

**A RESOLUTION FOR THE CITY OF CAMERON, CLINTON,  
DeKALB AND CALDWELL COUNTIES, MISSOURI  
AUTHORIZING THE CITY MANAGER TO EXECUTE TOLLING  
AGREEMENTS AND GRANTING FURTHER AUTHORITY**

**WHEREAS**, the City has initiated audits to determine the existence or extent of possible underpayment of the gross receipts license tax by telephone companies operating in the City (“Audits”);

**WHEREAS**, the City and T-Mobile Central, LLC desire to enter into a tolling agreement, as more fully described in Exhibit A attached hereto (“T-Mobile Tolling Agreement”), and the Council finds it in the best interest of the City to enter into such tolling agreement;

**WHEREAS**, in the course of conducting the Audits, the City may require additional tolling agreements with other telephone companies and the Council finds it in the best interest of the City to enter into such tolling agreements substantially in the same form as that approved in Exhibit A; and

**WHEREAS**, in the course of conducting the Audits, the City may be required, as authorized by law, to compel by subpoena the production of books, papers, and other evidence for the purpose of investigating the existence or extent of possible underpayment of the gross receipts license tax on telephone companies.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CAMERON, MISSOURI, AS FOLLOWS:**

**Section 1.** The City Council hereby authorizes the City Manager to execute on behalf of the City the T-Mobile Tolling Agreement, substantially in the form attached hereto as “Exhibit A,” and hereby further authorizes the City Manager to execute on behalf of the City tolling agreements substantially in the form of Exhibits A with other telephone companies as required during the course of the Audits.

**Section 2.** The City Council hereby authorizes the City Manager to issue as necessary during the course of the Audits and compel by subpoena the production of telephone companies’ books, papers, and other evidence for the purpose of investigating the existence or extent of possible underpayment of the gross receipts license tax on telephone companies.

**Section 3.** The City Council hereby authorizes the City Manager and Special Legal Counsel to take all such further actions as may be necessary to carry out the intent of this Resolution and the Audits.

**Section 4.** This Resolution shall take effect and be in force from and after its passage and approval by the Mayor.

Passed and approved by the City Council on this 7<sup>th</sup> day of August 2017.

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Mayor Darlene Breckenridge

Attest:

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City Clerk/Finance Clerk

**EXHIBIT A**

**T-MOBILE TOLLING AGREEMENT**

## **TOLLING AGREEMENT**

THIS TOLLING AGREEMENT ("Agreement") is made by and between the City of Cameron, Missouri (the "City") and T-Mobile Central, LLC ("T-Mobile" and together with the City, the "Parties").

### **Recitals**

**WHEREAS**, the City has a license tax of "five percent (5%) of the gross receipts" due from "[e]very person, firm, company or corporation now or hereafter engaged in the business of furnishing exchange telephone service in the City of Cameron, Missouri" as set forth in Cameron Ordinance 2878 ("License Tax");

**WHEREAS**, the City has commenced an audit to determine the existence or extent of possible underpayment of the License Tax by T-Mobile that the City believes would give rise to certain enforcement actions or claims against T-Mobile;

**WHEREAS**, the Parties wish to postpone or avoid the inconvenience, expense, and distraction of possible litigation by the City against T-Mobile, while fully preserving any rights of the City as to the Tolloed Claims that may exist prior to the Tolling Period (all as defined below in this Agreement) to commence legal action against T-Mobile, which, but for this Agreement, might otherwise be time-barred or limited in any way by any applicable statute of limitations, laches, and other possible time-bars and defenses based in whole or in part on the time which may elapse during the Tolling Period established herein (all of which time-bars and defenses, including, the statute of limitations and laches, are referred to as "Time Defenses");

**WHEREAS**, neither T-Mobile nor the City, by entering into this Agreement, make any statement as to the merit or extent of merit of any claims, damages or defenses (including the Time Defenses) and the City and T-Mobile agree that both have the power and authority to enter into this Agreement and no other parties are necessary to join herein in order to toll the statute of limitations and other Time Defenses and make this Agreement enforceable; and,

**NOW, THEREFORE**, in consideration of the mutual commitments herein and other good and valuable mutual consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### **Terms and Conditions**

1. With respect to any and all claims, causes of action or remedies of the City, known or unknown, relating to, arising out of, or in connection with the City's License Tax, including but not limited to claims for delinquent taxes, interest, penalties, and attorney fees, declaratory judgment and injunctive relief, accounting, violation of statute, or any other claims, offsets, or causes of action whatsoever (collectively, the "Tolloed Claims"), the Parties hereby stipulate that any applicable statute of limitations or other Time Defenses applicable to the Tolloed Claims shall be deemed tolled from the period of July 5, 2017 until the earlier of: (a) the termination of this Agreement by either the City or T-Mobile in accordance with the terms and conditions of this Agreement; or (b) July 5, 2018, unless extended in writing by the Parties, hereinafter such period to be known as the "Tolling Period." For purposes of clarity, the tolling of the statute of limitations

and other Time Defenses during the Tolling Period shall survive the Tolling Period and any termination hereof, such that any Tolloed Claim which would have been barred or limited in any way by as a result of any statute of limitations or other Time Defense may be brought by the City without regard to any expiration of time that occurs during the Tolling Period and T-Mobile may not hereinafter assert in any action between the Parties or otherwise the expiration of the statute of limitation or other Time Defense occurring during or as to the passage of time within the Tolling Period as a defense to any such Tolloed Claim brought by the City.

2. The City or T-Mobile may terminate the Tolling Period by giving the other Party thirty (30) days prior written notice by e-mail and physical delivery such as overnight delivery of the termination of the Tolling Period. Any applicable statute of limitations or other Time Defenses which apply to the Tolloed Claims shall begin to run again from the effective date of termination of the Tolling Period. Prior to expiration or termination of this Agreement, which shall occur upon expiration or termination of the Tolling Period, the City and T-Mobile agree not to file any cause of action against the other relating to the Tolloed Claims.

3. Nothing in this Agreement shall be construed as an admission of any fault, liability or wrongdoing by or relating to any person and nothing herein shall be deemed to limit any obligation or liability of either Party, or any defense other than Time Defense tolled during this Agreement, including during the Tolling Period, that may exist.

4. This Agreement may be signed in counterparts, each of which shall be deemed an original, and all such counterparts constituting one Agreement. The exchange of copies of this Agreement and of signature pages electronically or by physical delivery of hard copy shall constitute effective execution and delivery of this Agreement.

5. Any and all notices under this Agreement shall be in writing, and shall be addressed and provided to the Parties by email and physical delivery to the following:

To the City: Daniel G. Vogel  
Margaret C. Eveker  
Cunningham Vogel & Rost, P.C.  
333. S. Kirkwood Rd., Suite 300  
St. Louis, MO 63122  
dan@municipalfirm.com  
maggie@municipalfirm.com  
Special Legal Counsel  
City of Cameron, Missouri

To  
T-Mobile: Marie Harris  
Senior Manager, Tax Audit  
T-Mobile  
12920 SE 38<sup>th</sup> St.  
Bellevue, WA 98006  
Marie.harris@t-mobile.com

6. The rights and obligations of the Parties created by this Agreement shall be governed by and construed in accordance with the laws of the State of Missouri, without regard to conflicts of law.

7. This Agreement may not be amended, modified, or supplemented, except in writing duly executed and delivered by both Parties to this Agreement.

8. This Agreement constitutes the full and complete agreement of the parties concerning the subject matter of the Agreement, and there are no covenants, conditions, or terms other than those expressly set forth in this Agreement.

9. This Agreement shall be effective on the date of the last signature below.

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals as of the date below written.

**T-MOBILE**

By: Chris Miller

Name: Chris Miller

Title: VP Tax

Date: 7/17/17

**CITY OF CAMERON**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

