipment to offer or provide any other services not specified herein.

SECTION 5. MODIFICATION OF SECTION 5 OF THE AGREEMENT

Subsections 5.1 and 5.3 of the Agreement is hereby modified to read as follows:

5.1 Use Fee. In order to compensate the County for CWTI's entry upon and deployment of Equipment within the ROW or on any Municipal Facilities, CWTI shall pay to the County, on a quarterly basis, an amount equal to five percent (5%) of Gross Revenues (the "Use Fee") collected during the calendar quarter of each year. CWTI shall make any payment of the Use Fee that may be due and owing within forty-five (45) days after each calendar quarter of each year. Within forty-five (45) days after the termination of this Agreement, the Use Fee shall be paid for the period clapsing since the end of the last quarterly period for which the Use Fee has been paid and for any past due amounts. CWTI shall furnish to the County with each payment of the Use Fee a statement, executed by an authorized officer of CWTI or his or her designee, showing the amount of Gross Revenues for the period covered by the payment. If CWTI discovers any error in the amount of compensation due, the County shall be paid within thirty (30) days of discovery of the error or determination



of the correct amount. Any overpayment to the County through error or otherwise shall be refunded or offset against the next payment due. Acceptance by the County of any payment of the Use Fee shall not be deemed to be a waiver by the County of any breach of this Use Agreement occurring prior thereto, nor shall the acceptance by the County of any such payments preclude the County from later establishing that a larger amount was actually due or from collecting any balance due to the County.

5.3 CPI Adjustment. Effective on July 1, 2008, and continuing annually thereafter during the term, the Municipal Facilities Quarterly Fee shall be adjusted by a percentage amount equal to the percentage of change in the Annual Average Consumer Price Index, All Urban Consumers for All Items, U.S. City Average (1982-84 = 100), for the most recently completed calendar year as compared to the previous calendar year, as published by the U.S. Department Labor, Bureau of Labor Statistics, Washington, D.C.

SECTION 6. MODIFICATION OF SECTION 5 OF THE AGREEMENT

Section 5 of the Agreement is hereby modified by adding a new Subsection 5.1(A), to read as follows:

5.1(A) Reimbursement of County's Increased Power Costs. Reimbursement to the County for CWTI's usage of electrical power shall be based upon the plate rating of the Equipment installed pursuant to this Agreement and the initial rates shall be as follows:

<u>Category</u>	<u>Maximum Plate Rating (Watts)</u>	<u>Monthly Rate Per Pole</u>
1	Up to 75	\$ 4.75
2	76 – 149	\$ 9.50
3	150 – 225	\$14.50

The reimbursement of power shall be paid to the County on a calendar quarterly basis and shall be based upon the number of poles that CWTI has installed its Equipment on as of the first day of each month and that are using the County's electric power times the applicable rate as indicated in this Section. The applicable rates charged by this subsection shall not exceed the Wireless Communication Service rates as filed with the PUCN by Nevada Power Company. The County may increase the power fee charged by this subsection if the applicable rate for Wireless Communication Service as filed with the PUCN is greater then the rate provided for in this subsection by 25% or more. Any such change in rates shall take effect on July 1 of each year.

SECTION 7. MODIFICATION OF SECTION 6 OF THE AGREEMENT

Subsection 6.3 of the Agreement is hereby modified to read as follows:

6.3 Location of Equipment. The proposed locations of CWTI's planned initial installation of Equipment shall be provided to the County in the form of a map or on an annotated aerial photograph, either of which must be in a format acceptable to the County, promptly after CWTI's field review of available Streetlight Poles and prior to deployment of the Equipment. Prior to Commencement of Installation of the Equipment in the ROW or upon any Municipal Facility, CWTI shall obtain written approval from an authorized representative of the County for such installation in the ROW or upon such Municipal Facility from the County pursuant to §6.2 above. The County may approve or disapprove a location and installation, based upon reasonable regulatory factors, including but not limited to the ability of the Municipal Facility to structurally support the Equipment, the location of other present or future communication facilities, efficient use of scarce physical space to avoid premature exhaustion, potential interference with other communication facilities and services, the public safety and other critical services; provided however, that approval shall not be unreasonably conditioned, delayed, or withheld. Upon the completion of each installation, CWTI promptly shall furnish to the County a current Streetlight Pole list and as-built map or annotated aerial photograph, either of which must be in a format acceptable to the County, showing the exact location of the Equipment in the ROW and on Municipal Facilities or third-party facilities. Upon request by any public utility furnishing electrical power to the Municipal Facility CWTI shall provide said public utility with the same Streetlight Pole list and as-built map or annotated aerial photograph that is furnished to the County with related load requirements.

SECTION 8. MODIFICATION OF SECTION 7 OF THE AGREEMENT

Subsections 7.1 and 7.2 of the Agreement are hereby modified to read as follows:

7.1 **Waiver of Claims.** CWTI waives any and all claims, demands, causes of action, and rights it may assert against the County on account of any loss, damage, or injury to any Equipment or any loss or degradation of the Telecommunications Service or Information Service as a result of any event or occurrence which is beyond the reasonable control of the County.



7.2 Limitation of County's Liability. The County shall be liable only for the cost of repair to damaged Equipment arising from the sole negligence or sole willful misconduct of County, its employees, agents, or contractors and shall in no event be liable for indirect or consequential damages. County's total liability under this Agreement shall be limited to the annual aggregate Municipal Facilities Quarterly Fees and Use Fees paid by CWTF to the County in the year under which such liability arises.

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SECTION 9. CONFIRMATION OF REMAINDER OF AGREEMENT

Except to the extent that the Agreement has been expressly modified above, the parties hereby confirm that the terms and conditions of the Agreement as originally executed remain in full force and effect.

EXECUTED to be effective on the date specified above.


COUNTY OF CLARK, NEVADA

By: 
RORY REID, Chairman


ATTEST:


SHIRLEY PARRAGUIRRE, County Clerk

APPROVED AS TO FORM


By: MARK E. WOOD
Deputy District Attorney

CHEETAH WIRELESS TECHNOLOGIES, INC.
A Nevada Corporation

By: 
MITCHELL GONZALEZ
President and Chief Executive Officer