

Wilmington, Delaware
September 20, 2018

#4575

Sponsor:

Council
Member
Turner

WHEREAS, pursuant to Wilmington Charter Section 8-205, the City may sell or exchange any real estate belonging to the City or grant any license, easement, right-of-way, or other interest over or in such real estate with authority by general ordinance and later resolution from Council to do so; and

WHEREAS, City Code Section 2-626 provides that the Council shall by resolution approve the grant of any utility license, easement, or right-of-way by the Department of Public Works; and

WHEREAS, on July 8, 2004, City Council passed a resolution approving a license agreement (the "License Agreement") between the City and Omnipoint Communications Enterprises, L.P. ("Omnipoint") which permitted Omnipoint to install and operate communications antennas on and a control cabinet at the base of the City's water tower on or near New Castle Avenue (Route 9), sometimes referred to as Paper Place, Wilmington, Delaware; and

WHEREAS, T-Mobile Northeast, LLC ("T-Mobile") is the successor-interest to Omnipoint with respect to the License Agreement; and

WHEREAS, the License Agreement is set to expire on June 30, 2019; and

WHEREAS, the parties desire to amend the License Agreement (a copy of the amendment, in substantial form, is attached hereto as Exhibit "A") to: 1) extend the term of the License Agreement for an additional five (5) years commencing on July 1, 2019; 2) increase the license fee payable by T-Mobile to the City under the License Agreement to \$49,000 per year with an increase of four percent (4%) annually commencing on July 1,

2019; and 3) provide T-Mobile with an option to renew the License Agreement for two (2) additional terms of five (5) years thereafter.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WILMINGTON that the Council hereby authorizes and approves the “First Amendment to License Agreement” between the City of Wilmington and T-Mobile Northeast, LLC, a copy of which, in substantial form, is attached hereto as Exhibit “A”, and the Mayor, or his designee, and the City Clerk are hereby authorized to execute as many copies of said “First Amendment to License Agreement” as may be necessary.

Passed by City Council,

ATTEST: _____
City Clerk

SYNOPSIS: This Resolution approves the First Amendment to a License Agreement between the City and T-Mobile Northeast, LLC (“T-Mobile”), which permits T-Mobile to install and operate communications antennas on and a control cabinet at the base of the City’s water tower located on or near New Castle Avenue (Route 9), sometimes referred to as Paper Place, Wilmington, Delaware. The First Amendment will: 1) extend the term of the License Agreement for an additional five (5) years commencing on July 1, 2019; 2) increase the license fee payable by T-Mobile to the City under the License Agreement to \$49,000 per year with an increase of four percent (4%) annually commencing on July 1, 2019; and 3) provide T-Mobile with an option to renew the License Agreement for two (2) additional terms of five (5) years thereafter.

W0101580

EXHIBIT A

FIRST AMENDMENT TO LICENSE AGREEMENT

THIS FIRST AMENDMENT TO LICENSE AGREEMENT (“**First Amendment**”), dated as of the latter of the signature dates below, is by and between The City of Wilmington, having a mailing address of Attn: Commissioner of Public Works, City of Wilmington, 800 French Street, 6th Floor, Wilmington, DE 19801 (“**Licensor**”) and T-Mobile Northeast LLC, a Delaware limited liability company, having a mailing address of 12920 SE 38th Street, Bellevue, WA 98006 (“**Licensee**”).

WHEREAS, Licensor and Licensee, or their predecessors-in-interest, entered into that certain License Agreement dated July 8, 2004, whereby Licensor licensed to Licensee certain Premises, therein described, located at or near New Castle Avenue, Wilmington, DE 19720 (“**Agreement**”); and

WHEREAS, Licensor and Licensee desire to amend the Agreement to extend the term of the Agreement; and

WHEREAS, Licensor and Licensee desire to adjust the license fee in conjunction with the modifications to the Agreement contained herein; and

WHEREAS, Licensor and Licensee, in their mutual interest, wish to amend the Agreement as set forth below accordingly.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensor and Licensee agree as follows:

1. **Extension of Term.** In addition to the extension terms presently set forth in the Agreement at Section 2.2, the parties hereby agree to add three (3) additional extension terms of five (5) years each. Accordingly, commencing as of July 1, 2019, the Term will automatically renew for a five (5) year period upon the same terms and conditions of the Agreement except for the adjustment of fees described below. Licensee shall have the option to renew the term for two (2) additional five (5) year terms upon the same terms and conditions set forth in the Agreement except for the adjustment of fees described below unless Licensee notifies Licensor in writing of Licensee’s intention not to renew the Agreement at least ninety (90) days prior to the expiration of the existing Agreement.

2. **License Fee.** Section 3.1 of the Agreement is hereby deleted in its entirety and replaced with the following:

3.1 Commencing as of July 1, 2019, the license fee payable under the Agreement shall be \$49,000 per year, subject to an annual increase thereafter in the amount of four

percent (4%) over the license fee for the immediately preceding year, and any further adjustments as provided in the Agreement.

3. **Other Terms and Conditions Remain.** In the event of any inconsistencies between the Agreement (and any other amendment thereto) and this First Amendment, the terms of this First Amendment shall control. Except as expressly set forth in this First Amendment, the Agreement otherwise is unmodified and remains in full force and effect. Each reference in the Agreement to itself shall be deemed also to refer to this First Amendment.

IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute and seal this First Amendment on the dates set forth below.

“LICENSOR”

City of Wilmington

By: _____

Name: _____

Title: _____

Date: _____

“LICENSEE”

T-Mobile Northeast LLC, a Delaware
limited liability company

By: _____

Name: _____

Title: _____

Date: _____

T-Mobile Contract Attorney, as to form

[ACKNOWLEDGEMENTS APPEAR ON NEXT PAGE]

LICENSEE ACKNOWLEDGEMENT

State of Washington

County of King

This instrument was acknowledged before me on _____ (date) by _____ (name(s) of person(s)) as _____ (type of authority, e.g., officer, trustee, etc.) of _____ (name of party on behalf of whom instrument was executed).

_____ (signature of notarial officer)

Seal

title and rank

my commission expires: _____

LICENSOR ACKNOWLEDGEMENT

State of Delaware

County of _____ (Town/City)

This instrument was acknowledged before me on _____ (date) by _____ (name(s) of person(s)) as _____ (type of authority, e.g., officer, trustee, etc.) of _____ (name of party on behalf of whom instrument was executed).

_____ (signature of notarial officer)

Seal

title and rank

my commission expires: _____