

Wilmington, Delaware
June 6, 2019

#4664

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

Co-Sponsor:

Council
President
Shabazz

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 March 10, 2005, 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 6 Newark Union Road, 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 March 10, 2020; 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 March 10, 2020; 2) increase the license fee payable by T-Mobile to the City under the License Agreement to \$50,400 per year with an increase of three percent (3%) annually commencing on March 10,

2020; 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, is 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 6 Newark Union Road, Wilmington, Delaware. The First Amendment will: 1) extend the term of the License Agreement for an additional five (5) years commencing on March 10, 2020; 2) increase the license fee payable by T-Mobile to the City under the License Agreement to \$50,400 per year with an increase of three percent (3%) annually commencing on March 10, 2020; and 3) provide T-Mobile with an option to renew the License Agreement for two (2) additional terms of five (5) years thereafter.

EXHIBIT A

FIRST AMENDMENT TO LICENSE AGREEMENT

This First Amendment to License Agreement (the "**Amendment**") is effective as of the date of execution by the last party to sign (the "**Effective Date**") by and between The City of Wilmington, a municipal corporation of the State of Delaware ("**Licensor**") and T-Mobile Northeast LLC, a Delaware limited liability company ("**Licensee**") (collectively, the "**Parties**").

Licensor and Licensee (or their predecessors-in-interest) entered into that certain License Agreement dated March 9, 2005 ("**License**") regarding Licensor's leased area ("**Premises**") located at Carr Rd & Newark Union Public, Wilmington, DE 19803 (the "**Property**").

NOW, for good and valuable consideration, Licensor and Licensee agree as follows:

1. The License is in full force and effect and neither Licensor nor Licensee is in breach under the terms of the License.
2. At the expiration of the License, the Term of the License will automatically be extended for three (3) additional and successive five (5) year terms (each a "**Renewal Term**"), provided, that Licensee may elect not to renew by providing Licensor thirty (30) days' notice prior to the expiration of the then current Renewal Term.
3. At the commencement of the first Renewal Term provided for in this Amendment, Licensee shall pay Licensor Four Thousand Two Hundred and No/100 Dollars (\$4,200.00) per month ("**Rent**") in advance, by the fifth day of each month. Any Rent previously paid from and after the commencement of the first Renewal Term provided for in this Amendment shall be offset against the new Rent. Rent shall be adjusted annually, effective on each anniversary of the Renewal Term, by an amount equal to three percent (3%) over the Rent for the immediately preceding year. This Rent adjustment shall supersede and replace any prior Rent adjustments.
4. Any charges payable under the License other than Rent shall be billed by Licensor to Licensee within twelve (12) months from the date in which the charges were incurred or due; otherwise the same shall be deemed time-barred and be forever waived and released by Licensor.
5. All notices, requests, demands and other communications shall be in writing and shall be effective three (3) business days after deposit in the U.S. mail, certified, return receipt requested or upon receipt if personally delivered or sent via a nationally recognized courier to the addresses set forth below. Licensor or Licensee may from time to time designate any other address for this purpose by providing written notice to the other party.

If to Licensee:
T-Mobile USA, Inc.
12920 SE 38th Street
Bellevue, WA 98006
Attn: Lease Compliance/ 1NC6592B

If to Licensor:
The City of Wilmington
800 French Street, 6th Floor
Wilmington, DE 19801

6. Licensee and Licensor will reasonably cooperate with each other's requests to approve permit applications and other documents related to the Property.

- 7. Except as expressly set forth in this Amendment, the License otherwise is unmodified. To the extent any provision contained in this Amendment conflicts with the terms of the License, the terms and provisions of this Amendment shall control. Each reference in the License to itself shall be deemed also to refer to this Amendment.
- 8. This Amendment may be executed in duplicate counterparts, each of which will be deemed an original. Signed electronic copies of this Amendment will legally bind the Parties to the same extent as originals.
- 9. Each of the Parties represents and warrants that it has the right, power, legal capacity and authority to enter into and perform its respective obligations under this Amendment.

IN WITNESS, the Parties execute this Amendment as of the Effective Date.

Licensor:

The City of Wilmington, a municipal corporation of the State of Delaware

By: _____

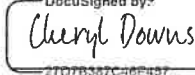
Print Name: _____

Title: _____

Date: _____

Licensee:

T-Mobile Northeast LLC, a Delaware limited liability company

By:  _____
DocuSigned by: Cheryl Downs
2707B387C16E497...

Print Name: Cheryl Downs

Title: Director, Technology Property Management

Date: 1/28/2019

Kelly Dunham 1/22/19
T-Mobile Contract Attorney
as to form